

File No. PCAOB 2005-02  
Consists of 1378 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

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Form 19b-4

Proposed Rule

By

Public Company Accounting Oversight Board

In accordance with Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of the Proposed Rule

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") proposed rules, "Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees." The proposed rules set forth ethics and independence requirements for registered public accounting firms. The proposed rules are attached as Exhibit A to this rule filing.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Board

(a) The Board approved the proposed rules, and authorized them for filing with the SEC, at its Open Meeting on July 26, 2005. No other action by the Board is necessary for the filing of the proposed rules.

(b) Questions regarding this rule filing may be directed to Gordon Seymour, Deputy General Counsel (202-207-9034; seymourg@pcaobus.org) or Bella Rivshin, Assistant Chief Auditor (202-207-9180; rivshinb@pcaobus.org).

3. Board's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rules

(a) Purpose

Section 103(a) of the Act directs the Board, by rule, to establish "ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection

of investors." Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor independence "as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act."

As discussed more fully in Exhibit 3, two types of tax services have raised serious concerns among investors, auditors, lawmakers, and others relating to the ethics and independence of accounting firms that provide both auditing and tax services –

1. the marketing to public company audit clients of questionable tax transactions used improperly to avoid paying taxes or to manipulate financial statements in order to make such statements appear more favorable to investors, and
2. the provision of tax services, including tax shelter products, to executives of public company audit clients who are involved in the financial reporting process at such companies.

Accordingly, the Board adopted a set of rules designed to establish a framework for addressing the concerns that have arisen in connection with auditors' provision of tax services to their public company audit clients. Specifically, the proposed rules are designed, among other things, to prevent auditors from providing (1) certain aggressive tax shelter services to public company audit clients, (2) any other service to a public company audit client for a contingent fee, which is a fee arrangement often used in tax work, and (3) any tax service to certain persons who serve in financial reporting oversight roles at a public

company audit client. The rules also codify, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and standards, and introduce a foundation for the independence component of the Board's ethics rules. Finally, the rules implement the requirements of the Act and the SEC's independence rules when an auditor seeks audit committee pre-approval to provide tax services that are not prohibited by the Board's or the SEC's rules.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

4. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules would apply equally to all registered public accounting firms and their associated persons. Although some of the proposed rules would prohibit a registered public accounting firm from providing certain non-audit services to its audit clients, they would not restrict the provision of these same services to other companies.

5. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the proposed ethics and independence rules for public comment on December 14, 2004. See Exhibit 2(a)(A). The Board received 807 written comment letters relating to its proposal. See Exhibits 2(a)(B) and 2(a)(C).

The Board has carefully considered all comments it has received. In response to the written comments received, the Board has clarified and modified certain aspects of the proposed rules. The Board's response to the comments it received and the changes made to the rules in response to these comments are summarized in Exhibit 3 to this filing.

6. Extension of Time Period for Commission Action

The Board does not consent to an extension of the time period specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rules Based on Rules of Another Board or of the Commission

As described in detail in Exhibit 3 to this filing, some of the proposed rules are based on comparable independence requirements of the Commission.

9. Exhibits

Exhibit A – Text of the Proposed Rules

Exhibit 1 – Form of Notice of Proposed Rule for Publication in the Federal Register.

Exhibit 2(a)(A) – PCAOB Release No. 2004-015 (December 14, 2004)

Exhibit 2(a)(B) – Alphabetical List of Comments

Exhibit 2(a)(C) – Written comments on the rules proposed in PCAOB Release No. 2004-015

Exhibit 3 – PCAOB Release No. 2005-014 (July 26, 2005)

10. Signatures

Pursuant to the requirements of the Act and the Securities Exchange Act of 1934, as amended, the Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Public Company Accounting Oversight Board

By: William J. McDonough / *WJM*  
William J. McDonough  
Chairman

Exhibit A – Text of the Proposed Rule**SECTION 3. PROFESSIONAL STANDARDS****Part 5 – Ethics****Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules**

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

**(a)(i) Affiliate of the Accounting Firm**

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

**(a)(ii) Affiliate of the Audit Client**

The term "affiliate of the audit client" means –

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

**(a)(iii) Audit and Professional Engagement Period**

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

#### **(a)(iv) Audit Client**

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

#### **(c)(i) Confidential Transaction**

The term "confidential transaction" means –

(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

**(c)(ii) Contingent Fee**

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

**(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

**(i)(i) Immediate Family Member**

The term "immediate family member" means a person's spouse, spousal equivalent, and dependents.

**(i)(ii) Investment Company Complex**

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

**Rule 3502. Responsibility Not to Cause Violations**

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew, or was reckless in not knowing, would directly and substantially contribute to such violation.

## **Subpart 1 – Independence**

### **Rule 3520. Auditor Independence**

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Commission or other applicable independence criteria.

### **Rule 3521. Contingent Fees**

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 service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

### **Rule 3522. Tax Transactions**

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 non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction –

(a) **Confidential Transactions** – that is a confidential transaction; or

(b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011.1-4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which the firm has a formal agreement or other arrangement related to the promotion of such transactions, recommends engaging in the transaction.

### **Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles**

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 a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless –

(a) the person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited  
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(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are –

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

**Rule 3524. Audit Committee Pre-approval of Certain Tax Services**

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall

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(a) describe, in writing, to the audit committee of the issuer –

(1) the scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and

(2) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;

(b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and

(c) document the substance of its discussion with the audit committee of the issuer.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. PCAOB-2005-02)

[Date]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on August 02, 2005, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On July 26, 2005, the Board adopted Rules 3501 - *Definitions of Terms Employed in Section 3, Part 5 of the Rules*; 3502 - *Responsibility Not to Cause Violations*; 3520 - *Auditor Independence*; 3521 - *Contingent Fees*; 3522 - *Tax Transactions*; 3523 - *Tax Services for Persons in Financial Reporting Oversight Roles*; and 3524 - *Audit Committee Pre-approval of Certain Tax Services* ("the proposed rules"). The proposed rule text is set out below.

**SECTION 3. PROFESSIONAL STANDARDS**

**Part 5 – Ethics**

**Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules**

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

**(a)(i) Affiliate of the Accounting Firm**

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

**(a)(ii) Affiliate of the Audit Client**

The term "affiliate of the audit client" means –

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

**(a)(iii) Audit and Professional Engagement Period**

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

**(a)(iv) Audit Client**

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

**(c)(i) Confidential Transaction**

The term "confidential transaction" means –

(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as

through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

**(c)(ii) Contingent Fee**

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

**(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

**(i)(i) Immediate Family Member**

The term "immediate family member" means a person's spouse, spousal equivalent, and dependents.

**(i)(ii) Investment Company Complex**

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

### **Rule 3502. Responsibility Not to Cause Violations**

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew, or was reckless in not knowing, would directly and substantially contribute to such violation.

### **Subpart 1 – Independence**

#### **Rule 3520. Auditor Independence**

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to

satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Commission or other applicable independence criteria.

### **Rule 3521. Contingent Fees**

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 service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

### **Rule 3522. Tax Transactions**

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 non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction –

(a) **Confidential Transactions** – that is a confidential transaction; or

(b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011.1-4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which the firm has a formal agreement or other arrangement related to the promotion of such transactions, recommends engaging in the transaction.

**Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles**

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 a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless –

(c) the person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(d) the person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited –

(2) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are –

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

**Rule 3524. Audit Committee Pre-approval of Certain Tax Services**

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall –

(a) describe, in writing, to the audit committee of the issuer –

(1) the scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and

(2) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;

(b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and

(c) document the substance of its discussion with the audit committee of the issuer.

## II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule

#### (a) Purpose

Section 103(a) of the Act directs the Board, by rule, to establish "ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor independence "as may be necessary or appropriate in the

public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act.”

As discussed more fully in Exhibit 3, two types of tax services have raised serious concerns among investors, auditors, lawmakers, and others relating to the ethics and independence of accounting firms that provide both auditing and tax services –

1. the marketing to public company audit clients of questionable tax transactions used improperly to avoid paying taxes or to manipulate financial statements in order to make such statements appear more favorable to investors, and
2. the provision of tax services, including tax shelter products, to executives of public company audit clients who are involved in the financial reporting process at such companies.

Accordingly, the Board adopted a set of rules designed to establish a framework for addressing the concerns that have arisen in connection with auditors' provision of tax services to their public company audit clients. Specifically, the proposed rules are designed, among other things, to prevent auditors from providing (1) certain aggressive tax shelter services to public company audit clients, (2) any other service to a public company audit client for a contingent fee, which is a fee arrangement often used in tax work, and (3) any tax service to certain persons who serve in financial reporting oversight roles at a public company audit client. The rules also codify, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the

firm to violate relevant laws, rules, and standards, and introduce a foundation for the independence component of the Board's ethics rules. Finally, the rules implement the requirements of the Act and the SEC's independence rules when an auditor seeks audit committee pre-approval to provide tax services that are not prohibited by the Board's or the SEC's rules.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules would apply equally to all registered public accounting firms and their associated persons. Although some of the proposed rules would prohibit a registered public accounting firm from providing certain non-audit services to its audit clients, they would not restrict the provision of these same services to other companies.

C. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2004-015 (December 14, 2004). A copy of PCAOB Release No. 2004-015 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's web site at [www.pcaobus.org](http://www.pcaobus.org). The Board received 807 written comments. The Board has modified certain aspects of the proposed rules in response to comments it received, as discussed below.

Rule 3502 - Responsibility Not to Cause Violations

Rule 3502, as proposed, provided that a person associated with a registered public accounting firm shall not cause that firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation. The Board proposed the rule to codify the ethical obligation of associated persons of registered firms not to cause registered firms to commit such violations. Proposed Rule 3502 also made clear that an associated person's ethical obligation is not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation.

The Board received a number of comments on proposed Rule 3502. Several commenters supported the rule as proposed and noted that they saw the rule as essential to the Board's ability to carry out its disciplinary responsibilities under the Act. Other commenters, however, including the largest accounting firms and an accounting trade association, did not support the rule as proposed. In general, these commenters objected to the proposed rule's use of a negligence standard in light of the complex regulatory requirements with which auditors must comply. Some of these commenters also questioned the Board's authority to adopt the proposed rule, or at least the proposed rule with a negligence standard.

The Board has carefully considered these comments and determined to adopt Rule 3502, with some modifications. The Board continues to believe that it is authorized to adopt the rule. Section 103(a) of the Act directs the Board to, "by rule, establish . . . such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." The Board believes that the rule is an appropriate exercise of this authority to set ethical standards for accountants subject to the Board's jurisdiction.

Under the Act and Board rules, both registered firms and their associated persons must comply with PCAOB rules and standards, as well as related laws. When an associated person with such a responsibility causes the firm with which he or she is associated to violate such rules, standards or laws, this conduct operates to the detriment of the protection of investors and the public interest and may bear on the ethics of the responsible associated person. When such a person engages in this conduct with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to the firm's violation, the Board believes this conduct plainly reflects an ethical lapse by the responsible person and, therefore, is within the Board's authority – and indeed responsibility – to proscribe.

At least one commenter asserted that the proposed rule was not a proper exercise of the Board's ethics standards-setting authority because it reached a range of conduct, rather than delineating "particular impermissible conduct." The

Board disagrees and believes the type of conduct addressed by the rule is plainly the type of conduct the Board's ethics rules can and should address. In fact, the accounting profession's existing ethical code at the time of enactment of the Act reaches any act that may "discredit[]" the profession – thereby reaching ranges of conduct, including violations of certain laws, rather than just specifying "particular impermissible conduct."<sup>1/</sup> When Congress vested the authority to set ethics standards in the Board, the Board believes it intended for this authority to be at least as broad as the scope of the existing ethics rules, at least as to matters within the Board's jurisdiction. This authority, in the Board's view, plainly includes the ability to require that persons subject to the Board's jurisdiction, as an ethical obligation, not cause a violation of relevant laws.

Commenters opposed to the proposed rule also sought to analogize the rule to a theory of liability that the Supreme Court rejected in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.<sup>2/</sup> In Central Bank, the Supreme Court held that there is no private right of action for aiding and abetting a violation of Section 10(b) of the Securities Exchange Act of 1934

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<sup>1/</sup> See AICPA Code of Professional Conduct, ET section ("sec.") 501, "Acts Discreditable" ("A member shall not commit an act discreditable to the profession."). Interpretations of this part of the ethical code provide that an accountant member will be considered to have committed a discreditable act if, among other things, he or she: "fails to comply with applicable federal, state or local [tax] laws or regulations," ET sec. 501.08, Interpretation 501-7; fails to follow applicable requirements of a governmental body, such as the SEC, in performing accounting services, ET sec. 501.06, Interpretation 501-5; or fails to follow government audit standards and rules in conducting a governmental audit, ET sec. 501.04, Interpretation 501-3.

<sup>2/</sup> 511 U.S. 164 (1994).

("Exchange Act"). That decision turned on the fact that the text of Section 10(b) does not provide for aiding-and-abetting liability.<sup>3/</sup> The Board does not believe this decision affects the scope of the Board's explicit authority to set ethics standards under Section 103 of the Act.<sup>4/</sup> Again, the Board notes that the profession's existing ethics code also reaches what can be characterized as "secondary" conduct contributing to a violation.<sup>5/</sup>

The power to adopt Rule 3502 also is inherent in, and necessary to, the Board's authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons. Section 105 authorizes the Board to investigate and, when appropriate, discipline registered firms *and* their associated persons. Certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm. Such firms, however,

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<sup>3/</sup> See *id.* at 190 ("Because the text of § 10(b) does not prohibit aiding and abetting, we hold that a private plaintiff may not maintain an aiding and abetting suit under § 10(b).").

<sup>4/</sup> Rule 3502, of course, differs from an aiding-and-abetting cause of action in important respects. Among other things, the rule does not apply whenever an associated person causes another to violate relevant laws, rules and standards. Rather, Rule 3502 applies only when an associated person causes a violation by the registered firm with which the person is associated.

<sup>5/</sup> See AICPA Code of Professional Conduct, paragraph .02(2) of ET sec. 91, "Applicability" ("A member shall not knowingly permit a person, whom the member has the authority or capacity to control, to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the member, would place the member in violation of the rules. Further, a member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control."); see also ET sec. 102.02, Interpretation 102-1(c) (violation of ethics rules not just to sign, but to "permit[] or direct[] another to sign a document containing materially false and misleading information") (adopted as a Board interim ethics rule in Rule 3500T).

can only act through the natural persons that comprise them, many of whom are "associated persons" subject to the Board's ethics standards and disciplinary authority. When one or more of those associated persons has caused that firm to violate PCAOB standards, rules, or related laws with the requisite state of mind, it is appropriate, and consistent with the Board's duty to discipline registered firms and their associated persons under Section 101(c)(4) of the Act, that the Board be able to discipline the associated person for that misconduct.<sup>6/</sup>

After carefully considering the comments received, the Board has determined, however, to modify the scope of Rule 3502 to apply only when an associated person causes the registered firm's violation due to an act or omission the person "knew, or was reckless in not knowing, would directly and substantially contribute to such violation." This revised formulation reflects two changes to the rule as proposed.

First, the Board has determined to change the state-of-mind requirement in the rule. Specifically, Rule 3502, as adopted, will apply to "an act or omission the [associated] person knew, or was reckless in not knowing," would cause the violation. While the Board believes it has the authority to adopt a negligence

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<sup>6/</sup> Some commenters suggested that the reference to "any act, or practice . . . in violation of this Act" in Section 105(c)(4) – the part of the Act authorizing the Board to impose certain sanctions – was inconsistent with the proposed rule. The Board notes, however, as it did in the proposing release, that Section 105(c)(5) expressly provides that the more severe of these sanctions may be imposed when intentional, knowing, or reckless conduct, or repeated instances of negligent conduct, "results in" violation of law, regulations, or professional standards.

standard,<sup>7/</sup> the Board believes the revised standard strikes the right balance in the context of this rule. The Board believes that the phrase "knew, or was reckless in not knowing" is a well-understood legal concept, and the Board intends for the phrase to be given its normal meaning.

Second, the Board has determined to modify the phrase used to describe the connection between the associated person's conduct and the violation. Specifically, Rule 3502, as adopted, provides that the associated person's act or omission must "directly and substantially contribute to [the firm's] violation." In particular, "substantially" in this context means that the associated person's conduct (i.e., an act or omission) contributed to the violation in a material or significant way. The term "substantially" also means, however, that the associated person's conduct does not need to have been the sole cause of the violation. "Directly" means that the associated person's conduct either essentially constitutes the violation – even though it is the firm and not the individual that actually commits the violation – or is a reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the violation. "Directly and substantially" does not mean that the associated person's conduct must be the sole cause of the violation, nor that it must be the final step in a

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<sup>7/</sup> A number of commenters argued that Section 105(c) of the Act prevents the Board from imposing discipline based on a negligence standard. The Board's determination to change the rule's state-of-mind requirement to recklessness moots these comments. The Board notes, however, that Section 105(c)(5) identifies a range of sanctions that the Board may not impose in the absence of knowing conduct, reckless conduct, or repeated instances of negligent conduct. The Act does not similarly limit the Board's authority to impose certain other sanctions.

chain of actions leading to the violation. In addition, the term "directly" should not be misunderstood to excuse someone who knowingly or recklessly engages in conduct that substantially contributes to a violation, just because others also contributed to the violation, or because others could have stopped the violation and did not. At the same time, the term does not reach an associated person's conduct that, while contributing to the violation in some way, is remote from, or tangential to, the firm's violation.

A number of commenters expressed concern that adoption of a negligence standard would allow the Board, or the SEC, to proceed against associated persons who in good faith, albeit negligently, have caused a registered firm to violate applicable laws or standards. For example, commenters suggested that the proposed rule could be used against compliance personnel within a firm who inadvertently design a firm's compliance system in a flawed manner. Commenters also expressed concern that, because the SEC can enforce PCAOB rules under Section 3 of the Act, the Board's rule could have the practical effect of altering the state-of-mind requirement applicable in SEC enforcement proceedings against accountants.

It was not the Board's intention to establish a new standard for SEC enforcement of the securities laws and related applicable rules. The Board also recognizes that persons subject to its jurisdiction must comply with complex professional and regulatory requirements in performing their jobs. The Board does not seek to create through this rule a vehicle to pursue compliance personnel who act in an appropriate, reasonable manner that, in hindsight, turns

out to have not been successful. Nor does the Board seek to reach those whose conduct, unbeknownst to them, remotely contributes to a firm's violation. At the same time, the Board continues to believe that it is necessary and appropriate for its ethics rules to apply when an associated person has engaged in an act or omission with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to a violation.<sup>8/</sup>

The Board also believes that, because the rule is essential to the functioning of the Board's independence rules, this rulemaking provides the appropriate forum to adopt the rule. For example, Rule 3521 provides, in part, that a registered firm is not independent of its audit client if the firm provides that audit client with a service for a contingent fee. When an associated person causes, in a manner consistent with the discussion above, the registered firm to provide that service for a contingent fee, Rule 3502 would allow the Board to discipline the associated person for that conduct.<sup>9/</sup>

#### Rule 3520 - The Fundamental Independence Requirement

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<sup>8/</sup> While the Board's proposed rule tracked some of the language of Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), the rule, as adopted, differs significantly from, and should not be interpreted in pari material with, that statutory provision.

<sup>9/</sup> Rule 3502, of course, is not the exclusive means for the Board to enforce applicable Board rules and standards against associated persons. Among other provisions, Rules 3100 and 3200T through 3600T directly require associated persons to comply with certain auditing and related professional practice standards. In addition, PCAOB standards generally contain directives to the "auditor." The term "auditor" is defined in PCAOB Rule 1001(a)(xii) to include both registered firms and their associated persons. Accordingly, an associated person of a registered firm that does not comply with such a directive may be charged with violations of such other standards, independent of any charges under Rule 3502.

Rule 3520 sets forth the fundamental ethical obligation of independence: a registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period. This requirement encompasses the independence requirements set out in PCAOB Rule 3600T and goes further, as a matter of the auditor's ethical obligation, to encompass any other independence requirement applicable to the audit in the particular circumstances. Accordingly, in the case of an audit client subject to the financial reporting requirements of the securities laws and the SEC's rules, the ethical obligation under Rule 3520 requires the firm and its associated persons to maintain independence consistent with the SEC's requirements.<sup>10/</sup>

By giving this scope to Rule 3520, the Board is not promulgating any new independence requirement. The Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately to lock in place any aspect of those requirements. Instead, Rule 3520 is based on the simple premise that ethical standards for auditors can and should encompass a duty by the auditor to maintain independence necessary to ensure compliance with independence requirements in the circumstances of the particular engagement.

A note to the rule emphasizes the scope of the obligation in the rule by pointing out that, even in circumstances to which the Commission's Rule 2-01 applies, a registered public accounting firm and its associated persons still may

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<sup>10/</sup> 17 C.F.R. § 210.2-01.

need to comply with other independence requirements, including those requirements separately established by the Board. Using this foundation, the Board may adopt additional rules in the "Independence" subpart of the ethics rules that effectively set out additional requirements. As described below, with the new rules adopted today, the Board's independence rules include contingent fee arrangements and tax services.

After carefully considering the comments on proposed Rule 3520, the Board has determined to adopt the rule, with only one change. Most commenters supported the scope and content of the proposed rule. A few commenters, however, asked the Board to add text to the proposed rule to clarify or emphasize that the rule incorporates certain concepts in the existing independence requirements. While these comments are discussed in more detail below, the Board did not adopt these suggestions, as a general matter, because of the purpose of Rule 3520. Rule 3520 was simply intended to require, by Board rule, compliance with applicable independence requirements. The rule was not intended to, and does not, add to – or subtract from – these existing requirements. Nor is it intended to reflect the Board's conceptual approach to independence issues. Accordingly, while the Board does not necessarily disagree with the intent of the commenters who suggested adding text to the proposed rule, it does not believe it is necessary or appropriate to modify the rule to reflect their specific suggestions.

Three commenters suggested that Rule 3520 expressly require that auditors maintain independence from their audit client "both in fact and

appearance." As proposed, the rule already requires auditors to maintain independence both in fact and appearance, because the SEC's independence rules – which are incorporated in Rule 3520, as discussed above – are "designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance."<sup>11/</sup> In addition, Statement on Auditing Standard ("SAS") No. 1, *Codification of Auditing Standards and Procedures*, adopted by the Board as an interim standard, requires that auditors "not only be independent in fact; [but also] avoid situations that may lead outsiders to doubt their independence."<sup>12/</sup> Therefore, the Board does not believe it is necessary to include this additional language in Rule 3520 to preserve these existing principles.

Some commenters also recommended that Rule 3520 expressly include the SEC's four overarching independence principles that it will look to in determining whether a particular service or client relationship impairs the auditor's independence.<sup>13/</sup> Other commenters asked the Board to explicitly note

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<sup>11/</sup> 17 C.F.R. § 210.2-01, Preliminary Note 1; accord United States v. Arthur Young & Co., 465 U.S. 805, 819 n.15 (1984).

<sup>12/</sup> SAS No. 1, Codification of Auditing Standards and Procedures, paragraph .03 of AU sec. 220. The standard further states that "[p]ublic confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence." Id.

<sup>13/</sup> See 17 C.F.R. § 210.2-01, Preliminary Note 2. Specifically, under those principles, the SEC looks to whether a relationship or the provision of a service: (a) creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of

in the rule that certain tax services are consistent with the SEC's four principles. For the reasons described above, the Board has decided not to change the rule in response to either of these suggestions. The Board notes, however, that the SEC's independence rules already refer to the four principles, and these rules must be complied with under Rule 3520.

Two commenters suggested that Rule 3520 include the text of the American Institute of Certified Public Accountants' ("AICPA") Ethics Rule 102, which provides, in pertinent part, that members of the AICPA should avoid any subordination of their judgment.<sup>14/</sup> Although the Board shares these commenters' view about the importance of this principle, the Board has already adopted Ethics Rule 102 as part of its interim ethics rule, Rule 3500T. Accordingly, this rule is already part of the Board's ethical standards and need not be separately repeated in Rule 3520 to be enforced by the Board.

Two firms suggested that Rule 3520, as proposed, might have the effect of precluding use of exceptions in the SEC's existing independence rules and asked the Board to avoid that result. Other than creating a requirement in a Board rule to comply with existing and applicable independence requirements, it does not add to, or detract from, the scope and substantive effect of these existing requirements in any respect.

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the audit client; or (d) places the accountant in a position of being an advocate for the audit client.

<sup>14/</sup> See AICPA Code of Professional Conduct, ET sec. 102, "Integrity and Objectivity".

The Board has, however, as suggested by a commenter, added "associated persons" to the rule. While the independence requirements added to the Board's rules through this rulemaking apply to the firm, other independence requirements covered by Rule 3520 are directed to individual accountants within auditing firms. Most notably, certain of the SEC's independence rules impose independence requirements directly on individual accountants.<sup>15/</sup> Accordingly, the Board believes it is appropriate for the rule to apply to associated persons, as well as registered firms themselves. At the same time, the Board has added a new note to the rule to make clear that the rule applies only to those associated persons of a registered public accounting firm that are required to be independent of the firm's audit client by standards, rules, or regulations of the Commission or other applicable independence criteria.<sup>16/</sup> Accordingly, the rule does not impose independence requirements on persons not already subject to them, and does not impose new independence requirements on any associated person. Rather, Rule 3520 only requires associated persons who are otherwise subject to independence requirements to comply, as an ethical obligation, with those requirements

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<sup>15/</sup> See, e.g., Rule 2-01(c)(1), 17 C.F.R. § 210.2-01(c)(1). See also PCAOB Rule 3600T.

<sup>16/</sup> Other applicable independence criteria include any rules of the PCAOB, other than Rule 3520, that contain independence requirements directly applicable to associated persons of the firm, such as Rule 3600T.

## Rule 3521 - Contingent Fees

The Board also has determined to adopt Rule 3521 as proposed. There was widespread support among commenters for the Board's view, expressed in the proposal, that certain fee arrangements used for the provision of tax services create per se conflicts of interest that impair auditors' independence from their audit clients. As discussed more fully in the proposing release, when an accounting firm provides a service to an audit client for a contingent fee, the firm's economic interests become aligned with the interests of its audit client in a manner that is inconsistent with the firm's role as independent auditor. The Board's rule was adapted from the SEC's rule prohibiting contingent fee arrangements<sup>17/</sup> and thus treats registered firms as not independent if they enter into contingent fee arrangements with audit clients.

Specifically, Rule 3521 provides that a registered public accounting firm is not independent of its audit client<sup>18/</sup> if the firm, or any affiliate of the firm,<sup>19/</sup> during the audit and professional engagement period,<sup>20/</sup> provides any service or product

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<sup>17/</sup> See 17 C.F.R § 210.2-01(c)(5).

<sup>18/</sup> Rule 3501(a)(iv) defines "audit client" as "the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client."

<sup>19/</sup> Rule 3501(a)(ii) defines "affiliate of the accounting firm" as "the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)."

<sup>20/</sup> Rule 3501(a)(iii) adapts the definition of "audit and professional engagement period" from the definition of that term in the Rule 2-01 of the SEC's Regulation S-X, which includes both the period covered by the financial statements under audit or review and the period beginning when a registered

to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission. The Board's definition of a contingent fee is "any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service."<sup>21/</sup>

Fees fixed by courts or other public authorities and not dependent on a finding or result are excluded from this definition to permit contingencies that do not pose a risk of establishing a mutual interest between the auditor and the audit client. In the proposing release, the Board cited, as an example of such a permissible fee, fees approved by a bankruptcy court, as required under U.S. federal bankruptcy law.<sup>22/</sup> The Board also sought comment on whether there are courts or other public authorities that fix fees that are not dependent on a finding

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public accounting firm signs an initial engagement letter (or when such a firm begins audit, review or attest procedures, whichever is earlier) and ends when the audit client notifies the SEC that the engagement has ceased. See 17 C.F.R. § 210.2-01(f)(5).

<sup>21/</sup> Rule 3501(c)(ii). As discussed in the Board's proposing release, the term "contingent fee" includes the aggregate amount of compensation for a service, including any payment, service, or promise of other value, taking into account any rights to reimbursements, refunds, or other repayments that could modify the amount received in a manner that makes it contingent on a finding or result.

<sup>22/</sup> 11 U.S.C. § 328(a) (providing that, with a court's approval, a bankruptcy trustee may employ a professional person "on any reasonable terms and conditions of employment, including on a retainer, on a fixed or percentage fee basis, or on a contingent fee basis").

or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary.

In response to this request, several commenters noted that they are not aware of any such authorities and encouraged the Board to eliminate the reference to "other public authorities" from the proposed rule. Other commenters suggested that the Board retain the phrase, even though they did not identify other contexts in which fees that are not contingent on a result of a "product or service" are nevertheless subject to approval by a court or other public authority.<sup>23/</sup> After considering these comments, the Board has decided to retain the exception for fees that require approval of "courts or other public authorities." The Board envisions that there may be fee approval schemes outside the U.S. that are analogous to U.S. bankruptcy law.

Although Rule 3521 and the related definition of "contingent fee" are modeled on the SEC's independence rules, as discussed in the Board's proposing release, they differ from those rules in that the Board's rules do not include the SEC's exception for fees "in tax matters, if determined based on the

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<sup>23/</sup> One commenter suggested that arbitration panels should be captured in the final rule as an example of "courts or other public authorities" that may approve auditor fees. The Board is not aware, and the commenter did not appear to suggest, that any arbitration panels currently have authority, by contract or law, to approve the payment of fees to accountants. Therefore, the Board has not expanded the exception to include fees fixed by arbitration panels. Nevertheless, if an arbitration panel were by contract given the authority to approve accountants' fees, such fees would be permissible under the Board's rule so long as the determination of the fee was not contingent on the result of a product or service.

results of judicial proceedings or the findings of governmental agencies."<sup>24/</sup> As discussed in the Board's proposing release, this exception may have been misinterpreted in the past and is largely redundant of the exception for fees fixed by courts or other public authorities.<sup>25/</sup> For these reasons, proposed Rule 3521 would eliminate this exception. The few commenters who addressed this issue agreed with the Board's reasoning and the elimination of this exception. Therefore, the Board's final rule does not include an exception for tax matters in which an auditor's fee agreement is based on the results of judicial proceedings or the findings of governmental agencies.

In addition, Rule 3521 treats a firm as not independent of an audit client if it receives a contingent fee or commission from that client "directly or indirectly." The rule's use of the term "indirectly" is meant to prevent arrangements for a fee from *any* person that is contingent on a finding or result attained by the audit client. The Board's determination to include such fees within the prohibition is based on the principle that, regardless of who pays the contingent fee, such a

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<sup>24/</sup> 17 C.F.R. § 210.2-01(f)(10). By eliminating this exception from its rule, the Board expresses no view on any firm's compliance with Rule 2-01 of the Commission's Regulation S-X. See 17 C.F.R. § 210.2-01(c)(5).

<sup>25/</sup> As the SEC Chief Accountant has stated, the SEC's "tax matters" exception only permits fee arrangements where the determination of the fee is "taken out of the hands of the accounting firm and its audit client . . . , with the result that the accounting firm and client are less likely to share a mutual financial interest in the outcome of the firm's advice or service." Letter from Donald T. Nicolaisen, Chief Accountant, U.S. Securities and Exchange Commission, to Bruce P. Webb, Professional Ethics Executive Committee Chair, American Institute of Certified Public Accountants (May 21, 2004), available at <http://www.sec.gov/info/accountants/staffletters/webb052104.htm> (hereinafter "Nicolaisen Letter").

contingency gives an auditor a stake in the audit client attaining the finding or result. Accordingly, under Rule 3521, it does not matter who pays the contingent fee, if it is contingent on a finding or result attained by the audit client or otherwise related to the firm's services for the audit client. That is, while use of an intermediary to disguise an audit client's agreement to a contingent fee is certainly prohibited, the rule is not limited to circumstances in which a contingent fee may be traced (e.g., through an intermediary) to an agreement or payment by an audit client.

Comparable to the SEC's independence rules, proposed Rule 3521 treats contingent fee arrangements between a registered firm's affiliates and the registered firm's audit clients as relevant to the firm's independence.<sup>26/</sup> The inclusion of such affiliates within the scope of those persons whose activities may impair the independence of a firm from an audit client is intended to prevent frustration of the rule's purpose through the use of firm subsidiaries and other

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<sup>26/</sup> The rule does so by providing that the firm is not independent if it "or any affiliate of the firm . . . provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission." The scope of the rule is intended to be the same as the scope of the Commission's rule, which defines the terms "accountant" and "accounting firm" to include such affiliates. Because registration with the Board is the basis for the Board's authority over an accountant, the rules would treat those persons that are related to a registered public accounting firm and satisfy the Commission's definition of "accounting firm," but are not registered firms themselves, as "affiliates of the accounting firm." Thus, Rule 3501(a)(i) would adapt the Commission's definition of the term "accounting firm" to define the term "affiliate of the accounting firm" as "the accounting firm's parents, subsidiaries, pension, retirement, investment or similar plans, and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)."

affiliates.<sup>27/</sup> The rule is not intended to, and does not, impose any requirements on affiliates of firms per se. Nonetheless, the conduct of an affiliate of the firm can cause the registered firm not to be independent in the situations specified in the rules.

Finally, one accounting firm commented that Rule 3521 should prohibit value-added fees because such fees could be used in lieu of contingent fees to achieve a similar effect as contingent fees. Fees that function as contingent fee arrangements are already prohibited under the SEC's rule against contingent fees,<sup>28/</sup> and thus under the Board's final rule as well, whether such fees are

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<sup>27/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, Exchange Act Release No. 46,216 (July 17, 2002), available at <http://www.sec.gov/litigation/admin/34-46216.htm> (finding an auditing firm and an affiliate under the control of the firm in violation of Commission requirements because the affiliate performed investment banking services for the firm's audit clients for contingent fees); In KPMG, LLP v. Securities & Exch. Comm'n, 289 F.3d 109 (D.C. Cir. 2002), the D.C. Circuit Court declined to find KPMG in violation of the AICPA's rule against contingent fees, where KPMG only indirectly received a contingent royalty from an audit client, through an associated entity of the firm. The Board's rules should be understood, however, to treat such an arrangement as an impairment of a registered firm's independence.

<sup>28/</sup> See Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919, § IV.D.5 (Nov. 21, 2000), 17 C.F.R. Parts 210, 240. Indeed, the SEC staff has cautioned audit committees against approving –

any agreement – from a direct contract provision to "a wink and a nod" – that provides for the possible additional payment of a "value added" fee based on the results of an accounting firm's performance of a tax or other service [that] would be viewed as impairing the firm's independence. In addition, an audit committee should consider carefully the impact on an accounting firm's independence of the possibility of even a completely voluntary payment of a "value added" fee by an audit client to the firm.

labeled contingent fees, value-added fees, or otherwise. The SEC has indicated that it will closely monitor the use of value-added fees "to determine whether a fee labeled a "value added" fee is in fact a contingent fee, such as where there are side letters or other evidence that ties the fee to the success of the services rendered,"<sup>29/</sup> and the Board intends to do so as well before, if necessary, considering additional rulemaking.

#### Rule 3522 - Aggressive Tax Positions

Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence if the auditor markets, plans, or opines in favor of, such a transaction. As discussed in the Board's proposing release, such conduct has seriously damaged investors' confidence in the judgment, objectivity, and ethics of firms that engage in such transactions. Further, aggressive tax positions carry a high risk that taxing authorities will not allow the position taken by the auditor and the audit client. As the SEC Chief Accountant noted in the context of contingent fees, "the fact that a government agency might challenge the amount of the client's tax savings . . . heightens . . . the mutuality of interest between the firm and client."<sup>30/</sup>

As proposed, Rule 3522 treated a firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to planning,

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Nicolaisen Letter, supra note 25.

<sup>29/</sup> See Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919, § IV.D.5 (Nov. 21, 2000), 17 C.F.R. 210, 240.

<sup>30/</sup> Nicolaisen Letter, supra 25.

or opining on the tax consequences of a transaction that is a listed or confidential transaction under U.S. Department of Treasury ("Treasury") regulations or that promoted an interpretation of applicable tax laws for which there is inadequate support. In order to describe such transactions in a manner that is clear and consistent with existing constructs for analyzing tax-oriented transactions, the rule is adapted from certain Treasury regulations and from the SEC's release accompanying its 2003 independence rules.

Commenters generally supported the notion that auditors should not provide tax services involving aggressive tax positions to their audit clients. They also supported the scope of Rule 3522, which as proposed covered listed transactions, confidential transactions, and other aggressive transactions. A number of commenters made suggestions to make the rule text clearer, however, and after considering such comments the Board has modified the rule in several respects.

First, several commenters suggested that the rule should make clear that it does not prohibit auditors from advising audit clients not to engage in an aggressive transaction. Rule 3522 was not intended to prevent such advice, so in response to these comments the Board has modified the rule to make clear the prohibition on opining on aggressive transactions is limited to "opining in favor of the tax treatment of" such transactions (emphasis added). Thus, auditors are permitted to advise against an audit client's execution of an

aggressive tax transaction.<sup>31/</sup> However, Rule 3522 prohibits an opinion that a transaction does not satisfy the more-likely-than-not standard but does satisfy a lower standard of confidence. Similarly, the rule prohibits advice that an audit client will "probably" lose an argument in favor of a tax treatment, because such advice can imply up to a 49-percent chance of success.

In addition, as recommended by one commenter, given recent concerns about accounting firms establishing marketing centers to sell tax shelter products, the Board has added the term "marketing" to the list of activities that compromise an auditor's independence. That is, under Rule 3522, as adopted, an auditor may not market an aggressive tax transaction to an audit client, in addition to being prohibited from "planning, or opining in favor of the tax treatment of," such a transaction.

Finally, proposed Rule 3522(a)'s prohibition on auditors' involvement in listed transactions has been moved to become a part of the prohibition on involvement in aggressive tax position transactions, in light of the overlap of the two provisions and also in light of questions regarding whether the prohibition on listed transactions could apply in the context of a non-U.S. tax regime. Accordingly, Rule 3522 now provides for two categories of prohibitions related to aggressive tax transactions, whereas, as proposed, it had provided for three

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<sup>31/</sup> In addition, a number of commenters asked for clarification of the scope of Rule 3522's prohibition against "opining" on an aggressive transaction. The Board does not intend the rule to encompass the auditor's opinion on the fairness of financial statements that reflect the accounting for a transaction that an audit client has executed. Rather, Rule 3522 is intended to prevent auditors from facilitating clients' execution of aggressive transactions by, among other things, providing auditors' written tax opinions that protect the audit client from the assertion of penalties by tax authorities or courts.

such categories. These two categories, as well as modifications of their proposed versions, are discussed below.

Rule 3522(b) - Aggressive Tax Position Transactions<sup>32/</sup>

Rule 3522(b) would treat a registered firm as not independent if the firm, or an affiliate of the firm, provided an audit client any service related to marketing, planning, or opining in favor of the tax treatment of, a transaction that satisfies three criteria –

- the transaction was initially recommended, directly or indirectly, by the firm;
- a significant purpose of the transaction is tax avoidance; and
- the proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable tax laws.

Rule 3522(b) is adapted from the SEC's guidance to audit committees in its release accompanying its 2003 independence rules, which cautioned that audit committees should "scrutinize carefully" the retention of the auditor "in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."<sup>33/</sup> The rule

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<sup>32/</sup> As proposed, this provision was entitled "aggressive tax positions." One commenter questioned whether this title was intended to expand the scope of this provision beyond transactions. In addition, the commenter noted that the term "transaction" was consistent with Treasury regulations. In response to this comment, the Board has re-titled this provision to be "aggressive tax position transactions."

<sup>33/</sup> Strengthening the Commission's Requirements Regarding Auditor Independence, at § II.B.11 (Jan. 28, 2003).

builds on this guidance from the perspective of the auditor, by providing that a registered firm is not independent of its audit client if the firm, or an affiliate of the firm, participates in such a transaction.

The first prong of the rule's test looks for transactions that the auditing firm – directly or indirectly, e.g., through an affiliate, through or with another tax advisor with which the firm has an arrangement, or otherwise – initially recommended to the audit client. In this manner, the rule excludes from its scope those transactions that the audit client itself, or a party other than a tax advisor with which the firm has an arrangement<sup>34/</sup> (e.g., an acquiring corporation), initiated. The term "initially recommended" is intended to be a test based on fact. Thus, the prong would be satisfied, notwithstanding a representation from the audit client that the audit client initiated the development of the transaction,<sup>35/</sup> if the auditor had knowledge that the auditor, its affiliate, or another tax advisor with which the firm has an arrangement, initially recommended it. As proposed, the rule would have looked for transactions that were "initially recommended by the registered public accounting firm or another tax advisor." Some commenters expressed concern that an auditor might not be

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<sup>34/</sup> The term "tax advisor" is not intended to denote a group with a certain license or professional status, but rather to cover any person, other than the client, that recommends a tax transaction to the client.

<sup>35/</sup> Two commenters indicated that, as they interpreted the term "transaction," an auditor's tax services in connection with, for example, a merger transaction that was initiated by the client or another company, would not come within the ambit of Rule 3522(b), because the auditor would not have recommended the merger transaction itself. This is not a fair interpretation of the rule and indeed would thwart its purpose.

in a position to know whether another tax advisor with no relationship to the auditor had recommended a transaction. In response to these comments, the Board has modified the first prong of Rule 3522(b) to make clear that auditors are only responsible for ascertaining whether the firm, one of its affiliates, or another tax advisor with which the firm has a formal agreement or other arrangement related to the promotion of such a transaction, initially recommended the transaction.<sup>36/</sup>

The second and third prongs of Rule 3522(b) incorporate concepts that have existing meaning and relevance to tax advisors. The second prong of the test set forth in Rule 3522(b) uses the phrase "significant purpose of which is tax avoidance," adapted from the Internal Revenue Code.<sup>37/</sup> The term "tax avoidance" should be understood to include acceleration of deductions into earlier taxable years and deferral of income to later taxable years. A few commenters noted that the test whether a significant purpose of a transaction is tax avoidance appears to be a low threshold that could encompass any plan to reduce taxes, and some of those commenters suggested that the Board raise

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<sup>36/</sup> See Rule 3522(b), Note 2. The term "formal agreement or other arrangement" in Note 2 relates only to relationships a registered firm may have with a tax advisor that is not already an affiliate of the firm.

<sup>37/</sup> The Internal Revenue Code treats transactions with respect to which a "significant purpose . . . is the avoidance or evasion of Federal income tax" as tax shelters, for purposes of determining whether an adequate disclosure defense is available for the substantial understatement penalty. See 26 U.S.C. § 6662(d)(2)(C) (amended by the Jobs Act; see also 26 U.S.C. § 6662A(b)(2)(B) (imposing 20-percent penalty on understatements of tax in connection with "any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax").

that threshold. The Board intends for the threshold to be low, however, and therefore has not used terms that might seem to establish a higher threshold, such as requiring an evaluation of whether the "sole purpose" of a transaction is tax avoidance.

In addition, the rule uses the term "more likely than not to be allowable under applicable tax laws," which is the standard certain taxpayers must meet, under Treasury regulations, to avoid penalties for substantial understatement of income tax in connection with a tax shelter.<sup>38/</sup> This test is based, in part, on the Board's observation of some firms' policies that rely on the "more likely than not" standard to approve the firm's involvement in providing tax services relating to a transaction initiated by the firm. The rule also uses this standard because a tax treatment that is not "more likely than not" to be allowed poses a significantly higher risk of being challenged by taxing authorities, such that a mutuality of interest between the auditor and the audit client could arise.<sup>39/</sup> Moreover, the rule uses this standard, as opposed to a higher standard, in recognition of the

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<sup>38/</sup> See 26 C.F.R. § 1.6664-4(f).

<sup>39/</sup> Some commenters noted that, while the term "more likely than not" is well-understood in the context of evaluating U.S. tax advice, it has not been used in non-U.S. contexts. One of these commenters also noted that this standard may be hard to judge in jurisdictions in which the rule of law does not always prevail. After considering these comments, the Board has determined to maintain the "more likely than not standard," because it is an objective standard that may be applied in contexts outside the U.S. even where it has not applied to-date. Further, the Board notes that foreign private issuers ordinarily file U.S. tax returns and therefore are already expected to comply – and be familiar with – U.S. tax laws and regulations.

fact that tax laws may often be complex and subject to differing good faith interpretations.<sup>40/</sup>

In order to satisfy Rule 3522(b)'s "more likely than not" standard, a registered public accounting firm must establish, based on an analysis of the pertinent facts and authorities, that there is a greater than 50-percent likelihood that the tax treatment of the transaction would, if challenged, be upheld.<sup>41/</sup> To satisfy this test, an auditor's analysis must be objectively reasonable and well-founded at the time the analysis is conducted. The Board would not, however, treat an auditor as not independent if the law changed after the service was provided or if the tax treatment simply turned out to be not allowed, despite the auditor's reasonable judgment before the ultimate resolution of a tax claim or other dispute.

Rule 3522(b) does not require a registered public accounting firm to obtain a third-party opinion that a tax treatment is "more likely than not" to be allowed under applicable tax laws. On the contrary, while a firm may decide for its own

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<sup>40/</sup> A few commenters recommended that the Board use a standard higher than "more likely than not," on the ground that there is some evidence that some accounting firms that used the "more likely than not" standard in the past have not adhered to it. While the Board is concerned about the record on this issue, the Board has determined not to use a higher standard at this time. The Board intends to monitor compliance with the rule through its inspections of registered public accounting firms and will consider revising the rule in the future, if that monitoring or other evidence reveals that the rule is not achieving its intended purpose.

<sup>41/</sup> Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. § 1.6662-4(d)(3)(ii) for analysis of whether a tax treatment has "substantial authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax).

reasons to obtain a third-party opinion, such an opinion would not relieve the firm of its obligation to form its own judgment on the likelihood of a proposed tax treatment to be allowed.<sup>42/</sup>

Finally, although the SEC's release accompanying its 2003 independence rules cautioned audit committees to scrutinize situations in which a proposed tax treatment might not be supported "in the Internal Revenue Code and related regulations," the proposed rule would use the term "applicable tax laws" in recognition of the variety of tax laws and regulations, including federal, state, local, foreign, and other tax laws, that may be the subject of tax services. For this reason, and in response to questions from several commenters, the Board also incorporated its proposed prohibition on auditors providing tax services in connection with transactions that are listed by the IRS into Rule 3522(b). That is, IRS listing is one example of aggressive tax transactions covered by the rule.

Accordingly, the prohibition on advising in favor of listed transactions, which was proposed as Rule 3522(a), has been moved to a note to what is now Rule 3522(b). Specifically, Note 1 to Rule 3522(b) treats a registered public accounting firm as not independent of its audit client if the firm, or any affiliate of

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<sup>42/</sup> Treasury regulations permit corporations to avoid penalties for substantial understatement of income taxes in connection with tax shelters if they "reasonably rel[y] in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities . . . and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service." 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(2). Rule 3522(b) would not permit registered public accounting firms, who themselves serve as tax advisors, to rely on other tax advisors to satisfy the rule's standard because registered firms that provide tax services are themselves in a position to perform such an analysis.

the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of, a listed transaction. Under Treasury regulations, a listed transaction is "a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction."<sup>43/</sup> The IRS uses its listing process to identify and publish a list of transactions that tax promoters and advisors have developed and sold to clients but that, in the IRS's view, do not comply with applicable laws. Thus, the Treasury's regulation on "listed transactions" identifies a class of transactions that, in the Board's view, carries an unacceptable risk of disallowance, which in turn create an unacceptable risk of establishing a mutuality of interest between the auditor and the audit client if the auditor participated in marketing, planning, or opining in favor of the tax treatment of a transaction that impairs independence. By referring to this class of transactions, Note 1 to Rule 3522(b) incorporates an existing framework that auditors who serve as tax advisors already follow in their tax practices and that is highly likely to remain current since the Treasury and the IRS regularly update guidance related to listed transactions.<sup>44/</sup>

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<sup>43/</sup> See, e.g., 26 C.F.R. § 1.6011-4(b)(2).

<sup>44/</sup> The IRS updates the list of listed transactions by issuing a listing notice, both adding to and removing transactions from the list of listed transactions. See, e.g., IRS Notice No. 2004-67, 2004-41 I.R.B. 600. Some commenters questioned whether the Board should effectively incorporate the IRS's changes to its list into the Board's rule on aggressive transactions. This is, indeed, the Board's intention. To freeze the IRS's list as of the date of the Board's final rule, or to establish a system of reviewing the IRS's list as it is

As discussed above, the Board's proposed prohibition on auditor involvement in transactions that are "listed" by the IRS has been moved to a note to Rule 3522(b). By definition, a listed transaction is not "more likely than not to be allowable under applicable tax laws" at the time the auditor advises on it. Because the risk of IRS or other scrutiny of listed transactions, including transactions that are substantially similar to listed transactions,<sup>45/</sup> is high, tax advisors and taxpayers tend not to enter into such transactions once they are listed. In light of this fact, when it proposed this rule, the Board sought comment on whether the rule should treat an auditor as not independent if a transaction planned or opined on by the auditor subsequently became listed. In general, commenters recommended against adopting a per se rule that subsequent listing of such a transaction impaired an auditor's independence with respect to either the period in which the transaction was executed or in subsequent periods. The Board agrees that such a per se rule would not be appropriate, but as discussed

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updated, might permit auditors to provide tax services in favor of listed transactions notwithstanding that the IRS had identified those transactions as potentially abusive. Such a system would thwart the underlying intent of the Board's rule.

<sup>45/</sup> By its terms, the Treasury regulation requiring reporting of listed transactions makes clear that the definition of "listed transaction" includes transactions that have been listed by the IRS as well as transactions that are "substantially similar" to such transactions. By expressly referring to the Treasury's regulation on listed transactions, the Board intends Rule 3522(b) to encompass such substantially similar transactions that are included in the Treasury's regulation.

below, firms should nevertheless be cautious in participating in transactions that they believe could become listed.

Even if a firm were independent at the time a transaction was executed, because it reasonably and correctly concluded the transaction was not the same as, or substantially similar to, a listed transaction, once a transaction is actually listed (or a substantially similar transaction becomes listed), a firm that has participated in the transaction may find its independence impaired due to the mutuality of interest caused by the listing. That is, depending on the circumstances, a firm's independence may become impaired in some cases after a transaction planned or opined on by the firm becomes listed. In such cases, the auditor should carefully consider the potential impairment of its independence with the audit committee of its audit client.<sup>46/</sup> For example, once a transaction is listed, either the audit client or the firm, or both, may be required to defend the tax treatment of the transaction and, in some cases, pay penalties. In addition, the firm may face liability to the audit client related to the firm's tax advice. The auditor's judgment regarding appropriate financial reporting and disclosure concerning a transaction that becomes listed could become biased by the auditor's vested interests in defending its tax advice.

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<sup>46/</sup> According to ISB Standard No. 1, which is incorporated in the Board's Rule 3600T interim independence standards, at least annually, an auditor must "disclose to the audit committee of the company (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence."

Some auditors commented that they would prefer a bright-line rule providing that, so long as a transaction recommended by the firm was not listed at the time it was executed, subsequent listing cannot impair an auditor's independence later in time, when the auditor is called on to defend its earlier tax advice. Such a bright-line rule, however, would do little to address circumstances in which, because of IRS scrutiny after execution of the transaction, the auditor's interest in the client's successful defense of the transaction becomes heightened to the point where the auditor can no longer be impartial about the financial statement presentation of the transaction. That said, as some commenters noted, existing independence requirements address these kinds of circumstances, and thus the Board has determined not to expand Rule 3522(b) either to retroactively deem an auditor not independent upon subsequent listing of a transaction or to deem an auditor not independent per se in the period in which such a transaction becomes listed.

#### Rule 3522(a) - Confidential Transactions

The Treasury has identified transactions with tax-advisor imposed conditions of confidentiality as potentially abusive. By regulation, the Treasury requires taxpayers to disclose to the IRS transactions in which a tax advisor "places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies."<sup>47/</sup> Tax-advisor imposed confidentiality may also be indicative of a tax product that a tax advisor intends to

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<sup>47/</sup> 26 C.F.R. § 1.6011-4(b)(3)(ii).

market to multiple customers, thus necessitating commitments by customers to treat the tax treatment or structure of the advisor's product as confidential.

As discussed in the proposing release, the Board is concerned that marketing, planning, or opining in favor of tax products that require confidentiality in order that they may be offered to multiple clients contributes to the erosion of public confidence in the ethics and integrity of such firms. A reasonable investor easily could infer that the auditor has a vested interest in advocating to the IRS the tax treatment it promoted, or helped to promote, to multiple clients and perpetuating that treatment in the audit client's financial statements. Based on these concerns, Rule 3522(a) treats a registered public accounting firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of a transaction for an audit client under terms that satisfy the definition of "confidential transaction," as defined by Rule 3501(c)(i), which is adapted from the Treasury's regulation requiring tax advisors to report confidential transactions.<sup>48/</sup>

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<sup>48/</sup> 26 C.F.R. § 1.6011-4(b)(3) (2005). The proposed version of this rule incorporated the Treasury's definition of the term "confidential transaction" by reference. A number of commenters noted generally that incorporation of this Treasury regulation by reference could lead to unintended changes to the Board's rules if the Treasury amends those regulations (or the IRS amends its list of listed transactions). As discussed above, the Board intends for its prohibition on auditors' involvement as tax advisors in audit clients' execution of listed transactions to be kept current by changes to the IRS's list. Upon further consideration, unlike the Board's prohibition on listed transactions, the Board has determined that it may not be appropriate for any changes the Treasury may make to its definition of "confidential transaction" to automatically be reflected in the Board's prohibition on auditors' involvement in such a transaction. The definition of "confidential transaction" in Rule 3501(c)(i) is intended to be the

It should be noted that, Rule 3501(c)(i) defines confidential transactions in terms of confidentiality restrictions imposed by tax advisors generally, not specifically auditors. Therefore, whereas under Rule 3522(b) a transaction that is initially recommended by a tax advisor other than the auditor or an affiliate of the auditor unless the tax advisor has an arrangement with the auditor does not fall within the first prong of the rule, Rule 3522(a) prohibits an auditor from marketing, planning, or opining in favor of a confidential transaction whether the applicable terms of confidentiality are imposed by the auditor or by another tax advisor, acting independently of the auditor.

Commenters generally supported the Board's proposed prohibition on confidential transactions. Although some commenters expressed the view that tax advisors might impose conditions of confidentiality for reasons other than the ability to market the proposed transaction to multiple clients, other commenters agreed that auditors should not become involved in transactions subject to tax-advisor imposed confidentiality restrictions. One accounting firm commenter also

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same as the current Treasury regulation, except for the minimum fee requirement.

The proposed version of the rule did not incorporate the Treasury's minimum fee exception to its regulation on confidential transactions. That is, Treasury Regulation 1.6011-4(b)(3)(i) provides that "a confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee." 26 C.F.R. § 1.6011-4(b)(3) (2005). Under the regulation, the "minimum fee" is \$250,000 for corporate taxpayers (and partnerships and trusts in which all of the owners or beneficiaries are corporations) and \$50,000 for all other transactions. *Id.* 26 C.F.R. § 1.6011-4(b)(3)(iii). Although some commenters suggested that the Board should adopt the minimum fee exception, the Board understands the IRS disclosure rules to serve a different purpose than Rule 3522(a). Accordingly, the Board has not adopted a minimum fee exception in its final rule either.

noted that, even if a transaction were not potentially abusive, the fact that there is a disclosure limitation is likely to create a negative impression concerning the objectivity of the auditor.

In addition, a few commenters suggested that the rule be limited to circumstances in which terms of confidentiality are imposed with respect to the U.S. tax treatment of a transaction. After carefully considering these comments, the Board has determined not to modify the scope of the rule. Tax-advisor imposed conditions of confidentiality facilitate aggressive selling of novel tax ideas that pose too great a risk of impairing the objectivity of auditors who market, plan, or opine in favor of them. Further, the rule continues to permit audit clients themselves to impose conditions of confidentiality in connection with transactions on which auditors may provide tax advice, and this fact appears to adequately serve audit clients' needs to maintain appropriate confidentiality. Finally, there does not appear to be a reasoned basis to limit the prohibition on confidential transactions to proposed tax treatments under U.S. tax laws.

#### Rule 3523 - Tax Services for Persons in Financial Reporting Oversight Roles

Rule 3523 provides that a registered public accounting firm is not independent of an audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any tax service to a member of management in a financial reporting oversight role at the audit client.<sup>49/</sup> As

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<sup>49/</sup> The rule's use of the term "financial reporting oversight role" is based on the Commission's definition of "financial reporting oversight role," which includes any person who has direct responsibility for oversight over those who prepare the issuer's financial statements and related information (for example, management's discussion and analysis) that are included in filings with the

discussed in the Board's proposing release, this rule addresses concerns that performing tax services for certain individuals involved in the financial reporting processes of an audit client creates an appearance of a mutual interest between the auditor and those individuals.

The Board received varied comments on Rule 3523. Some commenters, including groups representing investors and issuers, as well as several large accounting firms, supported the proposed rule on the ground that it is necessary to preserve the objectivity, and the appearance of objectivity, of auditors. Other commenters, however, including a number of smaller accounting firms, accounting associations, and a few issuers, claimed that the rule is not necessary, that these services have long been provided, and that auditors should be allowed to provide senior financial management of issuers with the same types of tax services the auditor may provide the issuer. After carefully considering these comments, the Board has determined to adopt the rule, with a few modifications. The Board continues to believe that the provision of tax services by the auditor to the senior management responsible for the audit client's financial reporting creates an unacceptable appearance of the auditor and such senior management having a mutual interest.

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Commission. See Strengthening the Commission's Requirements Regarding Auditor Independence, at § II.A. The Commission uses the term "financial reporting oversight role" to describe those positions that are covered by the Act's "cooling off" period, during which a public company would not be independent from its audit firm if a member of the engagement team for the audit of that company assumed such a position. See Sarbanes-Oxley Act of 2002, § 206, 17 C.F.R. § 210.2-01(f)(3)(ii). The term "financial reporting oversight role" as defined in Rule 3501(f)(i) mirrors verbatim the SEC's definition of the same term in Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01(f)(3)(ii).

The Board also received a number of comments on specific aspects of the proposed rule. For example, some commenters expressed confusion as to whether Rule 3523 is intended to apply to directors, in part because the definition of "financial reporting oversight role" includes directors. In response to these comments, the Board has modified the rule to exclude directors more explicitly. Thus, the rule no longer uses the term "officer" – which is how the proposed rule narrowed the scope to exclude directors – and instead includes an explicit exception for any person who serves in a financial reporting oversight role "only because he or she serves as a member of the board of directors or similar management or governing body of the audit client."<sup>50/</sup>

The Board also included a second exception in Rule 3523(b) in response to comments regarding whether the rule should apply to persons who serve in a financial reporting oversight role at an affiliate of an issuer. After considering these comments, the Board has determined not to restrict auditors' provision of tax services to employees in a financial reporting oversight role at an affiliate of an audit client, so long as the financial statements of the affiliate are not material to the financial statements of the audit client or are audited by an auditor other than the firm or an associated person of the firm. This exception is intended to exclude executives of affiliates that do not contribute to the consolidated financial statements of the audit client. The Board does not believe that auditors' relationships with executives of immaterial affiliates, or affiliates whose financial statements are audited by an auditor other than the firm or an associated person

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<sup>50/</sup> Rule 3523(a).

of the firm, pose as great a risk to auditors' impartiality regarding an audit clients' consolidated financial statements as do auditors' provision of tax services to executives involved in the consolidated financial reporting of the client.

The first part of this exception, Rule 3523(b)(i), excludes persons in a financial reporting oversight role at immaterial affiliates of the entity being audited. This exception would encompass, among others, executives of most affiliates within the same investment company complex as the audited entity and executives of up-stream affiliates of the audited entity. The second part of this exception, Rule 3523(b)(ii), excludes executives in financial reporting oversight roles of a subsidiary of an audit client that is not audited by the firm or any firm that is an associated person of the firm, as defined by PCAOB Rule 1001. On the other hand, executives in financial reporting oversight roles at a material subsidiary whose financial statements are audited by a firm that is an associated person of the registered firm would be subject to Rule 3523. For purposes of Rule 3523(b)(ii), the term "audited" should be understood to include audit procedures that contribute to the firm's preparation or issuance of an audit report on an audit client's consolidated financial statements, whether or not such procedures result in an audit opinion on the affiliate's financial statements.

Some commenters also expressed concern that the rule could impose an undue hardship on persons who become subject to the rule because they are hired or promoted into a financial reporting oversight role at an audit client. To address that concern, the Board determined to create a time-limited exception to the rule to cover such situations. Specifically, the Board has determined to add a

new exception to the rule that applies to a person who was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event, when the tax services are both: (1) provided pursuant to an engagement that was in process before the hiring, promotion, or other change in employment event; and (2) completed on or before 180 days after the hiring or promotion event.<sup>51/</sup> The Board will treat engagements as "in process" if an engagement letter has been executed and substantive work on the engagement has commenced; the Board will not treat engagements as "in process" during negotiations on the scope and fee for a service.

Some commenters also suggested that, as proposed, Rule 3523 could invite persons subject to the rule to evade the rule by using the auditor's tax services through an immediate family member or through an entity controlled by the person. In response to this comment, the Board has added to the scope of the rule immediate family members of persons who are covered by the rule.<sup>52/</sup>

In addition, some commenters suggested that the rule be expanded to cover all non-audit services, such as services involving investment, personal financial planning, and executive compensation, on the ground that any such

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<sup>51/</sup> Rule 3523(c).

<sup>52/</sup> The Board also has added a definition of "immediate family member," adapted from the SEC's definition in its independence rules. Compare Rule 3501(j)(i) with 17 C.F.R. § 210.2-01(f)(13). The Board has not included entities controlled by persons in financial reporting oversight roles, such as trusts and investment partnerships. The Board notes, however, that an auditor who provides services to an entity controlled by a person in a financial reporting oversight role of an audit client should consider whether, under ISB Standard No. 1, it is necessary to notify the client's audit committee of such services.

services provided to those in a financial reporting oversight role create a perception of a mutuality of interest between auditors and those members of management who receive such services.<sup>53/</sup> Other commenters suggested that the rule be expanded to include persons who do not play a financial reporting oversight role but nevertheless play a key role in operations, such as vice presidents of sales.<sup>54/</sup> Other commenters recommended the rule cover audit committee members. Still other commenters, however, disagreed with these commenters and noted that applying the rule to audit committee members might serve as a practical disincentive to audit committee service.

The Board has determined not to expand the final rule to include all non-audit services, directors or persons outside the definition of "financial reporting oversight role." To date, the concerns that have arisen in this area have related to auditors' provision of tax services to executives of public companies.

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<sup>53/</sup> Some commenters asked for clarification of whether persons in a financial reporting oversight role could seek the assistance of the registered public accounting firm that prepared the original tax return to assist them in responding to an IRS or other governmental agency examination regarding that specific tax return after Rule 3523 becomes effective. If a registered firm prepared such a tax return before the rule's effective date, the rule does not operate to prohibit that person from answering questions and providing assistance when that tax return is under examination by a taxing authority after the rule's effective date. Such assistance, of course, must be otherwise consistent with Board and SEC auditor independence rules, including the requirement the auditor not become an advocate for its audit client.

<sup>54/</sup> A few commenters suggested that the Board use the list of officers in section 16 of the Exchange Act, rather than relying on the defined term "financial reporting oversight role." The "financial reporting oversight role" term, however, includes those individuals at an audit client that, because of their oversight of the company's financial reporting process, raise special concerns when they have certain relationships with the auditor. For this reason, the Board continues to believe this is the appropriate group to include in this rule.

Accordingly, the Board believes it is appropriate, at this time, to limit the rule to address this problem. The Board intends to monitor implementation of the rule, however. In addition, to the extent that issuers pay for non-audit services provided to any individuals, audit committees can and should be scrutinizing the potential effects on the auditor's independence due to such services. Further, as discussed in the proposing release, although accounting firms are not now required to seek pre-approval for executive tax services paid directly by the employee, auditors should consider under Independence Standards Board ("ISB") Standard No. 1 whether it is necessary to notify the audit committee of these services<sup>55/</sup> or whether it is otherwise advisable to inform audit committees of such services.<sup>56/</sup> In this regard, while the Board is reluctant to establish a per

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<sup>55/</sup> See ISB Standard No. 1; see also Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission to William H. Donaldson, Chairman, Securities and Exchange Commission at 5 (June 24, 2003) (attached to letter from Chairman William H. Donaldson, U.S. Securities and Exchange Commission, to Five Consumer Groups) (July 11, 2003), available at <http://www.sec.gov/info/accountants/staffletters/taub071103.pdf> (hereinafter "Taub Memo").

<sup>56/</sup> For example, the SEC staff has recommended that audit committees scrutinize audit firms' provision of these services –

The provision of tax services to the executives of an audit client is not expressly addressed in the Act or in the Commission's rules. Nonetheless, an audit committee should review the provision of those services to assure that reasonable investors would conclude that the auditor, when providing such services, is capable of exercising objective and impartial judgment on all issues within the audit engagement.

Taub Memo, supra note 55, at 5.

se prohibition on auditors' provision of tax services to directors of their audit clients, the Board notes that firms can – and some have – adopted procedures to notify the audit committee of such services so it may evaluate the potential effect of such services on the auditor's independence.<sup>57/</sup>

#### Rule 3524 - The Auditor's Responsibilities in Connection with Audit Committee Pre-approval of Tax Services

Under Section 10A(h) of the Exchange Act, as amended by Section 202 of the Sarbanes-Oxley Act, all non-audit services that the auditor proposes to perform for an issuer client "shall be pre-approved by the audit committee of the issuer." The SEC's 2003 independence rules implemented the Act's pre-approval requirement by adopting a provision on audit committee administration of the engagement.<sup>58/</sup> Rule 3524 implements the Act's pre-approval requirement further by strengthening the auditor's responsibilities in seeking audit committee pre-approval of tax services. Specifically, Rule 3524 requires a registered public accounting firm that seeks pre-approval of an issuer audit client's audit committee<sup>59/</sup> to perform tax services that are not otherwise prohibited by the Act or the rules of the SEC or the Board to –

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<sup>57/</sup> See, e.g., Remarks of Scott Bayless, Deloitte & Touche LLP, Auditor Independence Roundtable on Tax Services (July 14, 2004) at 152 (indicating that even when "the company does not pay for those services . . . there is a notification procedure to ensure that the audit committee has the ability to take control of that relationship if they so desire").

<sup>58/</sup> See 17 C.F.R. § 210.2-01(c)(7).

<sup>59/</sup> Proposed Rule 3524 used the term "audit committee of the audit client," which some commenters interpreted to mean that the rule would require auditors to make the required communications in connection with proposed tax services for affiliates of an audit client that are not consolidated as subsidiaries

- Describe, in writing, to the audit committee the nature and scope of the proposed tax service;
- Discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the audit committee.

These requirements are intended to buttress the pre-approval processes established by the Act and the Commission's rules. Whether an audit committee pre-approves a non-audit service on an ad hoc basis or on the basis of policies and procedures, the Commission staff has stated that "detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor" should be provided to the audit committee.<sup>60/</sup> Indeed, the SEC

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with the audit client for financial statement purposes. One commenter noted that the Commission's Rule 2-01(c)(7) requires only that "[b]efore the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render audit or non-audit services, the engagement [be] approved by the issuer's or registered investment company's audit committee." By using the phrase "in connection with seeking audit committee pre-approval," the Board intends Rule 3524 to apply only when the SEC's Rule 2-01(c)(7) requires such approval. Accordingly, the rule does not require registered firms to make the specified communications or to seek audit committee pre-approval in any situations in which audit committee pre-approval is not already required by the SEC's rules. Nor should the rule be understood to require pre-approval by any committee other than the committee required to provide pre-approval by the SEC's rules. To clarify this issue, the Board has also modified Rule 3524 to more clearly track the language of section 10A(h) of the Exchange Act and the SEC's Rule 2-01(c)(7).

<sup>60/</sup> Taub Memo, supra note 55, at 3; see also SEC Office of the Chief Accountant: Application of Commission's Rules on Auditor Independence Frequently Asked Questions, Audit Committee Pre-approval, Question 5, (issued August 13, 2003), available at

staff has indicated "[s]uch documentation should be so detailed that there should never be any doubt as to whether any particular service was brought to the audit committee's attention and was considered and pre-approved by that committee."<sup>61/</sup>

Rule 3524 implements the Act's pre-approval requirement further by requiring that registered firms provide the audit committee of an issuer audit client a description of proposed tax services engagements that includes descriptions of the scope of any tax service under review and the fee structure for the engagement.<sup>62/</sup> Some commenters suggested significant changes to the scope of the proposed rule. One group of commenters recommended that the rule be broadened to apply to all non-audit services, rather than only tax services. Other commenters expressed concern that the rule appeared to impose restrictions on audit committee pre-approval in excess of the SEC's

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<http://www.sec.gov/info/accountants/ocafaqaudind121304.htm> (hereinafter "FAQs").

<sup>61/</sup> Taub Memo, supra note 55, at 3; see also FAQs, supra note 60, Audit Committee Pre-approval, Question 5 (issued August 13, 2003). The SEC staff FAQ answer states that ("[p]re-approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to pre-approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. For example, if the audit committee is presented with a schedule or cover sheet describing services to be pre-approved, that schedule or cover sheet must be accompanied by detailed back-up documentation regarding the specific services to be provided").

<sup>62/</sup> See Rule 3524(a)(1). Audit committees may ask auditors for other materials not identified in the rule, to assist them in their determinations whether to pre-approve proposed tax services. Rule 3524 should not be understood to limit the information or materials that an audit committee may request, or that a registered firm may decide to provide, in connection with the pre-approval of tax services.

requirements and, for that reason, recommended that the Board narrow or eliminate the rule. The Board has determined not to change the scope of the rule in response to these comments. While auditors and audit committees may find the procedures in Rule 3524 to be useful for purposes of considering non-audit services generally, the Board adopts these rules only after having engaged in a substantial effort to obtain facts and views of interested persons on appropriate procedures for considering proposed tax services. Before considering broadening the rule, the Board would seek additional information, based, among other things, on experience with this rule, inspections of registered firms, and additional public input. On the other hand, notwithstanding the concerns of some commenters that Rule 3524 requires more than the parallel SEC rule, the Board has determined not to narrow or eliminate the rule. The Board continues to believe that the rule is an appropriate complement to the SEC's pre-approval rule. Rule 3524 supports the procedure under the SEC rule, by requiring the auditor – who is in the best position to describe a proposed engagement – to gather the information required to be presented to the audit committee by the SEC rule. Indeed, it is the SEC rule and staff interpretations of what information audit committees need that have informed the Board's development of the rule.

The Board has made certain modifications to the proposed rule, however. As proposed, the rule would have required auditors to provide audit committees copies of all engagement letters for proposed tax services. While some commenters supported this proposal as a way to ensure that audit committees received adequate information on which to base their judgments, other

commenters expressed concern that the rule could result in audit committees being provided voluminous stacks of engagement letters – some in foreign languages – that would obscure rather than elucidate the nature of the tax services proposed. On the basis of this information, and because the underlying purpose of the proposed requirement was to establish a manageable collection of information on which audit committees could make their determinations to pre-approve tax services, the Board has determined to eliminate the proposed rule's requirement to supply the audit committee a copy of each tax service engagement letter. Instead, the rule requires auditors to describe for audit committees, in writing, the scope of the proposed service, the proposed fee structure for the service, and the potential effect of the service on the auditor's independence. The Board believes requiring such a description of a proposed service better meets the Board's goal to improve the quality of information auditors provide audit committees about proposed tax services.

The rule also requires the auditor to describe for the audit committee any amendment to the engagement letter or any other agreement relating to the service (whether oral, written, or otherwise) between the firm and the audit client.<sup>63/</sup> While the Board does not expect or encourage auditors to enter into side agreements relating to tax services, the Board understands that, in the past,

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<sup>63/</sup> Id. One commenter expressed concern that Rule 3524(a)'s requirement to describe an "other agreement" could be understood to require the auditor to submit to the audit committee documentation concerning "essentially every communication with the audit client." The Board believes this comment is misplaced. Rule 3524 does not require that the auditor describe all communications with the audit client, but rather all agreements with the audit client that relate to the proposed service.

some accounting firms have entered into such agreements.<sup>64/</sup> To the extent firms do so, they must disclose those agreements to the audit committee.

In addition, to the extent that a firm receives fees or other consideration from a third party in connection with promoting, marketing, or recommending a tax transaction, Rule 3524 requires the firm to disclose those fees or other consideration to the audit committee. Specifically, Rule 3524(a)(2) requires that the firm disclose to the audit committee "any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service." This provision is adapted from the IRS's rules of practice, which require tax advisors to disclose such arrangements to taxpayer clients.<sup>65/</sup>

Rule 3524(b) also requires registered public accounting firms to discuss with audit committees of their issuer audit clients the potential effects of any

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<sup>64/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, supra note 27 ("through side letters or oral understandings, the parties created contingent fee arrangements"). In addition, some commenters have expressed concern that Rule 3524 requires disclosure to the audit committee of fee arrangements that are prohibited by Rule 3521 (or by professional association membership requirements, such as certain referral agreements and fees). Those commenters have asked the Board to clarify that Rule 3524 does not operate to permit such fee structures that are otherwise prohibited by the Board's rules or to endorse fee structures that are prohibited or discouraged by professional ethics rules. It is the case that Rule 3524 does not permit or otherwise endorse such fees.

<sup>65/</sup> See 31 C.F.R. § 10.35(e)(1) (2005), available at <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

proposed tax services on the firm's independence. Even if a non-audit service does not per se impair an auditor's independence, the Commission's independence rules nevertheless deem an auditor not to be independent if –

the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.<sup>66/</sup>

Rule 3524(b) is intended to provide audit committees a robust foundation of information upon which to determine whether to pre-approve proposed tax services. Some commenters have asked for guidance as to the scope of the discussions intended by the rule. The Board intends that the scope of such discussions remain flexible, to address the matters that are pertinent in the judgment of the audit committee, as informed by Commission requirements. While the Act's legislative history makes clear that the Act "does not require the audit committee to make a particular finding in order to pre-approve an activity,"<sup>67/</sup> the Commission's staff expects a robust review of proposed non-audit services –

The audit committee must take its role seriously and perform diligent analyses and reviews that allow the committee to conclude that reasonable investors would view the auditor as capable of

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<sup>66/</sup> 17 C.F.R. § 210.2-01(b).

<sup>67/</sup> S. REP. No. 107-205, at 19 (2002).

exercising objective and impartial judgment on all matters brought to the auditor's attention.<sup>68/</sup>

To be clear, the rule does not prescribe any test for audit committees or require audit committees to make legal assessments as to whether proposed services are prohibited or permissible. Nor is the rule intended to limit an audit committee's discretion to establish its own more stringent pre-approval procedures. Rather, the rule directs registered firms to present detailed information and analysis to audit committees for audit committees' consideration, in their own judgment, of the best interests of the issuer and its shareholders.

In addition, through the discussion required by Rule 3524(b), the Board expects registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence and those that would be unlikely to have a detrimental effect. Some commenters expressed concern that an example of such a distinction that the Board provided in the proposing release could be understood to suggest that audit committees should not permit an auditor to provide any tax services unless the company had an internal tax department and/or a tax director who could make sound management decision in the best interest of the company. The Board did not intend to suggest that particular functional departments or managers must exist at a company before its auditor may provide it tax services. Rather, the inquiry the auditor should engage in when proposing to provide tax

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<sup>68/</sup> Taub Memo, supra note 55, at 7-8; see also FAQs, supra note 60, Audit Committee Pre-approval, Question 5 (issued August 13, 2003).

services to an audit client is whether, in the particular case, the company has the capacity to make its own decisions regarding the proposed tax matter, such that the auditor would not be in the position of performing management functions or making management decisions for the company.<sup>69/</sup> The resolution of this inquiry will vary depending on the nature of the tax matter at issue and the sophistication of the company, among other things.

Rule 3524, both as proposed and as adopted, is intentionally silent as to when a registered public accounting firm should provide the required information about a proposed tax service to an audit committee. This is because, under the SEC's 2003 independence rules, audit committees themselves may have policies that establish a procedure and schedule for audit committee review of non-audit services, including tax services.<sup>70/</sup> Some commenters expressed concern that the rule might favor one approval method (ad hoc) over another (approval pursuant to policies and procedures). This is not the case. Similar to the SEC's 2003 independence rules, Rule 3524 does not dictate, or even express a preference as to, whether the documentation and discussions required under Rule 3524 should take place pursuant to an audit committee's policies and procedures on pre-approval or on an ad hoc basis. Many issuers have adopted

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<sup>69/</sup> See PCAOB Rule 3600T (adopting AICPA Code of Professional Conduct, paragraph .05 of ET sec. 101, "Independence", Interpretation No. 101-3, "Performance of Other Services," as of April 16, 2003) ("care should be taken not to perform management functions or make management decisions for attest clients the responsibility for which remains with the client's board of directors and management.") (Interpretation No. 101-3 was later amended by the AICPA in December 2003).

<sup>70/</sup> 17 C.F.R. § 210.2-01(c)(7)(i)(B).

policies that provide for pre-approval in annual audit committee meetings. The Board understands that such an annual planning process can include as robust a presentation to the audit committee as a case-by-case pre-approval process, and Rule 3524 is designed to be flexible enough to accommodate either system and to encourage auditors and audit committees to develop systems tailored to the needs and attributes of the issuer.

The timing and method by which auditors describe for, and discuss with, audit committees proposed tax services will necessarily vary depending on different audit committees procedures. For those audit committees that hold an annual meeting to consider proposed non-audit services for the upcoming year, often by reviewing a proposed annual budget for non-audit services, it would be appropriate for auditors to provide their disclosures pursuant to Rule 3524(a), and hold their discussions pursuant to Rule 3524(b), about proposed tax services that are known at the time of the meeting in connection with or at that meeting. In addition, some audit committees' policies delegate authority to pre-approve non-audit services to one committee member and require reporting of any services approved by delegated authority at the next scheduled audit committee meeting, on a quarterly basis, or otherwise, in order for the audit committee to review an updated forecast or other summary of non-audit services. In such cases, it would be appropriate for auditors to provide the member holding delegated authority to approve a tax service a description of the service that complies with Rule 3524(a). Also, although the auditor may discuss the service with the member holding delegated authority when the member is considering

the service, in order to comply with Rule 3524(b), the auditor ought to discuss the service with the audit committee as a whole when the audit committee considers the updated forecast or other summary.

Finally, Rule 3524(c) requires a registered public accounting firm to document the substance of its discussion with the audit committee under subparagraph (b). The few commenters who addressed this provision supported it.<sup>71/</sup>

### III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

- (a) by order approve such proposed rule; or
- (b) institute proceedings to determine whether the proposed rule should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with

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<sup>71/</sup> One commenting auditor suggested that the Board consider requiring specific forms or occasions for auditor documentation of audit committee discussion. After considering this suggestion, the Board has determined that such forms or required timing of discussions could unnecessarily limit the scope of the discussions that, in the judgment of the auditor and audit committee, are appropriate.

the requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2005-02 and should be submitted within [ ] days.

By the Commission.

Secretary

Staff Note: There is a typographical error in Proposed Rule 3522(a) and 3522(b) on page A-5 of Release No. 2004-015. The citation in Proposed Rule 3522(a) should read 26 C.F.R 1.6011-4(b)(2) and the citation in Proposed Rule 3522(b) should read 26 C.F.R 1.6011-4(b)(3). We regret any inconvenience this may have caused.



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PROPOSED ETHICS AND INDEPENDENCE  
 RULES CONCERNING INDEPENDENCE, TAX  
 SERVICES, AND CONTINGENT FEES

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 ) PCAOB Release No. 2004-015  
 ) December 14, 2004  
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 ) PCAOB Rulemaking  
 ) Docket Matter No. 017  
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Summary: The Public Company Accounting Oversight Board ("PCAOB" or "Board") is proposing rules to promote the ethics and independence of registered public accounting firms that audit and review financial statements of U.S. public companies. The proposed rules would treat a registered public accounting firm as not independent of an audit client if the firm, or an affiliate of the firm, provided any service or product to an audit client for a contingent fee or a commission, or received from an audit client, directly or indirectly, a contingent fee or commission. The proposed rules also would treat such a firm as not independent if the firm, or an affiliate of the firm, provided assistance in planning, or provided tax advice on, certain types of potentially abusive tax transactions to an audit client or provided any tax services to certain senior officers of an audit client. Further, the proposed rules would require registered public accounting firms to provide certain information to the audit committee of an audit client in connection with seeking pre-approval to provide non-prohibited tax services to the audit client.

In addition to these proposed rules relating to tax services, the Board also is proposing a general rule requiring registered public accounting firms to be independent of their audit clients throughout the audit and professional engagement period. Finally, the Board is proposing a rule on the responsibility of associated persons not to cause registered public accounting firms to violate the Sarbanes-Oxley Act of 2002 (the "Act"), the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Securities



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and Exchange Commission issued under the Act, and professional standards.

### Public

Comments: Interested persons may submit written comments to the Board. Such comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, DC 20006. Comments also may be submitted by e-mail to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's Web site at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 017 in the subject or reference line and should be received by the Board no later than 5:00 p.m. (EST) on February 14, 2005.

### Board

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## I. Background

Independent auditors of public companies serve a critical public function. Investors, creditors, and others rely on the competence and ethics of the accountants who audit the financial statements of public companies. In recognition of its public responsibilities, the auditing profession has long held itself to certain ethical standards.<sup>1/</sup> Foremost among these ethical standards is the mandate that the auditor must be independent of his or her audit client.<sup>2/</sup> As described by the Securities and Exchange Commission ("SEC" or "Commission") –

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<sup>1/</sup> The profession's principles of professional conduct state that, "[m]embers should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism." American Institute of Certified Public Accountants ("AICPA") *Professional Standards*, "Code of Professional Conduct" ("AICPA Code of Professional Conduct"), ET § 53.

<sup>2/</sup> See AICPA Code of Professional Conduct, ET §§ 53, 101.



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The independence requirement serves two related, but distinct, public policy goals. One goal is to foster high quality audits by minimizing the possibility that any external factors will influence an auditor's judgments . . . . The other related goal is to promote investor confidence in the financial statements of public companies. Investor confidence in the integrity of publicly available financial information is the cornerstone of our securities markets. Capital formation depends on the willingness of investors to invest in the securities of public companies. Investors are more likely to invest, and pricing is more likely to be efficient, the greater the assurance that the financial information disclosed by issuers is reliable. The federal securities laws contemplate that that assurance will flow from knowledge that the financial information has been subjected to rigorous examination by competent and objective auditors.

The two goals – objective audits and investor confidence that the audits are objective – overlap substantially but are not identical. Because objectivity rarely can be observed directly, investor confidence in auditor independence rests in large measure on investor perception.<sup>3/</sup>

Accordingly, the profession's Statement on Auditing Standards ("SAS") No. 1, *Codification of Auditing Standards and Procedures*, emphasizes that auditors "should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence."<sup>4/</sup> The United States Supreme Court has recognized this point as well –

The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries. It is therefore not enough that financial

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<sup>3/</sup> Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919 (Nov. 21, 2000).

<sup>4/</sup> SAS No. 1, *Codification of Auditing Standards and Procedures*, AU § 220.03. The standard further states that "[p]ublic confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence." Id.



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statements be accurate; the public must also perceive them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional. . . . If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.<sup>5/</sup>

The federal securities laws reflect, and implicitly codify, this professional obligation by requiring public companies to file with the SEC financial statements audited by a public accountant that is independent of the company preparing the financial statements. To implement these requirements, the SEC has promulgated rules defining what it means for an auditor to be independent of his or her audit client.<sup>6/</sup>

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<sup>5/</sup> United States v. Arthur Young & Co., 465 U.S. 805, 819 n.15 (1984) (emphasis in original).

<sup>6/</sup> Prior to November 2000, the SEC auditor independence rules did not explicitly address many of the non-audit services that auditors were performing for audit clients. In November 2000, the SEC amended its auditor independence rules and, in doing so, significantly revised the types of non-audit services that auditors could provide to their audit clients. See Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919 (Nov. 21, 2000). In that rulemaking, among other things, the SEC examined the new types of services that accounting firms had developed over time and evaluated the impact of those services on the objectivity of the traditional auditor's report. In addition, the SEC modernized its rules on financial interests in, and employment relationships with, audit clients to address the new business models that the largest firms had established; added an express prohibition on auditors receiving contingent fees from their audit clients; and adopted a new disclosure framework to provide investors with information about the types of non-audit services public companies were hiring their auditors to perform. In revising the rules, the SEC also introduced four overarching independence principles that it will look to in determining whether a particular service or client relationship impairs the auditor's independence. Specifically, the SEC looks to whether a relationship or the provision of a service: (a) creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in a position of being an advocate for the audit client. See 17 C.F.R. § 210.2-01, Preliminary Note.



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Following the financial reporting scandals related to Enron, WorldCom, and other widely owned companies, the U.S. Congress also addressed auditor independence in the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "the Act").<sup>7/</sup> A Senate report related to the Act recognized the importance of this issue as it relates to restoring public confidence by stating –

The issue of auditor independence is at the center of this legislation. Public confidence in the integrity of financial statements of publicly-traded companies is based on belief in the independence of the auditor from the audit client.<sup>8/</sup>

In establishing the PCAOB, the Sarbanes-Oxley Act vested in the PCAOB the authority to establish standards relating to auditor ethics and independence in the practice of public company auditing. Specifically, Section 103(a) of the Act directs the Board, by rule, to establish "ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor independence "as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act."<sup>9/</sup>

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<sup>7/</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002).

<sup>8/</sup> S. REP. No. 107-205, at 14 (2002).

<sup>9/</sup> Pursuant to this authority, in April 2003, the Board adopted as its interim, transitional, independence standards (PCAOB Rule 3600T) the AICPA Code of Professional Conduct Rules 101 and 102 and related interpretations and rulings thereof, as they existed on April 16, 2003. PCAOB Rule 3600T notes that the interim standards do not supersede the Commission's auditor independence rules and, to the extent that a provision of the Commission's rules is more restrictive (or less restrictive) than the interim standards, the auditor must comply with the more restrictive rules. The PCAOB also adopted Independence Standards Board ("ISB") Standard Nos. 1, 2, and 3 and Interpretations 99-1, 00-1, and 00-2 as additional interim independence standards.



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Title II of the Act addresses auditor independence. Section 201(a) of the Act expressly prohibits eight types of non-audit services, as well as any other service that the Board determines is impermissible for auditors to provide to their public company audit clients.<sup>10/</sup> The Act further provides that "a registered public accounting firm may engage in any non-audit service, including tax services . . . only if the activity is approved in advance by the audit committee of the issuer."<sup>11/</sup>

As directed by the Act, the SEC on February 5, 2003, adopted new independence rules in order to implement Title II of the Act ("2003 independence rules").<sup>12/</sup> These rules, which generally took effect in May 2003, address key aspects of auditor independence with special emphasis on the provision of non-audit services. The rules expressly prohibit eight categories of non-audit services, as required by Section 201 of the Act.<sup>13/</sup> The SEC's rules also implement the Act's requirement, in Section 202, that all auditing and non-audit services be pre-approved by the company's audit committee.

Neither the Act nor the SEC's rules prohibit tax services that are pre-approved by the company's audit committee (unless those services also fall into one of the

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<sup>10/</sup> See Sarbanes-Oxley Act, Section 201(a). The eight specifically prohibited services are: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client, (2) financial information systems design and implementation, (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports, (4) actuarial services, (5) internal audit outsourcing services, (6) management functions or human resources, (7) broker or dealer, investment adviser, or investment banking services, and (8) legal services and expert services unrelated to the audit. See *id.*

<sup>11/</sup> *Id.*

<sup>12/</sup> See Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183 (Jan. 28, 2003).

<sup>13/</sup> See *supra* note 10. Section 201 of the Act also authorizes the Board to add to the Act's eight categories of prohibited non-audit services. See Sarbanes-Oxley Act, Section 201(a).



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categories of expressly prohibited services).<sup>14/</sup> Rather, the Act expressly recognizes that accountants "may engage in any non-audit service, including tax services," that do not fall into one of the prohibited categories, provided that each service is approved in advance by the audit committee.<sup>15/</sup> The SEC's adopting release accompanying its 2003 independence rules noted that there had been considerable debate regarding whether an accountant's provision of tax services for an audit client could impair the auditor's independence. The SEC determined that it would not prohibit tax services, however, partly because audit firms – both large and small – have historically played a part in return preparation and have advised their clients on the complexities of the tax code and how it affects the client's tax liabilities.<sup>16/</sup> Thus, the Commission stated "that an accounting firm can provide tax services to its audit clients without impairing the firm's independence . . . [and] may continue to provide tax services such as tax compliance, tax planning, and tax advice, to audit clients, subject to the normal audit committee pre-approval requirements . . . ." <sup>17/</sup>

While the SEC made clear that it did not consider conventional tax compliance and planning to be a threat to auditor independence, it distinguished such traditional services from the marketing of novel, tax-driven financial products. Thus, the SEC's release cautioned that audit committees should "scrutinize carefully" the retention of the auditor in a transaction initially recommended by the auditor "the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."<sup>18/</sup>

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<sup>14/</sup> The SEC's adopting release emphasized that the nature of the service being provided must be analyzed and that "merely labeling a service as a 'tax service' will not necessarily eliminate its potential to impair independence under Rule 2-01(b)." Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11 (Jan. 28, 2003).

<sup>15/</sup> Sarbanes-Oxley Act, Section 201(a).

<sup>16/</sup> See Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11, note 103 (Jan. 28, 2003).

<sup>17/</sup> Id. § II.B.11.

<sup>18/</sup> Id. Moreover, the release referred to the recommendation of the Conference Board's Commission on Public Trust and Private Enterprise that, as a "best



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Since the SEC issued its new rules, two types of tax services have raised serious concerns from investors, auditors, regulators, and others relating to the ethics and independence of accounting firms that provide both auditing and tax services. First, the Internal Revenue Service ("IRS") and the Department of Justice have brought a number of cases against accounting firms in connection with those firms' marketing of tax shelter products and, specifically, those firms' alleged failures to register, or comply with list maintenance requirements relating to, their tax shelter products. In addition, in November 2003, the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs held hearings on tax shelters<sup>19/</sup> in which the subcommittee elicited testimony that described certain potentially abusive tax shelter products marketed through cold-call selling techniques by accounting firms and others. Apart from any problems associated with non-compliance with applicable tax laws and the concomitant erosion of public confidence in the fairness of the U.S. system of taxation, these matters have called into question the ethics of accounting firms that offer these services. To the extent that such firms audit public companies, these potential ethical issues threaten to undercut efforts to restore investor confidence in the objectivity, integrity, and reliability of public company auditing.

Second, audit firms have been criticized for providing tax services, including tax shelter products, to senior executives of their public company audit clients. Some have questioned whether an auditor's provision of such services to the executives overseeing its audit client's financial reporting could lead to conflicts of interest.<sup>20/</sup> At a minimum, such practices have raised serious appearance issues that contribute to the erosion of public confidence in the objectivity of the auditor and, by extension, the reliability of

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practice," auditors not provide advice on "novel and debatable" tax strategies and products. Id. § II.B.11 at note 112.

<sup>19/</sup> U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals: Hearings Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, 108th Cong., 1st Sess, S. Hrg. 108-473 (2003); see also S. REP. No. 108-34 (2003).

<sup>20/</sup> See, e.g., Kathleen Pender, Double Standard at Sprint, S.F. CHRON., May 13, 2003, at B1.



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audited financial statements.<sup>21/</sup> The SEC staff has noted these concerns and recommended that audit committees scrutinize audit firms' provision of these services –

The provision of tax services to the executives of an audit client is not expressly addressed in the Act or in the Commission's rules. Nonetheless, an audit committee should review the provision of those services to assure that reasonable investors would conclude that the auditor, when providing such services, is capable of exercising objective and impartial judgment on all issues within the audit engagement.<sup>22/</sup>

It also has become apparent that certain fee arrangements used for the provision of tax services may not be in compliance with the SEC's requirements. In particular, it has recently come to light that a professional association may have been misinterpreting the SEC's contingent fee rule.<sup>23/</sup>

Specifically, the American Institute of Certified Public Accountants ("AICPA") recently asserted that the SEC's rule prohibiting contingent fees is consistent with an AICPA interpretation of the AICPA's own contingent fee rule. The AICPA relied on the

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<sup>21/</sup> Jeremy Kahn, Do Accountants Have a Future?; The last thing the Big Four needed was yet another scandal. But they've got one - this time over tax shelters, Fortune, March 3, 2003, at 115.

<sup>22/</sup> Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission (June 24, 2003), at 5 ("Taub Memo"), attached to letter from Chairman William H. Donaldson, U.S. Securities and Exchange Commission, to Five Consumer Groups (July 11, 2003).

<sup>23/</sup> The SEC's rule on contingent fees, similar to the AICPA's rule, provides that –

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides any service or product to an audit client for a contingent fee or a commission, or receives a contingent fee or commission from an audit client.



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incorporation into the SEC's rule of an exception for fees that are "determined based on the results of judicial proceedings or the findings of governmental agencies." While both the AICPA and SEC rules contain such an exception, the AICPA interpreted that exception to mean that an AICPA member has not violated the contingent fee rule if "the member can demonstrate a reasonable expectation at the time of a fee arrangement of substantive consideration by an agency with respect to the members' client."<sup>24/</sup>

In a May 21, 2004 letter on this issue, the Chief Accountant of the SEC pointed out that neither the SEC's rule nor its accompanying release refers to the AICPA's interpretation and that "the Commission had in mind a much different test for the application of this exception."<sup>25/</sup> The letter further stated –

[T]he exception in the Commission's rule is not based on whether the accountant reasonably expects a government agency would consider issues with respect to its audit client. The release makes clear that the exception would apply only when the determination of the fee is taken out of the hands of the accounting firm and its audit client and is made by a body that will act in the public interest, with the result that the accounting firm and client are less likely to share a mutual financial interest in the outcome of the firm's advice or service.<sup>26/</sup>

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<sup>24/</sup> Letter from Bruce P. Webb, Chair, Professional Ethics Executive Committee, American Institute of Certified Public Accountants, to Douglas Carmichael, Chief Auditor and Director of Professional Standards, Public Company Accounting Oversight Board, at 1 (April 30, 2004) (available at [www.aicpa.org/download/ethics/2004\\_0430\\_Carmichael.pdf](http://www.aicpa.org/download/ethics/2004_0430_Carmichael.pdf)); see also AICPA Code of Professional Conduct, Interpretation No. 302-1, "Contingent Fees in Tax Matters," of ET § 302, *Contingent Fees*.

<sup>25/</sup> Letter from Donald T. Nicolaisen, Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission, to Bruce P. Webb, Chair, Professional Ethics Executive Committee, American Institute of Certified Public Accountants, dated May 21, 2004 (available at [www.sec.gov/info/accountants/staffletters/webb052104.htm](http://www.sec.gov/info/accountants/staffletters/webb052104.htm)) ("Nicolaisen Letter").

<sup>26/</sup> Id.



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Thus, the SEC rule would not permit certain contingent fee arrangements that would be allowed under the AICPA's interpretation.

Finally, in addition to these new questions that have arisen after the SEC issued its rules to implement Title II of the Act, issuers have begun to publish their policies on pre-approval of non-audit services, including tax services, by the audit committee. Specifically, under the SEC's rules implementing Title II of the Sarbanes-Oxley Act, an accountant is considered not to be independent of a public company audit client unless, either –

- (A) Before the accountant is engaged by the issuer or its subsidiaries . . . to render audit or non-audit services, the engagement is approved by the issuer's . . . audit committee; or
- (B) The engagement to render the service is entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer . . . ; provided the policies and procedures are detailed as to the particular service and the audit committee is informed of each service and such policies and procedures do not include delegation of the audit committee's responsibilities under the Securities Exchange Act of 1934 to management . . . .<sup>27/</sup>

In general, many of these policies provide for an annual review of audit and non-audit services by the audit committee, which includes review of a schedule, or budget, of non-audit services anticipated in the coming year. The SEC staff has said that, under the SEC's Rule 2-01(c)(7) –

To the extent any schedule or cover sheet for a category of services is provided to the committee for its administrative convenience, that schedule or cover sheet must be accompanied by detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor that is being pre-approved by the audit committee. Such documentation should be so detailed that there should never be any doubt as to whether any particular service was brought to the audit

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<sup>27/</sup> 17 C.F.R. § 210.2-01(c)(7).



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committee's attention and was considered and pre-approved by that committee.<sup>28/</sup>

Although registered public accounting firms play a significant role in facilitating audit committees' consideration of non-audit services, the Board's rules do not yet include general auditor requirements relating to the Act's and the SEC's new pre-approval requirements.<sup>29/</sup> The proposed rules would implement these requirements as they relate to the provision of tax services to an issuer audit client.

The PCAOB has the authority and the responsibility to establish ethics and independence standards to enhance the quality and reliability of the audits of public company financial statements. Over the last several months, the Board has evaluated whether an auditor's provision of tax services, or any class of tax services, to an audit client impairs the auditor's independence from that audit client, in fact or appearance. As part of this evaluation, the Board held a public roundtable discussion with individuals representing a variety of viewpoints, including investors, auditors, managers of public companies, governmental officials, and others.<sup>30/</sup> In the context of this evaluation, the

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<sup>28/</sup> Taub Memo, *supra* note 22, at 3; see also SEC Office of the Chief Accountant: Application of the January 2003 Rules on Auditor Independence Frequently Asked Questions ("FAQs"), Audit Committee Pre-approval, Answer No. 24, issued August 13, 2003. The SEC's FAQ answer states that "[p]re-approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to pre-approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. For example, if the audit committee is presented with a schedule or cover sheet describing services to be pre-approved, that schedule or cover sheet must be accompanied by detailed back-up documentation regarding the specific services to be provided" (available at [www.sec.gov/info/accountants/ocafaqaudind080703.htm](http://www.sec.gov/info/accountants/ocafaqaudind080703.htm)).

<sup>29/</sup> The Board's Auditing Standard No. 2, paragraph 33, however, does provide that an "auditor must not accept an engagement to provide internal control-related services to an issuer for which the auditor also audits the financial statements unless that engagement has been specifically pre-approved by the audit committee."

<sup>30/</sup> The Board held the Auditor Independence Roundtable on Tax Services (the "Roundtable") on July 14, 2004. A list of Roundtable participants can be found at



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Board has considered a wide range of tax services, including routine tax return preparation and tax compliance; tax planning and advice relating to federal, state, local, and other tax laws; executive tax services; international assignment tax services; and tax shelter strategies and products.

On the basis of this evaluation, the Board has developed proposed rules designed to address the ethical problems posed by registered firms' involvement in two areas – the provision of advice on tax positions that may be abusive and tax compliance and planning services for certain senior officers, *i.e.*, those in a financial reporting oversight role. To the extent that auditors' provision of other tax services to public company audit clients is consistent with the Commission's independence requirements,<sup>31/</sup> the Board's proposed rules would not prohibit registered public accounting firms from providing those services to their audit clients, subject to the Act's and the Commission's requirements relating to audit committee pre-approval of such services.

In determining whether to propose restrictions on specific types of tax services, the Board considered such services in light of the Commission's rules on auditor independence, including specifically Rule 2-01(b), and the four principles set forth in the Preliminary Note to that rule.<sup>32/</sup> Rule 2-01(b) provides that –

The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude

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pages 2 and 3 of the transcript of the Roundtable (available at [www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14_Roundtable_Transcript.pdf)).

<sup>31/</sup> For example, as the Commission stated in its release accompanying its 2003 independence rules, "[i]t would not be appropriate to provide a prohibited service, label it as a 'tax service,' and argue that it is, therefore, permissible." Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11, note 111 (Jan. 28, 2003).

<sup>32/</sup> In addition, the Board took into consideration the Commission's rule treating an auditor as not independent if it "performs any decision-making, supervisory or ongoing monitoring function for the audit client." 17 C.F.R. § 210.2-01(c)(4)(vi).



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that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.<sup>33/</sup>

The Preliminary Note to Rule 2-01 provides, among other things, that –

Section 210.2-01(b) sets forth the general standard of auditor independence. Paragraphs (c)(1) to (c)(5) [on prohibited services] reflect the application of the general standard to particular circumstances. The rule does not purport to, and the Commission could not, consider all circumstances that raise independence concerns, and these are subject to the general standard in § 210.2-01(b). In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service: creates a mutual or conflicting interest between the accountant and the audit client; places the accountant in the position of auditing his or her own work; results in the accountant acting as management or an employee of the audit client; or places the accountant in a position of being an advocate for the audit client.<sup>34/</sup>

As the Commission's Preliminary Note indicates, predicting whether particular services in particular circumstances would cause a reasonable investor to believe the objectivity and impartiality of an auditor was impaired is a complex task, and it is one that may change over time. The following discussion is intended to provide registered firms and their audit clients with an indication of how the Board has analyzed these concepts as applied to some fairly typical types of tax services and explains why the Board has determined at this time to propose restrictions only in two particular areas. Specifically, tax services that the Board has considered and determined not to propose prohibiting include –

*Routine Tax Return Preparation and Tax Compliance.* Many issuers have in-house compliance employees who perform much or most of the compliance function. Registered public accounting firms and other consultants often are employed to render services in conjunction with these functions, including preparation of original and amended corporate tax returns, planning for estimated tax payments, and preparation of

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<sup>33/</sup> 17 C.F.R. § 210.2-01(b).

<sup>34/</sup> Id. § 210.2-01, Preliminary Note.



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tax return extensions. In addition, firms may provide assistance in the preparation of tax returns for applicable state and local tax jurisdictions, including payroll and sales tax returns, as well as the returns for employee benefit and similar plans.

As a general matter, routine tax return preparation and tax compliance services have not raised independence concerns. In the case of most tax compliance services, the auditor does not prepare tax returns until after management has calculated and allocated its tax liability and the auditor has audited the income tax accounts to obtain reasonable assurance that they are fairly stated and are accompanied by appropriate disclosure. Also, in preparing a tax return, the auditor is not acting as an advocate for its client. These services remain subject to the Commission's general standard of auditor independence in Rule 2-01(b) and its requirement that all non-audit services be pre-approved by an audit client's audit committee, the application of one or both of which is likely to identify any unique circumstances in a particular engagement that could present an independence concern. Therefore, at this time, a *per se* prohibition on such services appears to be unnecessary and inappropriate.

*General Tax Planning and Advice.* Research and tax planning in connection with routine and even non-routine business transactions initiated by the audit client generally have not raised auditor independence concerns, except in the case of aggressive strategies, and so long as the management of the audit client makes all decisions relating to, and takes responsibility for, both the tax work and the presentation of tax-related accounts and other matters in the financial statements.<sup>35/</sup> For example, these types of routine services do not appear to create the mutuality of interest that exists with regard to aggressive tax transactions. A tax accountant rendering planning advice often works with the client to structure an activity or transaction to secure the most tax-effective result or to establish appropriate characterization and reporting of activities or transactions that have already occurred. Either type of service can range from a technical explanation of a non-controversial "black-and-white" area of tax law to an evaluation of the likelihood that an interpretation of a "gray area" would be sustained in litigation or, if not, that it might lead to the imposition of penalties. The form of this tax advice also can range from phone calls, e-mails, and informal memoranda to formal written opinions to provide support in a tax audit or to avoid the imposition of penalties.

Given the breadth of such tax planning and advice services that accounting firms offer, it is difficult to apply a bright-line test to these services. As in the case of all non-

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<sup>35/</sup>

See supra note 32.

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audit services, the Commission's Rule 2-01(b) would still treat an auditor as not independent if "a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not capable of exercising objective and impartial judgment . . . ."<sup>36/</sup> Nor may an auditor characterize a prohibited service, such as bookkeeping or advocacy, as a tax service in order to avoid the Commission's prohibitions.<sup>37/</sup> Therefore, except in the case of aggressive tax transactions, there does not appear to be a need to prohibit *per se* registered firms from providing tax planning and advice to their audit clients.

*International Assignment Tax Services.* Accounting firms routinely provide assistance to companies in preparing home and host country tax returns and other forms for employees on international assignment. These services typically are paid for by the company, as a means of minimizing the company's risk that its employees will embarrass the company in a foreign country that hosts the company. Because the company pays for the services, they are subject to the Act's and the Commission's requirements relating to audit committee pre-approval and to proxy fee disclosure requirements. The Board's evaluation has not identified independence or ethical issues when an accounting firm provides these routine tax return preparation services to its audit clients, so long as the accounting firm does not perform bookkeeping services related to such tax work or hold or transfer funds for the company or its employees, which are prohibited functions under the Commission's independence rules.<sup>38/</sup>

*Employee Personal Tax Services.* Like international assignment tax services, registered firms' provision of personal tax services for employees of their audit clients has not raised significant independence concerns, except for personal tax services for officers who function in a financial reporting oversight role at the audit client. Accordingly, the Board's proposed rules to restrict auditors from providing personal tax services to audit client employees are limited to those officers who serve in a financial reporting oversight role.

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<sup>36/</sup> Id. § 210.2-01(b).

<sup>37/</sup> See supra note 31.

<sup>38/</sup> See 17 C.F.R. § 210.2-01(c)(4)(i). Officers who are on an international assignment and function in a financial reporting oversight role will not be able to have the issuer's auditor perform their tax compliance and tax return preparation because they fall under the Board's proposed Rule 3523 criteria, however.



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The Board invites comment on this discussion. In particular, the Board seeks comment on whether any of the types of services discussed in this section of the release raise independence concerns the Board has not identified. The Board also seeks comment on whether there are other types of tax services that could appropriately be included in this discussion.

### II. Underlying Objectives of the Board's Proposed Rules

The Board's proposed rules are intended to accomplish four objectives. First, the proposed rules would codify, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and standards. Second, the proposed rules introduce a foundation for the independence component of the Board's ethics rules. That foundation includes a fundamental independence requirement and, as necessary and appropriate, additional rules addressing specific circumstances related to independence issues.

Third, the proposed rules would build on that foundation with rules that identify certain impairments to an auditor's independence. Specifically, the proposed rules would treat a firm as not independent if it entered into contingent fee arrangements relating to its audit clients. Also, the proposed rules would treat a registered public accounting firm as not independent if the firm, or any of its affiliates, planned, opined on, or marketed certain tax transactions to audit clients. In addition, the Board's proposed rules would treat a registered public accounting firm as not independent if the firm, or any of its affiliates, provided tax services to officers in a financial reporting oversight role of an audit client.

Fourth, the proposed rules would require registered public accounting firms to provide certain information in connection with seeking pre-approval from the audit committee to perform non-prohibited tax services for the audit client. The proposed rules would require such firms seeking pre-approval to provide the audit committee with proposed engagement letters and detailed backup information and to engage in a substantive discussion with the audit committee about the potential effects of such services on the firm's independence.<sup>39/</sup>

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<sup>39/</sup> The proposed rules also include several definitions that are integral to the operation of the rules.



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### A. Responsibility Not to Cause Violations

Proposed Rule 3502 provides that a person associated with a registered public accounting firm shall not cause that firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation. While certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm, the firm's associated persons bear an ethical obligation not to be a cause of any violations by the firm. Proposed Rule 3502 would codify that obligation and would make it clear that the obligation is enforceable by the Board. Proposed Rule 3502 also makes clear that an associated person's ethical obligation is not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation.<sup>40/</sup>

Proposed Rule 3502 not only appropriately would codify an ethical obligation of associated persons of registered firms, but it is also inherent in, and necessary to, the Board's authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons. A registered firm, whether in the form of a partnership, a professional corporation, or otherwise, can only act through the natural persons who serve as its agents, including its associated persons. When one or more of those associated persons has caused that firm to violate PCAOB rules, standards, or related laws with the requisite state of mind, it is appropriate, and consistent with the Board's duty to discipline registered firms and their associated persons under Section

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<sup>40/</sup> The phrase "knew or should have known would contribute to such violation" in proposed Rule 3502 is intended to articulate a negligence standard. Cf. KPMG LLP v. Sec. and Exch. Comm'n, 289 F.3d 109, 120, 126 (D.C. Cir. 2002). In addition, in cases in which a person has caused a violation in circumstances meeting the higher thresholds in Section 105(c)(5) of the Sarbanes-Oxley Act (*i.e.*, intentional or knowing conduct, including reckless conduct, or repeated instances of negligent conduct), the more severe sanctions in Section 105(c)(4)(A) through (C) and (D)(ii) of the Act could also be imposed. See Sarbanes-Oxley Act, Section 105(c)(5). Indeed, Section 105(c)(5) expressly provides that those more severe sanctions may be imposed when intentional, knowing, or reckless conduct, or repeated instances of negligent conduct, "[results] in violation of law", regulations, or professional standards. Id.



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101(c)(4) of the Act, that the Board be able to discipline the associated person for that misconduct.

While proposed Rule 3502 would apply in other contexts as well, the Board is proposing the rule at this time, and as part of this rulemaking, because it is essential to the proper functioning of the Board's independence rules. As discussed in Section B1, Rule 3520 requires registered firms to be independent of their audit clients. When an associated person negligently causes the registered firm to not be independent, Rule 3502 would allow the Board to discipline that associated person for that action.

The Board invites comments on any aspect of proposed Rule 3502 and encourages commenters to consider certain issues in particular. First, are there categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason? Second, in a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation?

### B. Ethics and Independence

The proposed rules create a foundation for the independence component of the Board's ethics rules for registered public accounting firms and their associated persons. The proposed rules introduce a new "Independence" subpart in the ethics rules. That subpart begins with proposed Rule 3520, which articulates the fundamental independence requirement. The proposed rules also include additional rules that describe independence impediments in the particular context of contingent fee arrangements and tax services, respectively.

#### 1. The Fundamental Independence Requirement

Proposed Rule 3520 sets forth the fundamental ethical obligation of independence: a registered public accounting firm must be independent of its audit client throughout the audit and professional engagement period. This requirement encompasses the independence requirements set out in PCAOB Rule 3600T and goes further, as a matter of the auditor's ethical obligation, to encompass any other independence requirements applicable to the audit in the particular circumstances.



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Accordingly, in the case of an audit client subject to the financial reporting requirements of the Securities Exchange Act and the Commission's rules, a registered public accounting firm's ethical obligation under proposed Rule 3520 requires the firm to maintain independence consistent with the Commission's independence requirements. That is, with respect to an issuer audit client, the ethical obligation in proposed Rule 3520 requires an auditor to maintain independence in accordance with the terms of, among other things, Rule 2-01 of the Commission's Regulation S-X.<sup>41/</sup>

By giving this scope to proposed Rule 3520, the Board is not promulgating any new independence requirement. The Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately to lock in place any aspect of those requirements. Instead, Rule 3520 is based on the simple premise that rules of good conduct for auditors can and should encompass a duty by the auditor to maintain independence necessary to insure compliance with independence requirements in the circumstances of the particular engagement.

A note to the proposed rule emphasizes the scope of the obligation in the rule by pointing out that, even in circumstances to which the Commission's Rule 2-01 applies, a registered public accounting firm still may need to comply with other independence requirements, specifically those requirements separately established by the Board. Using the foundation of the proposed rules, the Board may adopt additional rules in the "Independence" subpart of the ethics rules that effectively set out additional requirements. As described below, the current proposed rules include only additional requirements addressing contingent fee arrangements and tax services.

The Board invites comments on any aspect of proposed Rule 3520, and encourages commenters to consider one issue in particular. Would the scope of the ethical obligation described above impose any practical difficulties? Commenters who foresee any such difficulties are encouraged to describe in detail any ways in which the proposed scope of the rule would cause or require auditors to follow any different practices and procedures than they currently follow to comply with existing legal requirements.

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<sup>41/</sup> See 17 C.F.R. § 210.2-01.



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### 2. Contingent Fees

Proposed Rule 3521, adapted from the Commission's rule on contingent fees, would treat registered public accounting firms as not independent of their audit clients if they enter into contingent fee arrangements with those clients.<sup>42/</sup> Specifically, proposed Rule 3521 would provide that a registered public accounting firm is not independent of its audit client<sup>43/</sup> if the firm, or any affiliate of the firm,<sup>44/</sup> during the audit and professional

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<sup>42/</sup> See id. § 210.2-01(c)(5).

<sup>43/</sup> Proposed Rule 3501(a)(iv) would define "audit client" as "the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client." This proposed definition is substantially similar to the SEC's definition of "audit client" in Rule 2-01 of the Commission's Regulation S-X. See 17 C.F.R. § 210.2-01(f)(6). The proposed definition does not include a clause that appears at the end of the SEC's definition of "audit client" that has significance only in the context of the SEC's financial relationship rules. The term "affiliates of the audit client" would itself be defined in a manner that generally includes entities in a control relationship with the audit client, entities over which the audit client has significant influence unless immaterial, or that have significant influence over the audit client unless immaterial, and, in the context of investment companies, each entity in the "investment company complex." The term "investment company complex" is itself defined in proposed Rule 3501(i)(i). The proposed definitions of both "affiliate of the audit client" and "investment company complex" are verbatim the SEC's definitions of these same terms and should be understood to cover the same entities that would be covered by these terms in applying the SEC's independence rules. See id. § 210.2-01(f)(14).

<sup>44/</sup> Proposed Rule 3501(a)(i) would define "affiliate of the accounting firm" as "the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)." This definition is intended to cover the same affiliates considered to be part of the accounting firm for purposes of complying with the SEC's independence rules. To clarify the scope of the term, the proposed definition would explicitly refer to the concept of an accounting firm's "associated entities" under the SEC's independence rules. See also PCAOB Rule 1001(a)(iv) (defining the term "associated entity" in the context of the Board's other rules in a manner consistent with the SEC's use of the term). The Commission has not



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engagement period,<sup>45/</sup> provided any service or product to the audit client for a contingent fee or a commission, or received from the audit client, directly or indirectly, a contingent fee or commission. Proposed Rule 3501(c)(i) would define a contingent fee as "any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service." Under the proposed rule, the term "contingent fee" should be understood broadly to include the aggregate amount of compensation for a service, including any payment, service, or promise of other value, taking into account any rights to reimbursements, refunds, or other repayments that could modify the amount received in a manner that makes it contingent on a finding or result.

Fees fixed by courts or other public authorities and not dependent on a finding or result would be excluded from this definition to recognize and permit contingencies that do not pose a risk of establishing a mutual interest between the auditor and the audit

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defined this term, although it has issued guidance indicating what factors will be looked at in determining if an entity is associated with an accounting firm. See SEC Office of the Chief Accountant: Application of Revised Rules on Auditor Independence FAQs, Answer No. 17, issued January 16, 2001 (explaining the staff's approach to this issue and referring readers to the guidance in notes 489 and 491 in the Commission's adopting release in its 2001 Independence Rulemaking; Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919 (Nov. 21, 2000)). Wholly apart from the Board's incorporation of this concept in the proposed rule, all registered public accounting firms auditing companies subject to the Commission's financial reporting requirements already need to know who their associated entities are in order to comply with the Commission's independence requirements.

<sup>45/</sup> Proposed Rule 3501(a)(iii) would adapt the definition of "audit and professional engagement period" from the definition of that term in the Rule 2-01 of the Commission's Regulation S-X, which includes both the period covered by the financial statements under audit or review and the period beginning when a registered public accounting firm signs, or submits to the audit client, an engagement letter (or when such a firm begins audit, review or attest procedures, whichever is earlier) and ends when the audit client notifies the SEC that the engagement has ceased. See 17 C.F.R. § 210.2-01(f)(5).



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client. For example, when an audit client is the subject of a bankruptcy proceeding, the bankruptcy court must approve the auditor's fees for any services.<sup>46/</sup> Accordingly, the exception would permit fees that are contingent on "the amount [being] fixed by courts or other public authorities and not dependent on a finding or result."<sup>47/</sup> Although the approval of a bankruptcy court is the most obvious contingency that may be imposed on auditors' fees from audit clients, the proposed exception extends to other "courts or other public authorities." The Board invites comment as to whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary.

Although proposed Rule 3521 and the related definition of "contingent fee" are modeled on the SEC's independence rules, they differ from those rules in important respects. The principal difference is that the definition would eliminate the exception in the text of the SEC's rule for fees "in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies."<sup>48/</sup> As discussed above, this exception may have been misinterpreted by the AICPA to allow contingent fee arrangements when "the member can demonstrate a reasonable expectation, at the time of a fee arrangement, of substantive consideration by an agency with respect to the member's client."<sup>49/</sup> The SEC Chief Accountant has noted that "[t]he release makes clear that the exception would apply only when the determination of the fee is taken out

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<sup>46/</sup> See 11 U.S.C. § 328 (providing that, with a bankruptcy court's approval, a bankruptcy trustee may employ a professional person "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis"). Although proposed Rule 3521, together with the proposed definition of "contingent fee" set forth in proposed Rule 3501(c)(i), would permit a registered public accounting firm to provide services for a fee that is contingent on a bankruptcy court's approval, they effectively would prohibit such a firm from arranging for a bankruptcy trustee to seek bankruptcy court approval of a contingent fee.

<sup>47/</sup> Proposed Rule 3501(c)(i)(2).

<sup>48/</sup> 17 C.F.R. § 210.2-01(f)(10).

<sup>49/</sup> AICPA Code of Professional Conduct, Interpretation No. 302-1, "Contingent Fees in Tax Matters," of ET § 302, *Contingent Fees*.



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of the hands of the accounting firm and its audit client and is made by a body that will act in the public interest.<sup>50/</sup> In light of the history of the possible misinterpretation of this exception, and the fact that the remaining exception for fees "fixed by courts or other public authorities" appears adequately to identify those contingent fees that pose lesser independence risks, proposed Rule 3521 would eliminate the "tax matters" exception.<sup>51/</sup>

In addition, proposed Rule 3521 would expressly treat a firm as not independent of an audit client if it received a contingent fee or commission from that client "directly or indirectly." The proposed rule would include the term "directly or indirectly" to signal that the rule is intended to discourage efforts to apply the rule in a formalistic manner or to seek to avoid application of the rule through use of intermediaries. Accordingly, the proposed rule should be understood to treat a registered public accounting firm as not independent of an audit client if the firm, or any affiliate of the firm, receives a fee from *any* person that is contingent on a finding or result attained by the audit client or otherwise related to the firm's services for the audit client.

Finally, like the Commission's independence rules, proposed Rule 3521 would treat contingent fee arrangements between a registered public accounting firm's affiliates and the registered public accounting firm's audit clients as relevant to the firm's independence.<sup>52/</sup> The inclusion of such affiliates within the scope of those persons

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<sup>50/</sup> Nicolaisen Letter, supra note 25.

<sup>51/</sup> By eliminating this exception from its contingent fee rule, the Board expresses no view on any accounting firm's compliance with Rule 2-01 of the Commission's Regulation S-X. See 17 C.F.R. § 210.2-01(c)(5).

<sup>52/</sup> The proposed rule would do so by providing that the firm is not independent if it "or any affiliate of the firm . . . provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission." The scope of the proposed rule is intended to be the same as the scope of the Commission's rule, which defines the terms "accountant" and "accounting firm" to include such affiliates. Because registration with the Board is the basis for the Board's authority over an accountant, the proposed rules would treat those persons that are related to a registered public accounting firm and satisfy the Commission's definition of "accounting firm," but are not registered firms themselves, as "affiliates of the accounting firm." Thus, proposed Rule 3501(a)(i) would adapt the Commission's definition of the term "accounting firm" to define the term



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whose activities may impair the independence of the registered public accounting firm from an audit client is intended to prevent frustration of the rule's purpose through the use of firm subsidiaries and other affiliates.<sup>53/</sup> The proposed rule is not intended to, and does not, impose any requirements on affiliates of firms *per se*. Nonetheless, the conduct of an affiliate of the firm can cause the registered firm not to be independent in the situations specified in the rules.

### 3. Aggressive Tax Positions

Proposed Rule 3522 would, in effect, prohibit auditors from providing services, other than auditing services, related to planning or opining on the tax consequences of certain transactions that pose special challenges to an auditor's independence. Specifically, proposed Rule 3522 would treat a registered public accounting firm as not independent from an audit client if the firm, or an affiliate of the firm, provided services related to planning or opining on the tax consequences of a transaction that is a listed or confidential transaction under United States Department of Treasury ("Treasury") regulations or that promotes an interpretation of applicable tax laws for which there is inadequate support. Like proposed Rule 3521 on contingent fees, proposed Rule 3522 would treat a registered public accounting firm as not independent of its audit client if the firm, or an affiliate of the firm, provided any service described in the proposed rule.

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"affiliate of the accounting firm" as "the accounting firm's parents, subsidiaries, pension, retirement, investment or similar plans, and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)."

<sup>53/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, AP 3-10835 (July 17, 2002) (finding an auditing firm and an affiliate under the control of the firm in violation of Commission requirements because the affiliate performed investment banking services for the firm's audit clients for contingent fees); see also KPMG LLP v. Sec. & Exch. Comm'n, 289 F.3d 109 (D.C. Cir. 2002) (declining to find an audit firm in violation of the AICPA's rule prohibiting contingent fee arrangements with audit clients, where the audit firm only indirectly received a contingent royalty from an audit client, through an associated entity of the audit firm and an audit client of the firm). Although the D.C. Circuit declined to find KPMG responsible under the AICPA rule for the contingent fee arrangement between its associated entity and its audit client, the proposed rules should be understood to treat such an arrangement as an impairment of a registered public accounting firm's independence.



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Proposed Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence if the auditor participates in the transaction in any capacity other than as an auditor. The participants in the Board's July 14, 2004, Auditor Independence Roundtable encouraged the Board to prohibit auditors from marketing, advising, or opining on abusive tax avoidance transactions on the ground that such conduct has seriously damaged investors' confidence in the judgment and objectivity of firms that engage in such transactions. For example, the Chief Accountant of the SEC stated that –

Tax services have been a fundamental part of the accounting firms since the inception of the profession. In recent years, however, the nature and extent of these services changed. Firms began formulating highly engineered tax products that were not designed for a particular client, but, instead, were marketed to numerous potential buyers, with the firm taking a percentage of each buyer's profits from the product. Over time, the IRS and others have found several of these products to be overly aggressive, or outright abusive, tax shelters. Personally, I believe that no accounting firm should be in the business of selling these kinds of tax products to their audit clients.<sup>54/</sup>

Further, aggressive tax positions, often called strategies or tax shelter products, carry a high risk that taxing authorities will not allow the position taken by the auditor and the

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<sup>54/</sup> Remarks of Donald Nicolaisen, Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission, Roundtable Tr. at 12-13; see also Remarks of Michael Gagnon, PricewaterhouseCoopers LLP, Roundtable Tr. at 101 (stating that tax advantage strategies "impacts a firm's independence and not in a positive way" and "encourag[ing] a reconsideration" of the current independence rules that leave consideration of such strategies to audit committees, on the ground that "from an integrity perspective" such transactions are inappropriate); Remarks of Mark Weinberger, Ernst & Young LLP, Roundtable Tr. at 107 ("I would agree that the rule that's currently out there, which says that there should be careful scrutiny of these transactions where sole motivation is tax aid without business purpose, could go further and it should be banned frankly from audit firms providing it to their audit clients or others."); Remarks of James Brasher, KPMG LLP, Roundtable Tr. at 103 ("[A]uditing firms should not sell tax strategies to an audit client that lack business purpose and economic substance.").



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audit client. As the SEC Chief Accountant noted in the context of contingent fees, "the fact that a government agency might challenge the amount of the client's tax savings . . . heightens . . . the mutuality of interest between the firm and client."<sup>55/</sup>

In order to describe this class of transactions in a manner that is clear and consistent with existing foundations for analyzing tax-oriented transactions, the proposed rule is adapted from certain IRS regulations and from the Commission's release accompanying its 2003 independence rules. For example, proposed Rules 3522(a) and (b) provide that transactions "listed" by the IRS, or that are substantially similar to such transactions, or that are required to be reported to the IRS as "confidential transactions," are within the class of transactions that impair an auditor's independence if the auditor participates in them in any capacity other than as the auditor.

### a. Listed Transactions

Proposed Rule 3522(a) would treat a registered public accounting firm as not independent of its audit client if the firm, or any affiliate of the firm, provided services related to planning, or opining on the tax treatment of, a listed transaction. Under the regulations of the IRS and the Treasury, a listed transaction is "a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction."<sup>56/</sup> The IRS utilizes its listing program to identify and publish on its list those transactions that tax promoters and advisors have developed and sold to clients but that, in the IRS's view, do not comply with applicable Internal Revenue Code ("Code") provisions and regulations.

The IRS's ability to discover and analyze new tax strategies places it in a good position to identify types of transactions that rely on questionable interpretations of the Code. Once the IRS lists a type of transaction, the Treasury's regulation on "reportable transactions" requires taxpayers to disclose such transactions as part of their federal tax returns to alert the IRS that such taxpayers have engaged in transactions that the IRS

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<sup>55/</sup> Nicolaisen Letter, supra note 25.

<sup>56/</sup> 26 C.F.R. § 1.6011-4(b)(2).



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may want to review or audit. In addition, "material [tax] advisors," as described under Treasury regulations, are now required to file disclosure statements concerning such transactions.<sup>57/</sup> Thus, the Treasury's regulation on "listed transactions" identifies a class of transactions that, in the Board's view, carry an unacceptable risk of disallowance by the IRS, which in turn could create an unacceptable risk of establishing a mutuality of interest between the auditor and the audit client if the auditor participated in planning or opining on the transaction that impairs independence. By referring to this class of transactions, the Board's proposed Rule 3522(a) would incorporate an existing framework that auditors who serve as tax advisors already follow in their tax practices and that is highly likely to remain current since the Treasury and the IRS regularly update guidance related to listed transactions.<sup>58/</sup>

Proposed Rule 3522(a) is narrowly tailored to describe a class of potentially abusive transactions that auditors ought not to participate in, other than to audit them. Because the risk of IRS scrutiny of listed transactions, including transactions that are substantially similar to listed transactions, is high, tax advisors and taxpayers tend not to enter into such transactions once they are listed. So long as a transaction is not listed, or is not substantially similar to a listed transaction, at the time it is executed, the independence of a firm that plans or opines on the transaction will not *per se* be impaired under Rule 3522(a). Nevertheless, firms should be cautious in participating in transactions that the firms believe could become listed.

Furthermore, even if a firm's independence was intact at the time the transaction was executed because it reasonably and correctly concluded the transaction was not the same as, or substantially similar to, a listed transaction, once a transaction is actually listed (or a substantially similar transaction becomes listed), a firm that has participated in the transaction may find its independence impaired due to the mutuality of interest caused by the listing. In such cases, the auditor should carefully consider the

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<sup>57/</sup> See The American Jobs Creation Act of 2004 ("Jobs Act"), Pub. L. No. 108-357, 188 Stat. 1418, § 815 (2004); see also IRS Notice 2004-80.

<sup>58/</sup> The IRS updates the list of listed transactions by issuing a listing notice, both adding and removing transactions from the list of listed transactions. See e.g., IRS Notice No. 2004-67, 2004-41 I.R.B. 600.



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potential impairment of its independence with the audit committee of its audit client.<sup>59/</sup> For example, once a transaction is listed, either the audit client or the firm, or both, may be required to defend the tax treatment of the transaction and, in some cases, pay penalties.<sup>60/</sup> In addition, the firm may face liability to the audit client related to the firm's tax advice. The auditor's judgment regarding appropriate financial reporting and disclosure concerning a transaction that becomes listed could become biased easily by the auditor's vested interests in defending its tax advice.

Although the proposed rule does not address situations in which a transaction planned, or opined on, by the auditor becomes listed after it is executed, the Board seeks comment on whether the rule should address the possible impairment of an auditor's independence in such situations. The Board also seeks comment, more generally, on whether proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor's independence.

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<sup>59/</sup> According to ISB Standard No. 1, which is incorporated in the Board's Rule 3600T on interim independence standards, at least annually, an auditor must "disclose to the audit committee of the company (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence." (available at [www.cpaindependence.org](http://www.cpaindependence.org)).

<sup>60/</sup> The Treasury's regulations impose on taxpayers a continuing obligation to report transactions that become listed after they have been entered into, until the period of limitations on the final tax return has expired. See 26 C.F.R. § 1.6011-4(e)(2)(i). Senior Treasury and IRS officials have expressed an intention vigorously to challenge abusive tax avoidance transactions. See Prepared Testimony of Commissioner of Internal Revenue Mark W. Everson before the Permanent Subcommittee on Investigations, Senate Governmental Affairs Committee Hearing on Abusive Tax Shelters, November 20, 2003; Statement of Treasury Assistant Secretary for Tax Policy Mark Weinberger on Treasury's Plan To Combat Abusive Tax Avoidance Transactions, March 20, 2002 ("The Treasury Department and the IRS are working to re-deploy additional resources to deal with tax avoidance transactions and have increased their coordination with the Department of Justice.").



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### b. Confidential Transactions

The Treasury has identified transactions with tax-advisor-imposed conditions of confidentiality as potentially abusive. By regulation, the Treasury requires taxpayers to disclose to the IRS transactions in which a tax advisor "places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies."<sup>61/</sup> Tax-advisor-imposed confidentiality may also be indicative of a tax product that a tax advisor intends to market to multiple customers, thus necessitating commitments by customers to treat the tax treatment or tax structure of the advisor's product as confidential.

The Board is concerned that the marketing of tax products that require confidentiality in order that the firm can offer them to multiple clients contributes to the erosion of public confidence in the ethics and integrity of such firms. In addition, such transactions can form a mutuality of interest between a registered public accounting firm that markets such transactions and audit clients that purchase the transaction. If an audit client purchased such a tax product from its auditor, the firm could find itself in the conflicted position of defending the tax treatment of the product at the same time that it is passing judgment on the financial reporting treatment of the product. A reasonable investor easily could infer that the auditor has a vested interest in advocating to the IRS the tax treatment it promoted to multiple clients and perpetuating that treatment in the audit client's financial statements. Based on these concerns, proposed Rule 3522(b) would treat a registered public accounting firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to planning, or opining on the tax consequence of, a transaction for an audit client under terms that satisfy the definition of "confidential transaction" under the Treasury regulation on reportable transactions.<sup>62/</sup>

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<sup>61/</sup> 26 C.F.R. § 1.6011-4(b)(3)(ii).

<sup>62/</sup> In addition, the proposed Rule would treat a registered firm as not independent of its audit client if the firm, or an affiliate of the firm, provided such services in connection with a transaction that would be a confidential transaction if the tax advisor had been paid the "minimum fee" specified in the Treasury's regulation. Treasury Regulation 1.6011-4(b)(3) provides that "a confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee." 26 C.F.R. § 1.6011-4(b)(3). Under the regulation, the "minimum fee" is \$250,000 for corporate taxpayers (and partnerships



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The Board seeks comment on whether confidential transactions should be treated as *per se* impairments of a registered public accounting firm's independence from an audit client. More broadly, the Board also seeks comment on whether other provisions of the Treasury's regulation on reportable transactions – that is, other than the provisions on listed and confidential transactions included here – should be incorporated by reference in the Board's rules on tax-oriented transactions that impair independence.

### c. Aggressive Tax Positions

In addition to the provisions on listed and confidential transactions adapted from the regulatory framework for disclosure of transactions to the IRS, proposed Rule 3522 also 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 is based on an aggressive interpretation of applicable tax laws and regulations. Specifically, proposed Rule 3522(c) would treat such a firm as not independent if the firm, or an affiliate of the firm, provided an audit client any service related to planning, or opining on the tax consequence of, a transaction that satisfies three criteria –

- the transaction was initially recommended by the registered public accounting firm or another tax advisor;
- a significant purpose of the transaction is tax avoidance; and
- the proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable tax laws.

Proposed Rule 3522(c) is adapted from the Commission's guidance to audit committees in its release accompanying its 2003 independence rules, which, as discussed above, cautioned that audit committees should "scrutinize carefully" the

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and trusts in which all of the owners or beneficiaries are corporations) and \$50,000 for all other transactions. Id. § 1.6011-4(b)(3)(iii). The Board understands the IRS disclosure rules to serve a different purpose than the proposed Rule 3522(b). The Board does not believe that the amount paid in connection with an auditor's provision of a confidential transaction bears on the auditor's independence, in fact or appearance. Accordingly, the Board's proposed Rule 3522(b) would apply to confidential transactions, irrespective of whether they meet the Treasury regulation's minimum fee.



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retention of the auditor "in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."<sup>63/</sup> The proposed rule would build on this guidance from the perspective of the registered public accounting firm, by providing that a registered public accounting firm is not independent of its audit client if the firm, or its affiliates, participated in such a transaction. The Board proposes to modify certain aspects of the SEC's release text, in part for clarity and in part for reasons of policy.

The first prong of the proposed rule's test looks for transactions that the auditing firm or another tax advisor initially recommended.<sup>64/</sup> In this manner, the proposed rule would exclude from its scope those transactions that the audit client itself, or a party other than a tax advisor<sup>65/</sup> (e.g., an acquiring corporation), initiated.<sup>66/</sup> The term "initially recommended" is intended to be a test based on fact. Under the proposed rule, the auditor would have an affirmative duty to ascertain that the transaction was not recommended initially by the firm or tax advisor. Thus, the prong would be satisfied, notwithstanding a representation from the audit client that the audit client initiated the development of the transaction, if reasonable, good faith diligence by the auditor would have revealed that the auditor or another tax advisor initially recommended it.

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<sup>63/</sup> Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11 (Jan. 28, 2003).

<sup>64/</sup> Cf. Remarks of Nick Cyprus, Interpublic Group, Roundtable Tr. at 104 ("I think anything that puts the auditor in the [role] of . . . originating [a] tax strategy . . . for a company, I think it's a problem."); Remarks of Colleen Sayther, Financial Executives International, Roundtable Tr. at 119-120 (arguing that "it's not appropriate to use your auditor for designing and marketing with respect to tax strategies . . .").

<sup>65/</sup> The term "tax advisor" is not intended to denote a group with a certain license or professional status, but rather to cover any party outside the audit client that recommends a tax transaction to the audit client.

<sup>66/</sup> Cf. Remarks of Nick Cyprus, Interpublic Group, Roundtable Tr. at 138-139 ("[A]s long as the auditor is independent, in other words, they didn't create the strategy, they didn't create the tax planning itself, but they're consulting on it, they're giving [the audit client] advice on it in the same way [the audit client would] get accounting advice.").



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Proposed Rule 3522(c) would tailor the second and third prongs to incorporate concepts that have existing meaning and relevance in the context of the field of tax advisors. Accordingly, the second prong of the test set forth in proposed Rule 3522(c) would use the phrase "significant purpose of which is tax avoidance," adapted from the Internal Revenue Code and the Treasury's regulations.<sup>67/</sup> The term "tax avoidance" should be understood to include acceleration of deductions into earlier taxable years and deferral of income inclusion to later taxable years.

In addition, the proposed rule would use the term "more likely than not to be allowed under applicable tax laws," which is the standard taxpayers must meet, under Treasury regulations, to avoid penalties for substantial understatement of income tax due in connection with a tax shelter.<sup>68/</sup> Proposed Rule 3522(c) is intended to provide registered public accounting firms more clarity and predictability as to the types of transactions that impair independence. This proposed prong is based, in part, on the Board's observation of some firm policies that rely on the "more likely than not" standard to approve the firm's involvement in providing tax service relating to a transaction initiated by the firm. The proposed rules also use this standard because a tax treatment that is not "more likely than not" to be allowed poses a significantly higher risk of being challenged by the IRS or other taxing authorities, such that a mutuality of interest

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<sup>67/</sup> The Internal Revenue Code treats transactions with respect to which a "significant purpose . . . is the avoidance or evasion of Federal income tax" as tax shelters, for purposes of determining whether heightened accuracy-related penalties on underpayments of tax should be imposed. See 26 U.S.C. § 6662(d)(2)(C) (amended by the Jobs Act; see also 26 U.S.C. § 6662A(b)(2)(B) (imposing 20-percent penalty on understatements of tax in connection with "any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax"); 26 U.S.C. § 6111(d)(1)(A) (superseded by amendment by the Jobs Act; defining confidential corporate tax shelters as transactions "significant purpose . . . of which is the avoidance or evasion of Federal income tax"); Joint Committee on Taxation, Background and Present Law Relating to Tax Shelters, at 31 (JCX-19-02, March 19, 2002) (explaining that whether a "significant purpose of [an] arrangement is the avoidance or evasion of Federal income tax by a corporate participant" is one of three criteria for identifying tax shelters for purposes of the tax shelter promoter registration requirements).

<sup>68/</sup> See 26 C.F.R. § 1.6664-4(f).



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between the auditor and the audit client could arise.<sup>69/</sup> The proposed rules also use this standard, as opposed to a higher standard, in recognition of the fact that tax laws may often be complex and subject to differing good faith interpretations.

In order to satisfy proposed Rule 3522(c)'s "more likely than not" standard, a registered public accounting firm would have to establish, based on its analysis of the pertinent facts and authorities, that there is a greater than 50-percent likelihood that the tax treatment of the transaction would be upheld if challenged by the IRS.<sup>70/</sup> Thus, if an auditor's judgment were unreasonable under the circumstances that existed at the time the auditor provided the tax service, or were reached in bad faith, then the standard under proposed Rule 3522(c) would not be met. The Board would not, however, treat an auditor as not independent if the law changed after the service was provided or if the tax treatment simply turned out to be not allowed.

The proposed rules do not require a registered public accounting firm to obtain a third-party opinion that a tax treatment is "more likely than not" to be allowed under applicable tax laws. On the contrary, while a firm may decide for its own reasons to obtain a third-party opinion, such an opinion would not relieve the firm of its obligation to form its own judgment on the likelihood of a proposed tax treatment to be allowed.<sup>71/</sup>

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<sup>69/</sup> See Remarks of Nick Cyprus, Interpublic Group, Roundtable Tr. at 123 (objecting to the practice of audit firms' opining on transactions "[w]hen you think you will not prevail with the service and it's less than a 50 percent chance").

<sup>70/</sup> Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. 1.6662-4(d)(3)(ii) for analysis of whether a tax treatment has "substantial authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax). The Board seeks comment on whether the analysis described in the Treasury's regulations provides useful guidance on the application of proposed Rule 3522(c).

<sup>71/</sup> Treasury regulations permit corporations to avoid penalties for substantial understatement of income taxes in connection with tax shelters if they "reasonably rel[y] in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities . . . and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue



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Finally, although the SEC's release accompanying its 2003 independence rules only cautioned audit committees to scrutinize situations in which a proposed tax treatment might not be supported "in the Internal Revenue Code and related regulations," the proposed rule would use the term "applicable tax laws" in recognition of the variety of tax laws and regulations, including federal, state, local, foreign, and other tax laws.

The Board invites comments on any aspect of proposed Rule 3522(c) and encourages commenters to consider certain issues in particular. First, is the term "initially recommended by the registered public accounting firm or another tax advisor" sufficiently clear? Is there a better way to describe aggressive tax transactions, strategies, and products that a registered public accounting firm ought not to sell to an audit client? Second, does the "more likely than not" standard draw the right line between aggressive tax strategies and products that a registered public accounting firm ought not to plan, or opine on the tax treatment of, for an audit client and routine tax planning and advice? In addition, the Board invites comments on whether the Board also should require a registered public accounting firm to obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have a material effect on the audit client's financial statements.

#### 4. Tax Services for Senior Officers in a Financial Reporting Oversight Role

Proposed Rule 3523 would provide 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. This proposed rule would address concerns that performing tax services for certain individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and those individuals.<sup>72/</sup>

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Service." 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(2). Proposed Rule 3522(c) would not permit registered public accounting firms, who themselves serve as tax advisors, to rely on other tax advisors to satisfy the rule's standard because registered firms that provide tax services are themselves in a position to perform such an analysis.

<sup>72/</sup> See Remarks of Mark Anson, Chief Investment Officer, California Public Employees' Retirement System, Roundtable Tr. at 146 ("When you have the audit firm



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Proposed Rule 3523 is narrowly tailored to include only those tax services that a registered public accounting firm provides to individuals in a position to play a significant role in an audit client's financial reporting. The proposed rule's use of the term "financial reporting oversight role" is based on the Commission's definition of "financial reporting oversight role," which includes any individual who has direct responsibility for oversight over those who prepare the issuer's financial statements and related information (e.g., management's discussion and analysis) that are included in filings with the Commission.<sup>73/</sup> Importantly, however, proposed Rule 3523 would apply only to tax services provided to officers in a financial reporting oversight role at an audit client; directors whose only role at an issuer audit client is to serve on the board would not be covered by the rule. Whether someone is an officer would depend on the person's function rather than title or designation in the company's bylaws.

The proposed rule does not distinguish between executive tax services paid for by the issuer and executive tax services paid directly by the officer. In either event, proposed Rule 3523 effectively would prohibit registered public accounting firms from providing personal tax services to officers in a financial reporting oversight role. The proposed rule, however, does not alter the existing requirement that a firm seek audit committee pre-approval to provide tax services paid for by the audit client to officers and

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providing tax advice, preparing tax returns for the senior management, you've now created a mutual interest between the executive management and that audit firm which could potentially taint the recommendation to that audit committee or the board of directors").

<sup>73/</sup> See Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.A (Jan. 28, 2003), 68 Fed. Reg. 6006, 6007 (Feb. 5, 2003), amended by 68 Fed. Reg. 15354 (Mar. 31, 2003). The Commission uses the term "financial reporting oversight role" to describe those executive positions that are covered by the Act's "cooling off" period, during which a public company would not be independent from its audit firm if a member of the engagement team for the audit of that company assumed such an executive position. See Sarbanes-Oxley Act, Section 206; 17 C.F.R. § 210.2-01(f)(3)(ii). The term "financial reporting oversight role" would be defined in proposed Rule 3501(f)(i). The proposed definition is verbatim the SEC's definition of the same term. See Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(3)(ii).



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other employees who do not meet the financial reporting oversight role criteria.<sup>74/</sup> While the accounting firm is not now required to seek pre-approval for executive tax services paid directly by the employee, the firm should consider under ISB Standard No. 1 whether it is necessary to notify the audit committee of these services.<sup>75/</sup>

The Board invites comments on any aspect of proposed Rule 3523 and encourages commenters to consider certain issues in particular. Are there other classes of employees to whom an accounting firm should not offer tax services? Would a registered public accounting firm's independence be perceived to be impaired if it offered tax services to members of an audit client's audit committee, or to other members of the audit client's board of directors?

### C. The Auditor's Involvement with the Audit Committee

Under Section 10A(h) of the Exchange Act, as amended by Section 202 of the Sarbanes-Oxley Act, all non-audit services "shall be pre-approved by the audit committee of the issuer." The SEC's 2003 independence rules implemented the Act's pre-approval requirement by adopting a provision on audit committee administration of the engagement.<sup>76/</sup> Proposed Rule 3524 would implement the Act's pre-approval requirement further by strengthening the auditor's responsibilities in seeking audit committee pre-approval of tax services. Specifically, proposed Rule 3524 would require a registered public accounting firm that seeks pre-approval of an issuer audit client's

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<sup>74/</sup> The Board interprets existing Commission independence rules to require registered public accounting firms to seek audit committee pre-approval for executive tax services that are paid by the audit client. See 17 C.F.R. § 210.2-01(c)(7).

<sup>75/</sup> See ISB Standard No. 1; see also Taub Memo, supra note 22 at 5. The Board understands that some firms have adopted policies to notify the audit committee of all executive tax services provided to executives of the audit client, regardless of whether the services are required to be pre-approved. See, e.g., Remarks of Scott Bayless, Deloitte & Touche LLP, Roundtable Tr. at 152 (indicating that even when "the company does not pay for those services . . . there is a notification procedure to ensure that the audit committee has the ability to take control of that relationship if they so desire").

<sup>76/</sup> See 17 C.F.R. § 210.2-01(c)(7).



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audit committee to perform tax services that are not otherwise prohibited by the Act or the rules of the SEC or the Board to –

- Provide the audit committee detailed documentation of the nature and scope of the proposed tax service;
- Discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the audit committee.

These proposed requirements are intended to buttress the pre-approval processes envisioned in the Commission's rules. Whether an audit committee pre-approves a non-audit service on an ad hoc basis or on the basis of policies and procedures, the Commission staff has stated that "detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor" should be provided to the audit committee.<sup>77/</sup> Proposed Rule 3524 would implement this requirement by requiring that registered firms provide audit committees of issuer audit clients an engagement letter that includes descriptions of the scope of any tax service under review and the fee structure for the engagement.<sup>78/</sup> The proposed rule also would require the auditor to provide to the audit committee any amendment to the engagement letter or any other agreement relating to the service (whether oral, written, or otherwise) between the firm and the audit client.<sup>79/</sup> While the Board does not expect or encourage auditors to enter into side agreements relating to tax services, the Board

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<sup>77/</sup> Taub Memo, supra note 22 at 3; see also SEC Office of the Chief Accountant: Application of the January 2003 Rules on Auditor Independence FAQs, Audit Committee Pre-approval, Answer No. 24, issued August 13, 2003 (available at [www.sec.gov/info/accountants/ocafaqaudind080703.htm](http://www.sec.gov/info/accountants/ocafaqaudind080703.htm)).

<sup>78/</sup> See Proposed Rule 3524(a)(i). Audit committees may ask auditors for other materials not identified in proposed Rule 3524, to assist them in their determinations whether to pre-approve proposed tax services. The proposed rule should not be understood to limit the information or materials that an audit committee may request, or that a registered firm may decide to provide, in connection with the pre-approval of tax services.

<sup>79/</sup> Id.



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understands that, in the past, some accounting firms have entered into such agreements.<sup>80/</sup> To the extent firms continue to do so, they must disclose those agreements to the audit committee.

In addition, to the extent that a registered public accounting firm receives fees or other consideration from a third party in connection with promoting, marketing or recommending a tax transaction, the proposed rule would require the firm to disclose those fees or other consideration to the audit committee. Specifically, proposed rule 3524(a)(ii) would require that the firm provide the audit committee "any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service." This proposed provision is adapted from the IRS's rules of practice, which require tax advisors to disclose such arrangements to taxpayer clients.<sup>81/</sup>

Proposed Rule 3524(b) also would require registered public accounting firms to discuss with audit committees of their issuer audit clients the potential effects of the proposed tax services on the firm's independence. Even if a non-audit service does not per se impair an auditor's independence, the Commission's independence rules nevertheless deem an auditor not to be independent if –

The accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.<sup>82/</sup>

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<sup>80/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, AP 3-10835 (July 17, 2002) (noting that, "through side letters or oral understandings, the parties created contingent fee arrangements.").

<sup>81/</sup> See Internal Revenue Service Circular 230: Regulations Governing Practice Before the Internal Revenue Service, 31 C.F.R. Part 10.

<sup>82/</sup> 17 C.F.R. § 210.2-01(b).



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Like proposed Rule 3524(a), the intent of proposed Rule 3524(b) is to provide audit committees a robust foundation of information upon which to determine whether to pre-approve proposed tax services. While the Act "does not require the audit committee to make a particular finding in order to pre-approve an activity,"<sup>83/</sup> the Commission's rules require a robust review of proposed non-audit services –

The audit committee must take its role seriously and perform diligent analyses and reviews that allow the committee to conclude that reasonable investors would view the auditor as capable of exercising objective and impartial judgment on all matters brought to the auditor's attention.<sup>84/</sup>

The proposed rule does not prescribe any test for audit committees or require audit committees to make legal assessments as to whether proposed services are prohibited or permissible, nor is it intended to limit an audit committee's discretion to establish its own more stringent pre-approval procedures. Rather, the proposed rule directs registered firms to present detailed information and analysis to audit committees for audit committees' consideration, in their own judgment, of the best interests of the issuer and its shareholders. The auditor's presentation may be informed by existing frameworks for evaluating independence, including the four principles that underlie the Commission's rules on auditor independence,<sup>85/</sup> but the proposed rule is designed not to

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<sup>83/</sup> S. REP. No. 107-205, at 19 (2002).

<sup>84/</sup> Taub Memo, supra note 22 at 7-8; see also SEC Office of the Chief Accountant: Application of the January 2003 Rules on Auditor Independence FAQs, Audit Committee Pre-approval, Answer No. 24, issued August 13, 2003 (available at [www.sec.gov/info/accountants/ocafaqaudind080703.htm](http://www.sec.gov/info/accountants/ocafaqaudind080703.htm)).

<sup>85/</sup> At least three participants in the roundtable discussion recommended that auditors use the principles set forth in the preliminary note to the SEC's Rule 2-01 as a foundation for evaluating whether pre-approval of a proposed tax service is advisable. See Remarks of Michael Gagnon, PricewaterhouseCoopers, Tr. 22-23 ("Whether it's compliance services, planning services, advisory-type tax services, I think it's very important to start with the framework of the principles. . . . [I]t is also important . . . that the context and facts and circumstances associated with the provision of tax services be considered and evaluated. . . . [I]t's important that audit committees are provided with information, full disclosure for the context, the facts and circumstances associated with



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drive a rigid, mechanical application of any such frameworks or principles. Instead, the proposed rule is intended to ensure that a registered firm provides an audit committee sufficient information to make its own informed judgments about the potential effects on the firm's independence of a tax service that is not already prohibited as a matter of law.

For instance, the Board envisions that, under proposed Rule 3524, a registered public accounting firm that sought pre-approval of tax compliance services, such as preparation of federal, state, local and other tax returns, would be required to provide the issuer's audit committee a copy of the proposed engagement letter, and any related agreements, to describe the scope of the proposed service and the proposed fee structure. That documentation should be sufficient to provide the audit committee the information contemplated by the Commission's rules –

For example, a cover sheet may indicate that the audit committee is pre-approving the preparation of federal, state and local corporate tax returns. To comply with the rules regarding pre-approval, the backup documentation, however, must identify clearly each return and provide sufficient information for the audit committee to evaluate the impact of the filing of that return on the auditor's independence. This would require information on each jurisdiction where a return is filed, the type or types of tax (income, property, real estate, etc.) owed in each jurisdiction, how often each return is prepared and filed, and any other appropriate information.<sup>86/</sup>

In addition, through the discussion that would be required by proposed Rule 3524(b), the Board would expect registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence – such as compliance services that, in effect, made up for the

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the provision of these services, as well as the framework of the principles so they can properly evaluate it."); Remarks of Bruce Webb, McGladrey & Pullen, Tr. 21 ("I agree that the overarching principles would apply to all services provided by the auditor. . . . It is my belief that issuer-specific transaction-based tax compliance and tax advisory services will generally fall within the overarching principles."); Remarks of James Brown, Crowe Chizek LLP, Tr. 29 ("[A]s a policy issue, we used these four [principles] in deciding, as our first step, what we could and couldn't do.").

<sup>86/</sup> Taub Memo, supra note 22 at 3.



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absence of a competent internal tax department and risked placing the firm's personnel in the position of making decisions that should be made by management – and those that would be unlikely to have a detrimental effect – such as compliance services for a competent tax director who is capable of exercising sound judgment in the best interest of the company.<sup>87/</sup>

Proposed Rule 3524 is intentionally silent as to when a registered public accounting firm should provide the required information about a proposed tax service to an audit committee, because, under the SEC's 2003 independence rules, audit committees themselves may have policies that establish a procedure and schedule for audit committee review of non-audit services, including tax services.<sup>88/</sup> Similar to the SEC's 2003 independence rules, the Board's proposed Rule 3524 does not dictate, or even express a preference as to, whether the documentation and discussions required under proposed Rule 3524 should take place pursuant to an audit committee's policies and procedures on pre-approval or on an ad hoc basis. Many issuers have adopted policies that provide for pre-approval in annual audit committee meetings. The Board understands that such an annual planning process can include as robust a presentation to the audit committee as a case-by-case pre-approval process, and proposed Rule 3524 is designed to be flexible enough to accommodate either system and to encourage auditors and audit committees to develop systems tailored to the needs and attributes of the issuer.

Finally, proposed Rule 3524(c) would require a registered public accounting firm to document the substance of its discussion with the audit committee under subparagraph (b).

The Board welcomes comment on any aspect of proposed Rule 3524 and encourages comment on certain matters in particular. Should additional information or documentation that is not described in proposed Rule 3524 be provided to audit

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<sup>87/</sup> For example, PCAOB Rule 3600T, which adopted the AICPA Code of Professional Conduct, Interpretation No. 101-3, "Performance of Other Services," of ET § 101, *Independence*, as of April 16, 2003 states that "care should be taken not to perform management functions or make management decisions for attest clients the responsibility for which remains with the client's board of directors and management." (Interpretation No. 101-3 was amended by the AICPA in December 2003).

<sup>88/</sup> See 17 C.F.R. § 210.2-01(c)(7)(i)(B).



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committees in the pre-approval process? In addition to the communications required by proposed Rule 3524, should auditors be required to have additional communications with the audit committee with regard to the tax advice that has been provided to the audit client?

### IV. Effective Date

The Board proposes that the proposed rules become effective on the later of October 20, 2005, or 10 days after the date that the SEC approves the rules. That is, provided the following services did not impair a registered public accounting firm's independence under pre-existing SEC and PCAOB requirements, the Board will not treat a registered public accounting firm as not independent due to –

(a) tax services, in connection with a transaction described in proposed Rule 3522, that were completed by the registered public accounting firm no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later; and

(b) tax services provided to audit client officers described in proposed Rule 3523 that were provided by the registered public accounting firm in connection with original returns filed no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later.

The Board proposes October 20, 2005, as the effective date for these rules because it is shortly after the last date, applying all available extensions, that an individual taxpayer may file a personal federal tax return in connection with income earned in the preceding year (or, October 15). This effective date would permit officers in a financial reporting oversight role at audit clients to use the services of the registered public accounting firm that audits the audit client, or an affiliate of such a firm, in connection with those officers' 2004 federal income tax returns. For simplicity and in order to provide an appropriate transition period before the rules go into effect, the Board proposes to set the same effective date for the remaining rules in this proposal.

The Board notes that the Commission's Rule 2-01 on auditor independence treats an auditor as not independent if it enters into a contingent fee arrangement with an audit client today.<sup>89/</sup> The Board proposes that its proposed Rule 3521 will not apply to contingent fee arrangements that were paid in their entirety, converted to fixed fee

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<sup>89/</sup> See 17 C.F.R. § 210.2-01(c)(5).



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arrangements, or otherwise unwound no later than October 20, 2005 or 10 days after SEC approval of the rule, whichever is later.

### V. Opportunity for Public Comment

Interested persons are encouraged to submit their views to the Board. Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's Web site at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 017 in the subject or reference line and should be received by the Board no later than 5:00 p.m. (EST) on February 14, 2005.

\* \* \*

On the 14th day of December, in the year 2004, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/

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J. Gordon Seymour  
Acting Secretary

December 14, 2004

APPENDIX –

Proposed Rules on Tax Services



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### Appendix – Rules

#### SECTION 3. PROFESSIONAL STANDARDS

##### Part 5 – Ethics

#### **Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules.**

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

##### **(a)(i) Affiliate of the Accounting Firm**

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

##### **(a)(ii) Affiliate of the Audit Client**

The term "affiliate of the audit client" means –

- (1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;
- (2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;
- (3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and
- (4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.



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### **(a)(iii) Audit and Professional Engagement Period**

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

### **(a)(iv) Audit Client**

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

### **(c)(i) Contingent Fee**

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in



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which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

### **(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

### **(i)(i) Investment Company Complex**

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment



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Company Act of 1940 (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

### **Rule 3502. Responsibility Not to Cause Violations.**

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation.

#### **Subpart 1 – Independence**

### **Rule 3520. Auditor Independence.**

A registered public accounting firm must be independent of its audit client throughout the audit and professional engagement period.

Note: Under Rule 3520, a registered public accounting firm's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

### **Rule 3521. Contingent Fees.**

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,



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provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

### **Rule 3522. Tax Transactions.**

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 non-audit service to the audit client related to planning, or opining on the tax treatment of, a transaction –

(a) **Listed Transactions** – that is a listed transaction within the meaning of 26 C.F.R. § 6011.1-4(b)(2);

(b) **Confidential Transactions** – that is a confidential transaction within the meaning of 26 C.F.R. § 6011.1-4(b)(3), or that would be a confidential transaction within the meaning of 26 C.F.R. § 6011.1-4(b)(3) if the fee for the transaction were equal to or more than the minimum fee described in 26 C.F.R. § 6011.1-4(b)(3); or

(c) **Aggressive Tax Positions** – that was initially recommended by the registered public accounting firm or another tax advisor and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

### **Rule 3523. Tax Services for Senior Officers of Audit Client.**

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.

### **Rule 3524. Audit Committee Pre-approval of Certain Tax Services.**

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall –

(a) provide to the audit committee of the audit client –



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(i) the engagement letter relating to the service, which shall include descriptions of the scope of the service and the fee structure, any amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and

(ii) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;

(b) discuss with the audit committee the potential effects of the services on the independence of the firm; and

(c) document the substance of its discussion with the audit committee.

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## Exhibit 2(a)(B)

Tab Number	Comment Source
1	ACCA, Author: David York , Head of the Auditing Practice, Chas Roy-Chowdhury, Head of Taxation, February 14, 2005
2	Accounting Principles and Auditing Procedures Committee of the Massachusetts Society of Certified Public Accountants, Philip B. Pacino, CPA, Chairman, February 15, 2005
3	Erich H Adams, January 18, 2005
4	AFL-CIO, Author: Richard L. Trumka, Secretary-Treasurer, February 14, 2005
5	Anthony Addonizio, January 18, 2005
6	Aqyris, Author: Trevor Link, February 14, 2005
7	Dennis Ahern, January 18, 2005
8	AICD, Author: Ralph Evans, Chief Executive Officer, February 14, 2005
9	AICPA, Author: Stevenson B. Rafferty, Vice Chair, Center for Public Committee Audit Firms, Bruce Webb, Chair Professional Ethics Executive Committee, Thomas J. Purcell, III, Chair, Tax Executive Committee, February 14, 2005
10	Air Product and Chemicals Inc, Author: Paul E. Huck, February 10, 2005
11	Marlys de Alba, January 19, 2005
12	Willis Alderson, January 19, 2005
13	Alyce Allen, January 18, 2005
14	Bruce Allen, January 18, 2005
15	John Alexander, January 18, 2005
16	Christian Ambrose, January 18, 2005



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17	American Accounting Association ♦ Auditing Section Auditing Standards Committee, Authors: Roger D. Martin, University of Virginia (Chair) Robert Allen, University of Utah (Vice Chair), Dana R. Hermanson, Kennesaw State University (Past Chair), Thomas M. Kozloski, Wilfrid Laurier University, Evelyn Patterson, University at Buffalo, Robert J. Ramsey, University of Kentucky, Stuart Turley, University of Manchester, February 10, 2005
18	American Bar Association, Author: Dennis B. Drapkin, Chair-Elect, Section of Taxation, February 10, 2005
19	America's Community Bankers, Author: Charlotte M. Bahin, Senior Vice President Regulatory Affairs, February 14, 2005
20	Pratik Amin, January 24, 2005
21	Eric Anderson, January 18, 2005
22	Jose Aquino, January 20, 2005
23	Joseph Armstrnog, January 18, 2005
24	Richard Arrindell, January 18, 2005
25	Leo Arsenault, January 19, 2005
26	Eric Ashby, January 19, 2005
27	Brian Askins, January 18, 2005
28	Arthur F. Bell, Jr & Associates, L.L.C., Author: Arthur F. Bell Jr., Alan J. Berkeley, Charles R. Mills, Edward J. Fishman, Kirkpatrick & Lockhart Nicholson Graham LLP, February 14, 2005
29	Karen Austin, January 19, 2005
30	Elena Avallone, January 18, 2005
31	Zaven S. Ayanian, January 18, 2005
32	Bruce Babcock, January 19, 2005



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33	Phyllis Bagheri, January 18, 2005
34	John Bailes, January 18, 2005
35	James Baldocchi, January 20, 2005
36	Gerald Ball, January 18, 2005
37	Dave & Tami Ballard, January 18, 2005
38	Wanda S. Ballentine, January 18, 2005
39	Dale Barber, January 19, 2005
40	William Barber, January 18, 2005
41	Edmund Baron, January 21, 2005
42	John Barrera, January 18, 2005
43	James Barry, January 18, 2005
44	Uwe Bartsch, January 19, 2005
45	Martin Baskin, February 14, 2005
46	Cathy Bataille, January 18, 2005
47	Ruth Anne Baumgartner, January 19, 2005
48	Kevin Bayhouse, January 18, 2005
49	BDO Seidman, LLP, Author: Wayne Kolins, February 10, 2005
50	Edwin Beale, January 19, 2005
51	Richard Beerkircher, January 18, 2005
52	Jonathan Beiler, January 22, 2005
53	Janet Beller, January 18, 2005
54	Regina Benge, January 18, 2005
55	John W. Bennett, January 18, 2005
56	Dennis R. Beresford, Ernst & Young Executive Professor of Accounting, J. M. Tull School of Accounting, The University of



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57	Andrea Berg, January 18, 2005
58	John J. Berger, January 18, 2005
59	Jeff Berka, January 18, 2005
60	Jill Berman, January 19, 2005
61	Nancy Berman, January 19, 2005
62	John Bernard, January 18, 2005
63	Robert S. Berry, January 20, 2005
64	Steve Berry, January 19, 2005
65	Ken Biasco, January 19, 2005
66	Robert Biehl, January 18, 2005
67	Kenneth Biggs, January 18, 2005
68	John Binkley, January 23, 2005
69	Roger Bintz, January 18, 2005
70	Margo Birkenhead, January 20, 2005
71	John Bisson, January 22, 2005
72	Robert Bisson, January 18, 2005
73	E Bittel, January 18, 2005
74	Chuck Blethen, January 18, 2005
75	Garrett Blood, January 18, 2005
76	William Bodden, January 18, 2005
77	Randall Boland, January 18, 2005
78	Richard Bond, January 18, 2005
79	Tom Bono, January 18, 2005



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80	Joan Bossart, January 18, 2005
81	Jack Boyd, January 19, 2005
82	Patrick Boyle, January 18, 2005
83	Elizabeth Bradley, January 21, 2005
84	Natasha & Noah Brenner, January 18, 2005
85	Lisa Briggs, January 23, 2005
86	Diane Britton, January 18, 2005
87	Carol Bronder, January 21, 2005
88	Michael Bronson, January 19, 2005
89	Benita Brown, January 18, 2005
90	Lee Brown, January 18, 2005
91	Susan Browne, January 18, 2005
92	Bantu K Bryant, January 18, 2005
93	Dr. Sally Buckner, January 18, 2005
94	Paul Buechler, January 18, 2005
95	D. Burbeck, March 1, 2005
96	Troy Burkard, January 18, 2005
97	Linda Burns, January 18, 2005
98	Stephen Burton, January 18, 2005
99	Business Roundtable, Author: Steve Odland, Chairman, President & CEO, Autozone, Inc. Chairman Corporate Governance Task Force Business Roundtable, February 14, 2005
100	Robin Butler, January 19, 2005
101	Ralph Butterfield, January 19, 2005



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102	Allison Byrum, January 18, 2005
103	California Board of Accountancy, Author: Renata M. Sos, January 24, 2005
104	Calpers, Author: Mark Anson, Chief Investment Officer, February 14, 2005
105	CalSTRS, Author: Christopher Ailman, Chief Investment Officer, February 14, 2005
106	Carlotta Camacho, January 25, 2005
107	Judith Campbell, January 18, 2005
108	Frank Cannon, January 18, 2005
109	Peggy Cannon, January 18, 2005
110	Peter A. Cantele, January 18, 2005
111	M Canter, January 18, 2005
112	Cecelia Capaul, January 18, 2005
113	Roand Capek, January 18, 2005
114	Bob Carlough, January 19, 2005
115	Johnson Miller & Co., Author: Charles Carlson Director, Certified Public Accountants A Professional Corporation An Independent Member of BDO Seidman Alliance, February 12, 2005
116	Bennie Carnahan, January 26, 2005
117	Gaile Carr, January 19, 2005
118	Cory Carter, January 18, 2005
119	Dan Carter, January 19, 2005
120	Harry Carter, January 19, 2005
121	Elma Carthron, January 19, 2005
122	Paul Cassidy, January 18, 2005



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123	Gregory Catacalos, January 18, 2005
124	CBI, Author: John Cridland Deputy Director- General, March 11, 2005
125	Jon Cecil, January 19, 2005
126	George Ceraulo, January 18, 2005
127	Mark Chaffin, January 21, 2005
128	Chamber of Commerce of the United States of America, Author: David Hirschmann, Senior Vice President, February 14, 2005
129	Patricia Chang, January 19, 2005
130	Donald H. Chapin, January 25, 2005
131	Joe Chasse, January 18, 2005
132	Marietta Cheeks, January 18, 2005
133	Gary Childers, January 18, 2005
134	Dennis Chin, January 18, 2005
135	Evangeline Chinn, January 18, 2005
136	Robert Chira & Associates, Author: Robert Chira, December 22, 2004
137	Susan Chizeck, January 19, 2005
138	John Chojnowski, January 19, 2005
139	James Cianfichi, January 18, 2005
140	Donna Cinelli, January 18, 2005
141	Jennifer Clagett, January 18, 2005
142	Stephanie Clayton, January 18, 2005
143	Brett Cloud, January 19, 2005
144	William Coan, January 31, 2005



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145	Allan Cole, January 19, 2005
146	Cindy Cole, January 19, 2005
147	Don Colodny, January 18, 2005
148	Caroline Constant, January 18, 2005
149	Consumer Federation of America, Author: Barbara Roper, Director of Investor Protection, February 11, 2005
150	James E. Copeland, Jr., February 11, 2005
151	Steven Copeland, January 18, 2005
152	Francis Corbett, January 18, 2005
153	Peter Cork, January 23, 2005
154	James Corrigan, January 18, 2005
155	Council of Institutional Investors, Author: Ann Yerger, Executive Director, February 2, 2005
156	Joan Cowger, January 18, 2005
157	Ian Cox, January 19, 2005
158	Mary Coyne, January 18, 2005
159	Danny Cramer, January 18, 2005
160	Christopher Craven, January 19, 2005
161	Andrew Cravitz, January 18, 2005
162	Donald Crawford, January 19, 2005
163	Peter Crawford, January 19, 2005
164	Will Crenshaw, January 18, 2005
165	William Crosby, January 19, 2005
166	William Cross, January 18, 2005
167	Crowe Chizek and Company, LLC February 14, 2005



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169	Eric Dahlgren, January 19, 2005
170	Kathryn Dalenberg, January 18, 2005
171	Charles Daliere, January 18, 2005
172	Gerald Dalton, January 18, 2005
173	Andrew D'Ambruoso, January 18, 2005
174	Ken Dammad, January 22, 2005
175	William Davidson, January 18, 2005
176	Burton Davis, January 18, 2005
177	Joanie Davis, January 18, 2005
178	Lorita Davis, January 18, 2005
179	Richard Degenhardt, January 18, 2005
180	Glenn DeGroot, January 20, 2005
181	Deloitte & Touche LLP, February 14, 2005
182	Pauline O'Brien-DeLury, January 18, 2005
183	Frank Denbowski, January 18, 2005
184	Erick Denizard, January 19, 2005
185	Walt & Susan Denley, January 18, 2005
186	Barbara Dersch, January 20, 2005
187	John Diaks, January 19, 2005
188	Kristi Dickey, January 18, 2005
189	Michael Diamond, January 18, 2005
190	Michael Diamond, January 19, 2005
191	Fernando Doldan, January 19, 2005



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192	Charles Donelan, January 19, 2005
193	Kathleen Doyle, January 19, 2005
194	Paul Douglas, January 18, 2005
195	Ted Doyle, January 18, 2005
196	Kelly Dragoo, January 18, 2005
197	Jane Drake, January 18, 2005
198	Jerri Drazkiewicz, January 19, 2005
199	Nancy Dukewich, January 18, 2005
200	DC Dworatzek, January 30, 2005
201	Sue Eberhardt, January 18, 2005
202	Susan Edelstein, January 18, 2005
203	Dave Edwards, January 18, 2005
204	Michael Edwards, January 18, 2005
205	Karen Ehrhardt, January 18, 2005
206	Richard Einig, January 19, 2005
207	Barbara Eisenstadt, January 24, 2005
208	Deborah Eldridge, January 18, 2005
209	Wayne Elkins, January 19, 2005
210	Karl Ellerbeck, January 18, 2005
211	Wm Scot Ellis, January 18, 2005
212	Willard Engelskirchen, January 19, 2005
213	Enpria, Author Victoria Whitlock, Compliance Practice Manager, J. Michael Hayes Compliance Analys, February 14, 2005
214	Elaine Ercolano, January 18, 2005



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215	Winn Erdman, January 22, 2005
216	Barry Ergang, January 18, 2005
217	Ernst & Young LLP, February 14, 2005
218	Mike Estok, January 18, 2005
219	Expert Process Solutions LLC, Author: David R. Eshleman, President, February 14, 2005
220	Dinda Evans, January 18, 2005
221	Faith Evans, January 18, 2005
222	Michael W Evans, January 18, 2005
223	Clyde Everton, January 18, 2005
224	Joseph Fahey, January 18, 2005
225	Harry Farr, January 18, 2005
226	Marilyn G. Farreras, January 18, 2005
227	Fédération des Experts Comptables Européen, Author: David Delvin President, February 14, 2005
228	FEI, Author: M P Reilly, Chair, FEI Committee on Taxation, Frank H, Boyd, Chair, FEI Committee on Corporate Reporting, February 14, 2005
229	Tim Ferguson, January 18, 2005
230	Daniel Fewster, January 18, 2005
231	David Field, January 18, 2005
232	John Fischer, January 19, 2005
233	Joyce Fisher, January 31, 2005
234	John Flaherty, January 18, 2005
235	Shannon Fletcher, January 19, 2005
236	Edward Flounoy Jr., January 19, 2005



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237	Bobbie Dee Flowers, January 23, 2005
238	Robert Flynn, January 18, 2005
239	Chad Fordham, January 18, 2005
240	Earl Forsman, January 18, 2005
241	Mark Foy, January 19, 2005
242	David Fredericks, January 18, 2005
243	John Freytag, January 18, 2005
244	Kevin Frindik, February 25, 2005
245	Jon Gallion, January 18, 2005
246	Jay Garfen, January 18, 2005
247	Jay Gassman, January 18, 2005
248	GCI, Author: John B. Lowber, February 10, 2005
249	Susan Gellert, January 18, 2005
250	Dwight Gerrelts, January 22, 2005
251	Charles T. Giambrone, January 19, 2005
252	Liz Giba, January 18, 2005
253	Peter Gillard, January 18, 2005
254	Laura Gillespie, January 19, 2005
255	L. Glasner, January 18, 2005
256	Glass Lewis & Co., Author: Lynn E. Turner, February 1, 2005
257	Charlene Glassman, January 18, 2005
258	Steve Gluhanich, January 18, 2005
259	Douglas Goddard, January 19, 2005
260	Fred Goldman, January 18, 2005

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261	Kenn Goldman, January 18, 2005
262	Jerry Goodnight, January 18, 2005
263	Anne Grady, January 18, 2005
264	Grant Thornton, February 14, 2005
265	Harrison Grathwohl, January 21, 2005
266	Nelsie Aybar-Grau, January 19, 2005
267	Roger Graves, January 18, 2005
268	Marty Green, January 19, 2005
269	Steve Green, January 19, 2005
270	Karen Greenfield, January 18, 2005
271	Phil Grenetz, January 19, 2005
272	Stewart Grey, January 18, 2005
273	Gary Grice, January 18, 2005
274	David Grimesey, January 19, 2005
275	Diana Grob, January 22, 2005
276	William M. Gottwald, January 12, 2005
277	Hank Gruemmer, January 19, 2005
278	Sajib Guhasarkar, January 18, 2005
279	James Gunther, January 18, 2005
280	Susan Gwertzman, January 18, 2005
281	Theresa Habshey, January 19, 2005
282	Patrick Hagan, January 19, 2005
283	Serna Hahn, January 20, 2005
284	James Halbig, January 18, 2005



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285	Denise Hammer, January 18, 2005
286	James Hampton, January 18, 2005
287	Stephen Hanebutt, CPA, January 5, 2005
288	Edward Harkins, January 18, 2005
289	Amy Harlib, January 18, 2005
290	Michael Harrington, January 19, 2005
291	Thomas Harris, January 19, 2005
292	Carrie Hartt, January 18, 2005
293	Irene Harvey, January 18, 2005
294	CJ Hathaway, January 18, 2005
295	Jayleen Hatmaker, January 19, 2005
296	Edward Hauck, January 18, 2005
297	Molly Hauck, January 19, 2005
298	James Haun, January 18, 2005
299	Marilyn Hayes, January 18, 2005
300	Hazlett, Lett & Bieter, PLLC, Author: Warren E. McEven, January 21, 2005
301	Jim Head, January 18, 2005
302	Deirdre Healy, January 18, 2005
303	R Heck, February 8, 2005
304	Harriet Helman, January 22, 2005
305	Carl Henne, January 19, 2005
306	Tom Henninger, January 18, 2005
307	Reverend Charles Hensel, January 18, 2005
308	William Herbick, January 18, 2005

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309	Tess Herrera, January 18, 2005
310	William Herrera, January 18, 2005
311	Susan Hesse, January 19, 2005
312	Neil Hilmer, January 18, 2005
313	Peter Hoag, January 18, 2005
314	Henry Hofmann, January 18, 2005
315	Stephen Hofstatter, January 18, 2005
316	Larre Hoke, January 18, 2005
317	Howard H. Holmes, January 18, 2005
318	Sarah Holland, January 19, 2005
319	Regina Holt, January 18, 2005
320	Brian Hoort, January 18, 2005
321	D Hopson, January 18, 2005
322	Janet Hose, January 18, 2005
323	Sandy Howard, January 18, 2005
324	Welton Howard, January 18, 2005
325	Linda Hoyt, January 26, 2005
326	Jodi Hubbell, January 20, 2005
327	Kim Huber, January 19, 2005
328	Gary Huddleston, February 1, 2005
329	Jerry Humphrey, January 21, 2005
330	Arlene Hunt, January 18, 2005
331	Robin Hunt, January 19, 2005
332	Toni Hurst, January 21, 2005



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333	Robert Hustus, July 27, 2005
334	M. E. Hutchinson, January 18, 2005
335	Patricia Hynds, January 18, 2005
336	Illinois CPA Society's Audit and Assurance Services Committee's, Author: William P. Graf, Chair Audit & Assurance Service Committee, February 14, 2005
337	Institut Der Wirtschaftsprufer, Author: Klaus-Peter Naumann, Chief Executive Officer, February 9, 2005
338	Lura Irish, January 19, 2005
339	Billy Jackson, January 18, 2005
340	Anna Jacus, January 21, 2005
341	Manuel Jaime, March 5, 2005
342	Misti Jancosek, January 18, 2005
343	Robert Janusko, January 18, 2005
344	Bonnie Jay, January 18, 2005
345	Joya Jennings, January 18, 2005
346	Karin Jerdee, January 18, 2005
347	Mr. John, January 19, 2005
348	Audrey Johnson, January 18, 2005
349	Dean Johnson, January 18, 2005
350	Dixie Johnson, January 18, 2005
351	Len Johnson, January 18, 2005
352	Russell Johnson, January 18, 2005
353	Timothy Johnston, January 18, 2005
354	Hubert Jones, January 18, 2005
355	Verna n. Jones, January 18, 2005



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357	Clyde Jorgensen, February 22, 2005
358	John Joyce, January 19, 2005
359	Patricia Kaczmarek, January 22, 2005
360	Linda Kadas, January 18, 2005
361	Hayden Kaden, January 20, 2005
362	Chuck Kaiser, January 18, 2005
363	Jeanne Karis, January 25, 2005
364	Dan Karney, January 18, 2005
365	Christine Kasten, January 20, 2005
366	Cecelia Keech, January 18, 2005
367	Herb and Carole Keeler, February 10, 2005
368	Chris Kell, January 19, 2005
369	D. Kathleen Keller, January 18, 2005
370	Arthur Kendy, January 18, 2005
371	Edward Kennedy, January 18, 2005
372	Vic Kern, January 19, 2005
373	Aaron Kershenbaum, January 23, 2005
374	Candace Key, January 18, 2005
375	Lisa Khalil, January 19, 2005
376	Mitch Kihn, January 19, 2005
377	John Killeen, January 19, 2005
378	Evelyn Klapholtz, January 18, 2005
379	Frank X. Kleshinski, January 18, 2005



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381	Aren Knutsen, January 19, 2002
382	Wayne J. Kohout, January 18, 2005
383	Zora L. Kolkey, January 22, 2005
384	Gary Konecky, January 22, 2005
385	Elaine Koplik, January 20, 2005
386	Mark Koplik, January 20, 2005
387	Walter Kortge, January 18, 2005
388	Thaddeus Kozlowski, January 18, 2005
389	KPMG LLP, February 15, 2005
390	Robert Kronish, January 18, 2005
391	Paul Kubinsky, January 18, 2005
392	Lolette Kuby, January 18, 2005
393	Susan Kulis, January 18, 2005
394	Bimal Kundu Kundu, January 18, 2005
395	Lonnie Kuntzman, January 19, 2005
396	Francine Kupferman, January 18, 2005
397	Andrea Kuryak, January 19, 2005
398	Karen Kwong, January 18, 2005
399	Reed Lacy, January 18, 2005
400	Romeo Lafond, January 18, 2005
401	Lori Lagorio, January 18, 2005
402	John Laing, January 19, 2005
403	Chuck Lakin, January 18, 2005



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405	Amanda Lang, January 18, 2005
406	Liz Langford, January 18, 2005
407	David Lawhon, January 18, 2005
408	Francis Leblanc, January 18, 2005
409	Laura Lee, January 18, 2005
410	Michael Lensbouer, January 18, 2005
411	Bobbi Leonard, January 18, 2005
412	Senator Carl Levin, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate, February 24, 2005
413	Harvey Levin, January 18, 2005
414	Diane Lewis, January 26, 2005
415	Karen Lind, January 18, 2005
416	Cassandra B. Lista, January 18, 2005
417	Kay Lockridge, January 18, 2005
418	Charles Loeber, January 26, 2005
419	June Logie, February 8, 2005
420	Mike Loomis, January 19, 2005
421	Sharon Loudon, January 18, 2005
422	Michael Loveless, January 18, 2005
423	Michael Lowe, January 18, 2005
424	Nicholas Lubofsky, January 19, 2005
425	David Luckens, January 18, 2005
426	Judie Hilke Lundborg, January 19, 2005



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429	James Macallair, January 18, 2005
430	Linda MacDonald, February 8, 2005
431	Mona MacDonald, January 19, 2005
432	Richard Mcdonald, January 18, 2005
433	Wanda McDonald, January 18, 2005
434	Tallman Mahan,II, January 19, 2005
435	Kathleen Maher, January 18, 2005
436	Sonja Malmuth, January 18, 2005
437	Eleanor Martin, January 18, 2005
438	James Martin, January 18, 2005
439	Marie Martrano, January 18, 2005
440	Scott Marx, January 18, 2005
441	Rhodia Mason, January 21, 2005
442	Frank Masters, January 18, 2005
443	Phyllis Matson, January 19, 2005
444	Elaine Matthew, January 27, 2005
445	Thomas Matthews, January 19, 2005
446	James Mathewson, January 19, 2005
447	Arthur Mauretti, January 18, 2005
448	James Mayor, January 19, 2005
449	David Mazza, January 18, 2005
450	Elizabeth McCallum, January 18, 2005



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453	McGladrey & Pullen, LLP, February 14, 2005
454	Robert McIntosh, January 18, 2005
455	Joshua McKain, January 18, 2005
456	Judith McKay, January 18, 2005
457	Martin McLean, January 18, 2005
458	Katherine McMahon, January 18, 2005
459	Jean McMeans, January 18, 2005
460	Sharon McMenamin, January 18, 2005
461	Don McMillan, January 18, 2005
462	Ronald McNeer, January 22, 2005
463	Michael Mctague, January 18, 2005
464	George Mealer, January 18, 2005
465	June Meek, January 18, 2005
466	Jim Meier, January 19, 2005
467	Linda Messner, January 18, 2005
468	Ann Meyette, January 18, 2005
469	Don Milbocker, January 18, 2005
470	Holly Millar, January 18, 2005
471	Charles Miller, January 18, 2005
472	Jacqueline Miller, January 20, 2005
473	Kenneth E. Miller, January 19, 2005
474	Patricia Miller, January 18, 2005



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476	Miller, Hamilton, Snider & Odom, L.L.C. Author: Hugh C. Nickson, III, February 14, 2005
477	Genie Mims, January 21, 2005
478	Loretta Minnick, January 26, 2005
479	Alexandra Mitchell, January 18, 2005
480	James Mitchell Jr., January 18, 2005
481	Dr. David Modarelli, January 18, 2005
482	Jassim Mohammad, January 18, 2005
483	Ralph A Monello, January 18, 2005
484	Candida Montalvo, January 18, 2005
485	Richard Montgomery, January 18, 2005
486	Kathryn Moor, January 18, 2005
487	Peter Moore, January 18, 2005
488	Robert Moran, January 18, 2005
489	Raymond Moreland, January 18, 2005
490	Donna Mae Travis-Morgan, January 18, 2005
491	Andrew Morgen, January 18, 2005
492	Andy Morris, January 18, 2005
493	Martha Morton, January 18, 2005
494	Nancy Moynihan, January 18, 2005
495	Lawrence E. Mueller, CPA, January 18, 2005
496	Harold Muir, January 18, 2005
497	Delores Mulvihill, January 18, 2005
498	Nori Muster, January 18, 2005



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499	Kris Muto, January 18, 2005
500	Gary Myerson, January 18, 2005
501	National Association of State Boards of Accountancy, Author: Michael D. Weatherwax, NASBA- Chair, David A. Costello, CPA President & CEO, February 2, 2005
502	NBC Capital Corporation, Author: Lewis F. Mallory, Jr. Chairman and CEO, March 11, 2005
503	Joseph Newton, January 18, 2005
504	Ronald Newton, January 19, 2005
505	Dirk Neyhart, March 1, 2005
506	Mai Nguyen, January 30, 2005
507	Julie Nicholson, January 20, 2005
508	James Nikora, January 18, 2005
509	K. John Niski, January 19, 2005
510	Nordson, Author: Edward P. Campbell, February 15, 2005
511	Daniel Nornhold, January 18, 2005
512	Linda Noruk, January 19, 2005
513	Thaddius Novack, January 18, 2005
514	Chester Nowak, January 18, 2005
515	Mercedes Nunez, January 21, 2005
516	NYSSCPA, Author: John J. Kearney, President, February 20, 2005
517	Kathryn O'Connor, January 18, 2005
518	Thomas O'Donoghue, January 26, 2005
519	Michael O'Donovan, February 14, 2005
520	Ohio Public Employees Retirement System, Author: Laurie Fiori Hacking, February 1, 2005



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521	The Executive Directors with the Ohio Retirement Systems, Authors: Richard A. Curtis, Executive Director, Highway Patrol Retirement System, William Estabrook , Executive Director, Ohio Police and Fire Pension Fund, Laurie Hacking, Excutive Director, Ohio Public Employees Retirement System, Damon Asbury, Executive Director, State Teachers Retirement System of Ohio, James R. Winfree, Executive Director, School Employees Retirement System of Ohio, Keith Overly, Executive Director, Ohio Public Employees Deferred Compensation, February 3, 2005
522	Derek Ohlms, January 18, 2005
523	Margy Ohring, January 18, 2005
524	Carol O. Olse, January 20, 2005
525	Pamela Olson, January 18, 2005
526	Elizabeth O'Nan, January 18, 2005
527	Reverend Juanita One, January 18, 2005
528	Ira Openden, January 18, 2005
529	Gary Orendorff, January 18, 2005
530	Joseph Ortiz, January 21, 2005
531	Chris Pallas, January 18, 2005
532	Robert Pancner, January 18, 2005
533	Rene Paradis, January 21, 2005
534	Marina Parowski, January 18, 2005
535	Carlos Pascual, January 20, 2005
536	Mr. Patrick, January 18, 2005
537	David Paul, January 18, 2005



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538	Binu Paulose, January 20, 2005
539	Peri Payn, January 19, 2005
540	Howard Pellett, January 23, 2005
541	Pennsylvania Institute of Certified Public Accountants, Author: Susan E. Howe, CPA PICPA President, February 14, 2005
542	Casey Pera, January 18, 2005
543	Suzanne Perlman, January 19, 2005
544	JoAnn Perryman, January 18, 2005
545	Kristin Perugino, January 20, 2005
546	Vanessa Pesece, January 19, 2005
547	Gene and Doris Peters, January 18, 2005
548	Robert B Phillips, January 18, 2005
549	James Piani, January 18, 2005
550	Theresa Pickel, January 18, 2005
551	Kathryn Pierquet, January 18, 2005
552	Scott Plantier, January 18, 2005
553	Brian Pope, January 18, 2005
554	Cippy Port, January 22, 2005
555	Duncan Porter, January 19, 2005
556	George Porter, January 18, 2005
557	Carl Poske, January 18, 2005
558	Charles Post, January 19, 2005
559	Elena Powers, January 18, 2005
560	William Prentice, January 19, 2005



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561	PricewaterhouseCoopers LLP, February 14, 2005
562	Lisa Printz, January 20, 2005
563	Christine Puelle, January 24, 2005
564	Gerryl E. Puelle, January 18, 2005
565	Roslyn Pulitzer, January 18, 2005
566	Robert Puls, January 18, 2005
567	Dorli T Rainey, January 18, 2005
568	Robert Ramming, January 19, 2005
569	Riaz Rana, January 18, 2005
570	Fred Ratio, January 18, 2005
571	Marilyn Raupe, February 9, 2005
572	Linda Rawlings, January 18, 2005
573	Terry Reckmo, January 18, 2005
574	Maryellen Redish, January 21, 2005
575	John Reichel, January 18, 2005
576	Peter C. Reilly, January 18, 2005
577	Reznick Group February 14, 2005
578	Bonnie Richardson, January 18, 2005
579	Emily Rieber, January 19, 2005
580	Linda Riling, January 18, 2005
581	Kenneth Roach, January 19, 2005
582	Robert F Robbins, January 18, 2005
583	Melissa Roberts, January 19, 2005
584	Robert Roberts, January 18, 2005



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585	Peter Roche, January 18, 2005
586	David Rockefeller, January 19, 2005
587	Luis Rodriguez, January 18, 2005
588	Robert Rose, January 19, 2005
589	Wolfgang Rosenberg, January 18, 2005
590	Bill Rosenthal, January 18, 2005
591	Norm Ross, January 19, 2005
592	Morris Roth, January 18, 2005
593	Frank Rowan, January 18, 2005
594	Thomas J Rowan, January 19, 2005
595	Don Rowinsky, January 18, 2005
596	Lee Rubenstein, January 18, 2005
597	Ken Rugg, January 26, 2005
598	Lorraine Rumore, January 18, 2005
599	Brian Ruppert, January 19, 2005
600	Charlene Rush, January 19, 2005
601	Sam Russo, January 18, 2005
602	Robert E. Rutkowski, March 1, 2005
603	J. Leo Sadauskas, January 19, 2005
604	Ana Salinas, January 20, 2005
605	Richard Sam Salmon, January 18, 2005
606	Michael Sanders, January 19, 2005
607	Rex Sanders, January 18, 2005
608	Dan Sandstrom, January 6, 2005



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609	Ajit Sanghvi, January 18, 2005
610	Ralph S Saul, July 21, 2005
611	Susan Savarise, January 18, 2005
612	Beverly Scaff, January 18, 2005
613	Jeffrey Schade, January 18, 2005
614	Alice Scheller, January 18, 2005
615	James Schiffman, January 18, 2005
616	Robert Schlagal, January 18, 2005
617	Richard Schloss, January 18, 2005
618	Cindy Schnacke, January 20, 2005
619	Phyllis Schoen, January 18, 2005
620	Roberta Schonemann, January 23, 2005
621	Robert Schuessler, January 19, 2005
622	Melvyn B. Schupack, January 19, 2005
623	Edith Schutz, January 18, 2005
624	Robert Schwalb, January 18, 2005
625	Jeff Schwartz, January 18, 2005
626	Martin Schwartz, February 3, 2005
627	Karen R. Searle, January 18, 2005
628	Star Seastone, January 19, 2005
629	Karen Keating-Secular, January 18, 2005
630	James Seeley, January 18, 2005
631	Robert Segal, January 18, 2005
632	Arnold Seligman, January 18, 2005



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634	Brent Seltzer, January 18, 2005
635	James Sepenzis, January 18, 2005
636	Gary Shade, January 18, 2005
637	Davira Shain, January 19, 2005
638	SWtephen Shamroth, January 18, 2005
639	Edwin Shannon, January 18, 2005
640	c. Joseph Sharrer, January 18, 2005
641	Paul Sheridan, January 19, 2005
642	Bill Sherman, January 19, 2005
643	Gregory Shernell, January 18, 2005
644	Paul Sherr, January 20, 2005
645	William Shortencarrier, January 18, 2005
646	David Sierra, January 25, 2005
647	Lee Silverman, January 20, 2005
648	Ransom Simmons, January 19, 2005
649	Henry Simms, January 18, 2005
650	Leslie Simons, January 18, 2005
651	Nadia Sindi, January 18, 2005
652	Sara Skinner, January 27, 2005
653	William Slattery, January 19, 2005
654	Rita Sloan, January 23, 2005
655	Bonnie Faith-Smith, January 26, 2005
656	Brian Smith, January 18, 2005



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657	John Smith, January 19, 2005
658	Kenneth Smith, January 18, 2005
659	Kris Smith, January 18, 2005
660	Shirley Smith, January 19, 2005
661	William Smith, January 18, 2005
662	Bruce Snyder, January 18, 2005
663	Arlen Dean Snyder, January 18, 2005
664	Frederique n Sol, January 23, 2005
665	William Sowa, January 18, 2005
666	John Spear, January 18, 2005
667	Marlene T Spitz, January 18, 2005
668	Paul Spivey III, January 18, 2005
669	Thomas Spradley, January 18, 2005
670	Arthur Springer, January 18, 2005
671	Joe St. Clair, January 22, 2005
672	Jon Staid, January 18, 2005
673	Karen Stamm, January 23, 2005
674	Bill & Susan Stanaway, January 19, 2005
675	Thoams Stanley, January 18, 2005
676	Brad & Jennifer Stanton, January 20, 2005
677	Dawn Stanzione, February 10, 2005
678	Dustin Starbuck, January 18, 2005
679	Valerie Starr, January 18, 2005
680	William Stavisky, January 19, 2005



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681	Stanley Stefancic, January 19, 2005
682	Edward Stein, January 18, 2005
683	Paul Stein, January 18, 2005
684	Mike Stevenson, February 7, 2005
685	State Board Of Administration of Florida, Author: Coleman Stipanovich, Executive Director, February 14, 2005
686	Gregory Stone, January 18, 2005
687	Paul Story, January 18, 2005
688	William Stosch III, January 25, 2005
689	Mary Theresa Stout, January 18, 2005
690	Jeff Strand, January 19, 2005
691	Susan Strolla, January 18, 2005
692	Charles Stromwall, January 27, 2005
693	Julia Strong, January 20, 2005
694	Richard Struzik, January 18, 2005
695	Michael Stuart, January 18, 2005
696	Edwin A. Sturman, January 20, 2005
697	Mark Sullivan, January 18, 2005
698	Carl Sundberg, January 20, 2005
699	Joan Stupler, January 18, 2005
700	Shirley Supplee, January 18, 2005
701	Richard Swayne, January 20, 2005
702	Roger Swanson, January 19, 2005
703	Jay Sweeney, January 18, 2005
704	Sally Anne Syberg, January 21, 2005



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705	John Tatum, January 18, 2005
706	Taxware, Author: Richard T. Ainsworth, Tax Counsel (International & Domestic), February 14, 2005
707	Carol taylor, January 18, 2005
708	Lauryn Taylor, January 18, 2005
709	Timothy Taylor, January 18, 2005
710	TEI International President, Author: Judith P. Zelisko, March 1, 2005
711	James Tercek, January 18, 2005
712	Theresa Terhark, January 18, 2005
713	Anthony Terich, January 18, 2005
714	Texas Society of Certified Public Accountants, Author: C. Jeff, CPA Chairman, Professional Standards Committee, February 11, 2005
715	Phyllis Thakis, January 18, 2005
716	Chan Thanawalla, January 18, 2005
717	Boniface Thayil, January 18, 2005
718	Chester Thomas, January 18, 2005
719	James Thomas, January 18, 2005
720	Joan Thomas, January 18, 2005
721	Charles Thompson, January 19, 2005
722	Janet C. Thompson, January 18, 2005
723	Johnie Thompson, January 18, 2005
724	Mary Thompson, January 18, 2005
725	Nola L. Thompson, January 19, 2005
726	Don and Roberta Timmerman, January 18, 2005



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728	David Tongel, January 18, 2005
729	Gary Trabucco, January 18, 2005
730	Meghan Tracy, January 18, 2005
731	Ann Trinz, January 18, 2005
732	Frank Trumble, January 18, 2005
733	Albert Tully, January 18, 2005
734	Bobby Ty, January 19, 2005
735	Jason Tyburczy, January 18, 2005
736	Kimberlee Ulrich, January 19, 2005
737	Sandra Upright, January 18, 2005
738	Gene Vapenik, January 18, 2005
739	Thomas Vareha Jr, February 20, 2005
740	Frank Vastano, January 18, 2005
741	Preston Vaughan, January 18, 2005
742	Richard Vaughan, January 18, 2005
743	Louis Vitali, January 18, 2005
744	VITERBO University, Author: David K. Banner, PhD Professor of Management, March 5, 2005
745	Robert Vogel, January 19, 2005
746	Steve Vu, January 18, 2005
747	Laurel Wadley, January 23, 2005
748	William M Waldrip, January 18, 2005
749	Julie Waldrup, January 18, 2005
750	Carolyn Waller, January 18, 2005



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751	Cindy Waltershausen, January 18, 2005
752	Jeannette Ward, January 18, 2005
753	Shelly Wardell, January 19, 2005
754	Robert Waring, January 18, 2005
755	Jay Wasman, January 19, 2005
756	Dr. Thomas Watson, January 18, 2005
757	Judi Watt, January 19, 2005
758	Edward Waxman, January 18, 2005
759	Jayme Weare, January 20, 2005
760	Susan Wechsler, January 18, 2005
761	Michael Weekley, January 28, 2005
762	Charles Wegrzyn, January 18, 2005
763	Diane Weinberg, January 18, 2005
764	Nancy Welch, January 18, 2005
765	Erin Wells, February 5, 2005
766	Mary Wells, January 19, 2005
767	Darlene Wendt, January 18, 2005
768	Jo Wesley, January 18, 2005
769	E. Joseph West, January 19, 2005
770	David Wexstein, January 18, 2005
771	Larry Whipple, January 18, 2005
772	Joel White, January 20, 2005
773	Vernon Whitney, January 18, 2005
774	Christina Wicker, January 18, 2005



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775	Stewart Wilber, January 24, 2005
776	Jeanne Wilhelm, January 18, 2005
777	Charles F. Williams, January 18, 2005
778	J. Kent Williams, January 18, 2005
779	Keith Williams, January 20, 2005
780	Ronald Willams, January 18, 2005
781	Susan Williams, January 22, 2005
782	Janet Wilson, January 19, 2005
783	Kent Wilson, January 20, 2005
784	Pamela Wilson, January 27, 2005
785	Tim Wilson, January 18, 2005
786	Thomas Windberg, January 18, 2005
787	Warren Winter, January 20, 2005
788	Tony Witlin, January 18, 2005
789	Ernest Wittenbreder, January 19, 2005
790	Darlene Wolf, January 19, 2005
791	Bernard Wolfman, Fessenden Professor of Law, Harvard Law School, December 15, 2004
792	Jerome Wondoloski, January 18, 2005
793	Tami Wrice, January 18, 2005
794	Daniel Wolter, January 18, 2005
795	Jean Woodman, January 18, 2005
796	Gary Wortman, January 20, 2005
797	Dave Wylie, January 18, 2005
798	Willard Wynne, January 19, 2005



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799	Nancy Yamagata, January 20, 2005
800	Susan Yango, January 18, 2005
801	Tabatha Yeatts, January 18, 2005
802	Richard Zaengle, January 18, 2005
803	David L. Zalles, CPA, March 8, 2005
804	Ralph Zarumba, January 18, 2005
805	Samz Zaslavsky, January 18, 2005
806	Reverend Glen Zorn, January 18, 2005
807	Manuel B. Zuniga Sr., January 19, 2005



Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006  
USA

11 February 2005

Dear Sirs

**PCAOB Rulemaking Docket Matter No. 017**  
**Proposed ethics and independence rules concerning independence, tax services, and contingent fees**

ACCA is the largest and fastest-growing international accountancy body. Over 330,000 students and members in 160 countries are served by more than 70 staffed offices and other centres.

ACCA's mission is to work in the public interest to provide quality professional opportunities to people of ability and application, to promote the highest ethical and governance standards and to be a leader in the development of the accountancy profession.

ACCA is an active member of the European Federation of Accountants and, from our worldwide perspective, we fully endorse the comments made to you in that body's letter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'David York', is written over a horizontal line.

**David York**  
Head of Auditing Practice

A handwritten signature in black ink, appearing to read 'Chas Roy-Chowdhury', is written over a horizontal line.

**Chas Roy-Chowdhury**  
Head of Taxation

February 14, 2005

Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

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

Dear Ladies and Gentlemen:

The Accounting Principles and Auditing Procedures Committee is the senior technical committee of the Massachusetts Society of Certified Public Accountants. The Committee consists of 25 members who are affiliated with public accounting firms of various sizes, from sole proprietorships to international "big four" firms, as well as members in both industry and academia. The Committee has reviewed and discussed the above mentioned exposure draft. The views expressed in this comment letter are solely those of the Committee and do not reflect the views of the organizations with which the Committee members are affiliated.

Our comments are as follows:

- 1) The Committee has a concern that if these rules as proposed are adopted that the cost of affected company audits will be driven up substantially. These costs will then be either passed on to the ultimate consumer or in some cases the smaller auditor will be forced to bear these costs.
- 2) The Committee has a grave concern that these rules would have a severe effect on service that auditors and accountants now provide to their small client. Even thru the rules would be applicable only to registered public accounting firms there is a fear among the members of the Committee that these rules could "trickle down" to nonpublic audit client. The application of these rules to small audit client would force small clients to incur massive costs to be in compliance and change, not for the good, the relationship accountants have with these clients. The Committee to prevent these rules from being applied to small clients recommends a dollar threshold be put in place. The FASB has used a threshold of \$100,000,000 in applying some of its standards. In this way should local regulators adopt some form of these rules the small clients would be unaffected. We recommend that some kind of a threshold as to when these rules are to be adopted be made part of the final rules.

We appreciate the opportunity to present our comments and thank you for your consideration.

Very truly yours,

Philip B. Pacino, CPA, Chairman  
Accounting Principles and Auditing  
Auditing Procedures Committee  
Massachusetts Society of Certified Public

Accountants

---

**From:** Erich H Adams [jacerni@bellsouth.net]  
**Sent:** Tuesday, January 18, 2005 4:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Erich H Adams  
10304 Avenida Del Rio  
Delray Beach, FL 33446-2418

# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000  
www.aflcio.org

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February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

## Re: PCAOB Rulemaking Docket Matter No. 017

Dear PCAOB Board Members:

On behalf of the American Federation of Labor and Congress of Industrial Organizations, I welcome this opportunity to offer our strong support for the Public Company Accounting Oversight Board's proposed rules to promote the ethics and independence of outside auditors.

The AFL-CIO is the federation of America's labor unions, representing 60 national and international unions and their membership of more than 13 million working women and men. Union members participate in the capital markets as individual investors and through a variety of benefit plans with over \$6 trillion in assets. Union-sponsored pension plans account for \$400 billion of that amount.

The AFL-CIO and worker pension funds have actively sought to enhance auditor independence ever since Enron's collapse exposed major weaknesses in the existing auditor regulatory regime. The issue the PCAOB now seeks to address—the provision of aggressive tax services to audit clients—was at the very heart of the Enron scandal<sup>1</sup>. It is inexcusable that, despite the reforms enacted in response to Enron and subsequent scandals, auditors are still permitted to provide tax services that place them in the role of advocate for their audit client or its executives, and requires them to audit their own work. We were especially disappointed that the final auditor independence rules adopted by Securities and Exchange Commission (the "Commission") in March 2003 failed to ban this practice, as the AFL-CIO and other investors had recommended.

We therefore commend the PCAOB for proposing rules that would put an end to the serious conflicts of interest that result when auditors provide aggressive tax services to an audit client or

<sup>1</sup> As reported in *Journal of Corporation Law*, "Arthur Andersen was both promoter and tax opinion provider (as well as external auditor) for Tanya and Valor, two of Enron's earliest tax shelters." (Beale, Linda M., "Putting SEC Heat on Audit Firms and Corporate Tax Shelters", *Journal of Corporation Law*, January 1, 2004.)

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any tax service to the client's senior officers. These rules and the proposed rules prohibiting the sale of services to audit clients on a contingent fee basis will meaningfully strengthen the independence of outside auditors and thereby enhance investor confidence in the integrity of audited financial statements. We generally support the rules as proposed, and offer a few specific comments below.

## I. Background

Independent auditors occupy a central position in promoting confidence in the integrity of the financial reporting system and U.S. capital markets. Because the Commission requires that financial information filed with it be certified or audited by independent auditors, auditors are, as the Commission has stated, the "gatekeepers" to the public securities markets.<sup>2</sup> Auditors work not only for their clients, but also for the investing public.

The role of Arthur Andersen in the fall 2001 collapse of Enron thrust the role of independent auditor into the spotlight, reopening a debate the Commission had sought to resolve with its 2000 rulemaking. In response, the AFL-CIO petitioned the Commission in December 2001 to further strengthen its rules governing auditor independence by, among other requirements, limiting the services accounting firms could provide to their audit clients.<sup>3</sup> In December 2002, in response to our petition and the subsequent requirements of the Sarbanes-Oxley Act, the Commission proposed comprehensive rules to strengthen its auditor independence rules. The AFL-CIO supported the proposed rules, but recommended

*the Commission modify its proposal to conform more closely to the recommendation in the recent report issued by the Conference Board Commission on Public Trust and Private Enterprise.<sup>4</sup> That report concludes that there is no conflict of interest in a public accounting firm providing certain income tax and other services, such as preparing corporate tax returns, "provided that these services do not place the auditor in the role of acting as advocate for the company." Consistent with this finding, audit firms should not be permitted to advise companies on "debatable tax strategies and products that involve income tax shelters and extensive off-shore partnerships or affiliates."<sup>5</sup>*

The fact that the Commission's final rules did not prohibit auditors from selling these aggressive tax services to clients was among the factors that prompted worker funds to seek to strengthen auditor independence beyond the Commission's requirements on a firm-by-firm basis. Worker

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<sup>2</sup> Revision of the Securities and Exchange Commission's Auditor Independence Requirements, Exchange Act Release No. 43602 (Nov. 21, 2000) (adopting release).

<sup>3</sup> Request for Rulemaking Concerning Definition of Independent Auditor and Limiting Services Accounting Firms May Provide to Audit Clients, submitted to the Securities and Exchange Commission by Richard L. Trumka, Secretary-Treasurer, AFL-CIO, December 11, 2001.

<sup>4</sup> Conference Board Commission on Public Trust and Private Enterprise: Findings and Recommendations, January 9, 2003.

<sup>5</sup> AFL-CIO Comment Letter on Securities and Exchange Commission proposal, S7-49-02, to Strengthen the Commission's Requirements Regarding Auditor Independence, submitted by Damon Silvers, Associate General Counsel, AFL-CIO, January 13, 2003.

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funds have subsequently sponsored shareholder resolutions at dozens of companies seeking to limit the non-audit services performed by the company's auditor and have also opposed auditor ratification at companies where the auditor's independence has been compromised. In May 2003, for example, the AFL-CIO led a block of Sprint shareholders that cast 38 percent of their votes against the ratification of Ernst & Young after we learned the audit firm had advised the Sprint's top executives on personal income tax avoidance strategies while simultaneously providing auditing services to Sprint.

We are therefore pleased that PCAOB is now proposing rules that would put an end to the serious conflicts that result when auditors provide aggressive tax services to an audit client or any tax service to the client's senior officers. These rules and the proposed rule prohibiting the sale of services to audit clients on a contingent fee basis will meaningfully strengthen the independence of outside auditors, an objective of fundamental importance to worker fund shareholders and to the capital markets as a whole.

## **II. Specific Comments on PCAOB Proposal**

While we strongly support the proposed rules and believe they substantially implement key recommendations of the Conference Board Commission on Public Trust and Private Enterprise, we recommend the PCAOB consider several modifications.

First, with respect to Proposed Rule 3522 – Aggressive Tax Positions, we recommend the PCAOB also prohibit the provision of expatriate tax services since these non-audit services can generate significant fee income to the audit firm. Second, with respect to Proposed Rule 3523 – Tax Services for Senior Officers, we recommend the PCAOB (a) define the vice president of sales as a senior officer with a financial reporting oversight role, since improper revenue recognition is the leading cause of restated financial statements; and (b) expand its proposal to also include members of the audit committee of the board of directors, which is responsible for hiring and evaluating the outside auditor.

Finally, in addition to prohibiting aggressive tax services, contingent fee arrangements and the provision of tax services to senior officers and audit committee members, we encourage the PCAOB to also prohibit auditors from consulting on the compensation arrangements of company executives. While we believe it is appropriate for outside auditors to offer routine tax preparation services for organizations and individual managers, advocacy consulting on executive compensation is inappropriate. Although not a tax service per se, the nature of this conflict is similar to the conflict that arises from the provision of aggressive tax services. As we explained to the Commission in our second comment letter in response to the Commission's December 2002 proposal to strengthen the auditor independence rules,

*By advising the board on executive compensation, an auditor is in effect evaluating the performance of that executive, a role that could make an auditor reluctant to draw attention to possible shortcomings by that executive in the future. Alternatively, if the auditor advises the executive on his or her compensation, the auditor is acting as an*

PCAOB  
February 14, 2005, p. 4

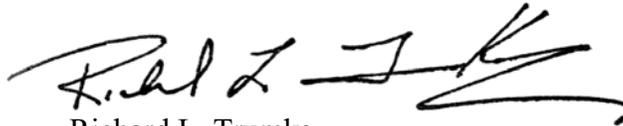
*advocate for the executive, a role that conflicts with the auditor's duty to shareholders. In either case, the auditor's independence is impaired.*<sup>6</sup>

Given the similar nature of this conflict, we believe it appropriate for the PCAOB to address it within its current rulemaking process.

### **III. Conclusion**

We commend the PCAOB for formulating meaningful rules to promote the ethics and independence of registered public accounting firms, and we support their rapid adoption. We thank you for the opportunity to comment on this proposal, and hope that the PCAOB will consider our comments in formulating its final rules. If you have any comments regarding our comments, please feel free to contact Damon Silvers, Associate General Counsel, at (202) 637-3953.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Trumka", with a stylized flourish at the end.

Richard L. Trumka  
Secretary-Treasurer

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<sup>6</sup> AFL-CIO Supplemental Comment Letter on Securities and Exchange Commission proposal, S7-49-02, to Strengthen the Commission's Requirements Regarding Auditor Independence, submitted by Richard L. Trumka, Secretary-Treasurer, AFL-CIO, January 21, 2003.

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**From:** Anthony Addonizio [aaddon@sbcglobal.net]  
**Sent:** Tuesday, January 18, 2005 8:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Anthony Addonizio  
2514 Silver Ridge St  
San Antonio, TX 78232-4237



14 February 2005

Office of the Secretary,  
PCAOB,  
1666 K Street NW,  
Washington DC, 20006-2803  
USA

By e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: Public Company Accounting Oversight Board (PCAOB)  
Rulemaking Docket Matter No. 17, Proposed Ethics and Independence Rules  
Concerning Independence, Tax Services, and Contingent Fees

Dear PCAOB Board Members:

I appreciate the opportunity to comment to the Public Company Accounting Oversight Board (the Board) on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees (the Proposals). Since these rules will have to be applied not just in the United States but around the world as they affect foreign registrants and overseas subsidiaries (and to some extent affiliates) of all registrants, I would be grateful if you would consider these comments made from an international perspective.

I was until recently a tax partner with a major audit firm and part of my duties included assisting tax practitioners across Central and Eastern Europe to understand and comply with relevant regulations including independence rules applicable to the SEC registered audit clients of the firm. I had come to the conclusion that the existing business model of the major audit firms - where they both audited public interest entities (including SEC registrants) and provided other services, principally tax services, as consultants to that sector of the market - did not serve the interests of the public, their clients or indeed the audit or tax practitioners working for those firms.

I do not believe that the Proposals will have any significant impact on the status quo. To a large extent the market is already ahead of the regulators on this issue and public interest entities are increasingly choosing not to use their auditors for any material non-audit services. This has the unwelcome side-effect of reducing significantly the level of effective competition in the public interest entity audit market, and to some extent the market for international tax services. Whereas this sector might appear to have four major international audit firms to choose from in any circumstance, if - as is often the case - one or two of those firms are being retained in some capacity as consultants, the incumbent auditor may only face competition for replacement from, at most, two other major international audit firms. The strengthening of audit independence standards (as long as these firms continue to provide other services) is therefore only further reinforcing the existing oligopoly in the large scale international audit market.



The managements of the incumbent firms have an overwhelming interest in the status quo and this is not conducive to the reform of this sector, or to producing the quantum improvements to audit quality which the public deserves. The barriers to entry in the large scale international audit market are significant and this is not a situation where the market can be allowed to take its natural course. Some improvement is gradually occurring as tax practitioners in the major audit firms, increasingly frustrated by the audit independence constrictions on their business, move out to start independent tax consultancies and build their own international tax alliances or join larger law firms expanding their international tax capabilities. New competition in this sector will though surely be resisted by the major audit firms using their existing dominant market positions and the economic power at their disposal.

It might be asked why the major audit firms actually want to continue to provide tax consulting services at all? They will answer (after having already extensively discussed the question among themselves) that their tax practices exist to ensure audit quality. This assertion really does deserve to be examined in detail by the Board.

Although perhaps no longer currently the case in the United States, it should not be forgotten that, in most markets worldwide, audit partners have for long been financially supported from the profits of consultancy services including tax services. The audit mandate itself was for too long a means to an end (i.e. advisory service revenues) and the audit was treated as a commodity to be sold sometimes as a loss leader.

Audit firms do (as they maintain) need to have good tax expertise to be good auditors, but a tax consultant who spends 90% of their time acting as an advocate for clients advancing their interests does not necessarily become a healthy skeptic when participating as a tax expert on audit engagements. Even when they are not effectively auditing their own work, tax consultants participating on a part-time basis in tax reviews on audit engagements will necessarily be reviewing the work through their own consultant filters and may well have advised other clients on structures similar to those found at the audit client which may impact their judgment. Audit quality would, I suggest, be enhanced by audit firms retaining full-time specialist tax auditors rather than using their consultant-minded colleagues to perform the activity on a possibly compromised basis.

The Board in its Proposals has concentrated on some fairly narrow areas of tax practice. The sale of shrink-wrapped tax shelters which lack any business purpose is a vile activity whether these products are supplied to an audit client or any other client for that matter. I would hope that all the major audit firms have now ceased activities in this area. The difficulty is, as always, where to draw the lines around such activities. The Board has chosen to leverage off concepts already known to US tax practitioners through existing IRS rules to define what is 'aggressive tax planning'.

It should not be forgotten that the Proposals will, if adopted, need to be followed by tax practitioners in audit firms in the remotest corners of the world where registrants' subsidiaries operate. The 'more likely than not to be allowed under applicable tax laws' concept will be very hard to judge in practice in jurisdictions where the rule of



law does not always prevail or where the laws are sometimes almost void for uncertainty. There will be a natural tendency to judge with the benefit of hindsight whether the tax practitioner should have advised on a particular transaction only once the tax administration and tax courts have found against the position taken. In some countries the tax authorities ignore the stated law and the courts have an inclination to support the state against the taxpayer, especially in politicized situations. The proposed standard will therefore cause tax practitioners working for audit firms in such markets a great deal of heartache and may lead them to be unduly conservative in their opinions and merely advise on what they know the authorities will accept. This does not serve the interest of the client who is then receiving tax advice which is impaired by the conflict of interest which the audit firm has as a result of the fear of criticism or sanction under the audit independence rules. It then becomes very difficult for the audit firm to provide truly objective tax advice to its audit clients in such circumstances. This situation also does nothing to promote the rule of law in these jurisdictions.

The Board's justification for continuing to allow auditors of registrants to provide routine tax services to their clients seems to be based principally upon the fact that audit firms have been performing these activities for a long time. It may have been true, even through the 1970's, that the tax practices were an auxiliary and support function of the audit practices in the respective firms performing relatively routine tax compliance tasks. But with the burgeoning consulting culture in the audit firms through the 1980's and 1990's, this is today no longer the case and these tax businesses are substantial in their own right. The four major international audit firms currently share about \$15bn of tax business worldwide, less than 15% of which is probably truly in support of their audit businesses. A relatively small amount of this overall turnover is attributable to very routine compliance tasks for public interest entities since it is generally more cost effective for this work to be handled in-house by the companies themselves or outsourced to specialized suppliers. The majority of the tax services provided by the major audit firms therefore have a significant value-added component which is evidenced by the average rates paid for the services. This great middle ground of tax service has not really been addressed in the Proposal where the references made are generally only to the two ends of the scale: abusive tax shelters and routine compliance.

The SEC has prohibited the provision of legal services to registrant audit clients on the grounds that the lawyer is an advocate for his or her client and that role is fundamentally incompatible with the role of auditor. I would submit that the duty of a tax consultant is equally to promote and protect the interests of his or her client and that he or she is as much an advocate as any lawyer. Tax consultants are involved every day in making submissions to tax authorities, negotiating on behalf of their clients and in resolving tax disputes on an administrative level. It is this middle ground which causes tax practitioners in audit firms most difficulty in applying the existing rules and the Proposal really does not do anything to improve that situation. In such circumstances, breaches of independence rules are inevitable. It is, I suggest, illogical to forbid other legal services, but to permit such tax services to be provided to audit clients. To do so solely in the name of tradition (when the existing business model of the major accounting firms has shown itself to be so wanting) really cannot be justified.



The focus on non-audit services provided by audit firms is to some extent a distraction from the real issues of audit quality, but, until such time as the major international audit firms concentrate fully on their prime business, independence issues will continue to divert attention from what the auditors themselves do - or do not do - in the course of their audit work.

The perpetuation of the current business model of the major audit firms is not in the long-term interest of any of the stakeholders either internal or external:

- Audit partners live in fear that someone in their global organization will cause an independence breach on one of their clients and are constrained from proposing audit services to the valued consulting clients of their firms.
- Tax partners struggle to understand what services they can and cannot provide to audit clients under the varying applicable rules internationally and sometimes even have difficulty to identify whether their tax client is connected with an audit client of their network or not. As long as they work in their existing network, they are increasingly constrained from pursuing that part of the public interest entity market which their firm audits.
- Clients consequently have a restricted choice of both auditors and to some extent tax consultants due to regulatory or 'best market practice' imposed audit independence rules.
- And the investing Public still does not yet have a quality financial audit system in which they can truly place reliance.

I would therefore urge the Board to take a fresh look at this subject, ignoring tradition, with a view to adopting a simple rule from an early date that audit firms should not provide any services to their SEC registered audit clients which are not necessary for the fulfillment of their audit mandate.

Secondly, I would encourage the Board, perhaps with other relevant authorities, to examine the competition issues arising as a result of the combination of an already too small number of major international audit firms with the impact of audit independence restrictions (both regulatory and arising from market best practice) and consider whether the interests of the market and the public would be better served by encouraging or forcing some more radical restructuring of these firms.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Trevor Link".

**Trevor Link**  
MA ACA CTA Barrister  
[TrevorLink@aQyris.com](mailto:TrevorLink@aQyris.com)

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**From:** dennis ahern [spoc5000@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. dennis ahern  
10 Clover St  
Old Bridge, NJ 08857-2114

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street  
N.W., Washington DC 20006

Our reference: RME/CM

Via Email: [comments@pcaobus.org](mailto:comments@pcaobus.org)

14 February 2005

Dear Secretary,

## **Public Company Accounting Oversight Board (PCAOB) Rule Making Docket Matter No. 017 Tax Services and Auditor Independence**

This submission is made on behalf of the Australian Institute of Company Directors (AICD) in response to the PCAOB Release of December 14, 2004.

The AICD is the peak organisation representing the interests of company directors in Australia. Current membership is over 19,000 drawn from large and small organisations, across all industries, and from private, public and the not-for-profit sectors. The AICD has had a standing policy committee focusing on financial and other reporting issues for over thirty years.

The AICD's initial review of the PCAOB's release indicates that the proposed rules provide a level of clarity concerning permissible tax services. This is welcome. However, from the perspective of an Australian director, the proposed rules appear to raise significant issues for foreign registrants that will impact on how directors, and more particularly audit committees, satisfy the requirements under Sarbanes-Oxley and the Securities and Exchange Commission's auditor independence rules.

The AICD is hopeful that the proposed rules will be further clarified, and if necessary amended, to address unintended international commercial consequences.

### **Pre-approval requirements**

The expansion of the pre-approval requirement raises some commercial issues that the AICD considers would be detrimental to the proper and efficient functioning of an audit committee.



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February 14, 2005

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. 017: Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees**

Members and Staff of the Public Company Accounting Oversight Board:

The Center for Public Company Audit Firms (the "Center") respectfully submits the following written comments on the Public Company Accounting Oversight Board's ("PCAOB" or the "Board") Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees (the "Proposed Rules"). The Center was established by the American Institute of Certified Public Accountants ("AICPA") to, among other things, provide a focal point of commitment to the quality of public company audits and provide the PCAOB and the Securities and Exchange Commission, when appropriate, with comments on their proposals on behalf of Center member firms. There are approximately 1,000 firms that are members of the Center. All of the Center's member firms are U.S. domiciled accounting firms. The AICPA is the largest professional association of certified public accountants in the United States, with more than 340,000 members in business, industry, public practice, government and education.

Due to the subject matter of the Proposed Rules, the Center has received significant input from the Professional Ethics Executive Committee and the Tax Executive Committee of the AICPA. Accordingly, this letter is being issued jointly by the three AICPA committees.

The Center recognizes the enormous effort made by the PCAOB's members and staff to implement the provisions of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act" or the "Act"). As part of that effort, the Board has proposed rules to promote the ethics and independence of registered public accounting firms that audit and review financial statements of U.S. public companies. The Center is committed to working with the PCAOB to develop fair and effective ethics and independence rules. To that end, we appreciate the opportunity to comment on the Proposed Rules.

The Center is supportive of the Board's efforts to strengthen the profession's ethics and independence rules as they relate to financial statement audits of public companies. Throughout its history the AICPA has been deeply committed to auditor independence. It is a core tenet of the accounting profession, which has a more than 100-year history of working to uphold auditor independence.

\* \* \* \* \*

Overall, we support the majority of the Board’s Proposed Rules and believe the Board has taken a reasonable approach in addressing and differentiating between the types of tax services and transactions that pose an unacceptable threat to the auditor’s independence from those that do not. We also applaud the Board for recognizing that there are many types of tax services that the firm could perform for an audit client that do not impair the firm’s independence. By virtue of the independent accountant’s involvement in understanding the financial activities of an audit client, as well as his/her expertise in understanding the tax accounting and financial accounting guidance, CPAs have been the logical professionals on whom audit clients rely for tax reporting to governmental authorities as well as for advice on the tax effects of alternative business decisions. Audit quality, and the quality of the resulting financial statements, are enhanced when auditors have access to the deeper understanding of a client’s financial transactions that can be gained from providing certain tax services.

However, we have identified a number of issues that we believe require further consideration or clarification by the Board. Accordingly, we offer the following comments, observations and recommendations regarding the Proposed Rules.

Proposed Rule 3502: Responsibility not to cause violations

The AICPA supports the PCAOB’s efforts to enforce legal requirements and professional standards that apply to individual accountants and believes that the PCAOB can – and should – hold accountable individual accountants who have violated their professional obligations. Indeed, the PCAOB has already adopted rules that make clear that various Board requirements apply directly to “associated persons” of registered public accounting firms, and the AICPA believes that the PCAOB should continue to adopt such rules in the future, as warranted in particular circumstances. As discussed below, however, Proposed Rule 3502 would establish a new basis for the PCAOB to impose “secondary liability” on individual accountants for “causing” violations of the Act, the rules of the Board, certain provisions of the federal securities laws, or professional standards. It is unclear what Rule 3502 is specifically intended to achieve or whether the Board has authority to adopt a rule that would establish a new basis for imposing “secondary liability” on individual accountants for “contributing” to a firm’s violation.

*The Board’s Authority to Impose Secondary Liability on “Associated Persons”*

The Sarbanes-Oxley Act clearly empowers the PCAOB to investigate and bring disciplinary actions against registered public accounting firms and their associated persons for violations of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports, or professional standards. This authority is embodied in numerous provisions of the Act, including Sections 101(c)(4), 105(a), 105(b)(1) and 105(c)(4). Accordingly, the PCAOB has adopted a series of rules clarifying that associated persons of registered public accounting firms are required to comply with applicable professional standards. In particular:

- Board Rule 3100 provides that associated persons of a registered public accounting firm “shall comply with all applicable auditing and related professional practice standards;”
- The Board’s current interim auditing, attestation, quality control, ethics and independence standards (Rules 3200T, 3300T, 3400T, 3500T and 3600T) all require compliance with such standards by associated persons of a registered public accounting firm; and
- Board Rule 1001(a)(xii) defines the term “auditor,” for purposes of the PCAOB’s rules generally, to include associated persons as well as the registered public accounting firms with which they are associated.

The AICPA supports the PCAOB’s adoption of these rules, as well as the Board’s obligation under the Act to impose appropriate sanctions on associated persons of registered public accounting firms who have violated applicable standards. In light of the PCAOB’s current authority, however, it is unclear what additional purpose would be served by adopting an additional rule that would create a new general standard of secondary liability for individual accountants who have in some manner “caused” or “contributed” to a firm’s violation of the Act, the Board’s rules or various provisions of the federal securities laws.

Moreover, the AICPA respectfully submits that the Act does not permit the PCAOB to expand the scope of an associated person’s liability through such a general rule. In this regard, the concept of secondary liability is not discussed in, or apparently contemplated by, the Act. The determination of congressional intent with respect to the scope of liability created by a particular statute rests primarily on the language of that statute.<sup>1</sup> In *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, the Supreme Court held that there was no private right of action for “aiding and abetting” primary violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder, because the text of the Exchange Act could not be read to reach persons who aid and abet Section 10(b) violations.<sup>2</sup> Moreover, recognizing that the Court’s rationale would apply equally to aiding and abetting actions brought by the SEC itself, the SEC thereafter requested and received express authority from Congress to bring charges against those who aid and abet other persons’ violations of the Exchange Act.<sup>3</sup>

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<sup>1</sup> See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 175 (1994) (citing *Pinter v. Dahl*, 486 U.S. 622, 653 (1988)).

<sup>2</sup> *Id.* at 177.

<sup>3</sup> See *id.* at 200 (“The majority leaves little doubt that the Exchange Act does not even permit the SEC to pursue aiders and abettors in civil enforcement actions under § 10(b) and Rule 10b-5.”) (Stevens, J., dissenting); Testimony of Arthur Levitt, Chairman, United States Securities and Exchange Commission Concerning Litigation Reform Proposals Before the Subcommittee on Telecommunications and Finance, Committee on Commerce, United States House of Representatives (February 10, 1995), available at <http://www.sec.gov/news/testimony/testarchive/1995/spch025.txt>. See also Section 20(e) of the Exchange Act.

Proposed Rule 3502 is modeled not on the concept of “aiding and abetting” liability, but instead on another theory of secondary liability expressly provided for under Section 21C of the Exchange Act. Section 21C permits the SEC to institute cease-and-desist proceedings against any person who violates the Exchange Act and any other person who is a “cause” of the violation “due to an act or omission the person knew or should have known would contribute to such violation...” Thus, the SEC’s authority to bring a proceeding against a person for “causing” another person’s violation of a statutory or regulatory requirement is expressly authorized by statute. In addition, the language of Section 21C suggests that the SEC may only bring an action against a person for “causing” another person’s violation if the SEC has made a specific finding that a primary violation has occurred and entered an order requiring the primary violator to cease and desist from future violations.

In comparison, no provision of the Act authorizes the imposition of secondary liability on associated persons of registered public accounting firms generally, nor does any provision specifically contemplate the imposition of liability on such persons for contributing to violations by firms. In addition, it is unclear from the language of the PCAOB’s proposed rule whether the Board would make a finding of a primary violation before alleging that an associated person contributed to such violation. Instead, the Board’s Proposing Release asserts that the proposed rule merely codifies an existing ethical obligation of associated persons and that the proposed rule is “inherent in, and necessary to, the Board’s authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons.”

In support of this assertion, however, the Proposing Release cites only the Board’s general authority to conduct disciplinary proceedings and impose appropriate sanctions on registered public accounting firms and their associated persons. The Release offers no other support for the imposition of secondary liability upon associated persons, and no evidence of any intent by Congress to expand the scope of liability under the Act to include secondary liability. Accordingly, Proposed Rule 3502 appears to be an overly expansive application of the PCAOB’s rulemaking authority.

The Proposing Release also suggests that Rule 3502 is “essential to the proper functioning of the Board’s independence rules.” However, there are other, more targeted means available to the Board that would make clear that associated persons of a registered public accounting firm are expected to comply with the Board’s independence standards, without raising the concerns posed by Rule 3502. For example, the Board could provide that its independence rules apply to “auditors,” which Rule 1001(a)(xii) defines to include both registered public accounting firms *and* their associated persons. This approach would be consistent with the SEC’s independence rules, which apply to “accountants” (a term defined in Rule 2-01(f)(1) of Regulation S-X to include both registered public accounting firms and individual accountants).

#### *Requisite State of Mind under the Proposed Rule*

The Proposing Release also solicits comments as to whether, in a situation where a firm was found to have committed a violation that required that the firm knowingly or recklessly engage in the misconduct, it would be appropriate to find a violation under Proposed Rule 3502 by an associated person who negligently contributed to the primary violation.

We believe that, even if the PCAOB is not prepared to revise its proposed rules as suggested above, it would be unfair to discipline an associated person for negligently contributing to a “scienter-based” violation by a firm. If the underlying violation required a finding that the firm had engaged in knowing or reckless misconduct, members of the public almost certainly would assume that the PCAOB believed that the individual had acted with a similar mental state. Indeed, it is difficult to see how the individual’s conduct fairly could be characterized as a “cause” of the firm’s violation unless there was such a similar mental state.

Accordingly, the AICPA believes that the state of mind required to find that a primary violation occurred should apply to any finding that an associated person was the cause of such violation. This is consistent with several proceedings that discuss the standards applicable to SEC actions under Section 21C alleging that a person “caused” another party’s violations of the federal securities laws.<sup>4</sup>

### Proposed Rule 3522 – Tax Transactions

#### *Proposed Rule 3522(a) – Listed Transactions*

Numerous layers of statutory, regulatory, and ethical safeguards already apply to the provision of tax services by CPAs. For example, sections of the Internal Revenue Code impose penalties and other sanctions for failure to meet specific standards for tax compliance, advisory and representation services. Practice before the IRS is regulated by Circular 230, a statutorily authorized set of Treasury regulations, violation of which can lead to sanctions including disbarment from representing taxpayers before the IRS. In addition, the AICPA has promulgated its enforceable ethical tax practice standards, the Statements on Standards for Tax Services, which are enforced under Rule 201, *General Standards*, and Rule 202, *Compliance with Standards* of the AICPA Code of Professional Conduct. Violating these rules of tax practice can subject CPAs to ethics investigations and possible sanctions by the AICPA and state CPA societies and potential license revocation by state boards of accountancy.

Notwithstanding these safeguards, we believe it is entirely appropriate to promulgate prohibitions with regard to those services that “pose special challenges” with regard to independence. The AICPA also believes that “listed transactions” are within a class of transactions that have the potential to impair an auditor’s independence. However, we believe, that to provide more certainty to the application of the rules, a number of issues require additional elaboration.

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<sup>4</sup> See, e.g., *In the Matter of Robert W. Armstrong, III*, Administrative Proceeding File No. 3-9793 (Apr. 6, 2004) (“It is assumed that scienter is required to establish secondary liability for causing a primary violation that requires scienter.”); *In the Matter of KPMG Peat Marwick*, Exchange Act Release No. 43862 (Jan. 19, 2001) (“We hold today that negligence is sufficient to establish ‘causing’ liability under Exchange Act Section 21C(a), at least in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter”).

- (1) The phrase “if the auditor participates in them [certain classes of transactions] in any capacity other than as auditor” needs clarification. Presumably, the “special challenge” with regard to a listed transaction relates to situations where the auditor has also recommended the transaction to an audit client, or where the auditor positively opines on such a transaction and the transaction is implemented. There are a number of situations where the auditor may be considered to have “participated” but “the mutuality of interest between the firm and client” would not exist. For example, (a) the firm recommends a transaction and before the engagement is finalized, the transaction becomes listed and the firm withdraws its recommendation of the transaction; (b) the firm recommends a transaction and before the engagement is finalized, the firm realizes the transaction may be substantially similar to a listed transaction and the firm withdraws its recommendation of the transaction; and (c) the firm is asked by its audit client to opine on a transaction, the firm identifies the transaction as a listed transaction or believes it is substantially similar to a listed transaction, and recommends that the client not enter the transaction. The regulations should clarify that these situations would not impair independence.
- (2) The phrase “in all material respects” should be added to the term “substantially similar” to avoid inadvertent independence impairment where the auditor recommended a transaction where material *components* of it are substantially similar to material *components* of a transaction that happens to be listed.
- (3) Proposed Rule 3522(a) indicates that the operative timing for per se impairment is “at the time [the listed transaction, including transactions that are substantially similar,] is executed” but requested comment on situations where the transaction becomes listed after execution. The Proposing Release indicates that, “*Proposed Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor’s independence.*” From an ethics perspective, we believe a transgression can only take place where an auditor knows, or should have known, a rule is being violated. From a fairness perspective, we believe the proposed rule may be unworkable unless the timing of per se impairment is fixed at the time the transaction is executed. Retroactively challenging the auditor’s independence during “the audit and professional engagement period,” and certainly beyond that period, would cause irreparable harm to the audit client. Conversely, there have been recent situations where courts have found in the taxpayer’s favor regarding listed transactions challenged by the Internal Revenue Service, or the Service has included and subsequently removed a transaction from its list. Nevertheless, if at the time the transaction was executed, it was a listed transaction, per se impairment is appropriate as both parties were on notice.

The Department of the Treasury recognized the need for certainty in timing when it recently promulgated final regulations (REG-122379-02) revising the regulations governing practice before the Internal Revenue Service (Circular 230). § 10.35 indicates that a practitioner who provides written advice regarding certain transactions (“covered opinions”) must comply with a specific list of requirements relating to the development of the opinion (§ 10.35(c)). The first item described as a “covered opinion” indicates: “A transaction that is the same as or substantially similar to a transaction that, *at the time the advice is rendered* (emphasis

added), the Internal Revenue Service has determined to be a tax avoidance transaction and identified by published guidance as a listed transaction under 26 CFR 1.6011-4(b)(2).”

*Proposed Rule 3522(c) - Aggressive Tax Positions*

Proposed Rule 3522(c) indicates that independence would be impaired if the auditor provided any service related to planning or opining on any transaction (1) not initially recommended by the audit client; (2) the transaction has a significant purpose of tax avoidance; and (3) the proposed treatment of the transaction does not meet the “more likely than not” standard. As described above with regard to listed transactions, we believe that advising the audit client that a transaction recommended by a third party would *not* meet the “more likely than not” standard is in the public interest and should not be considered problematic. In fact, we concur with Ms. Rivshin who indicated at the Board’s December 14, 2004 meeting on the Proposed Rules, that “a mutuality of interest between the firm and client” would not exist under this circumstance and, indeed, such an outcome would serve to enhance independence. Accordingly, we suggest that the Final Release be clarified that it is appropriate for the auditor to act in such a fashion.

We request clarification regarding the scope and meaning of the term “initially recommended.” For example, there are many instances where audit clients have made a decision, or are considering a proposed transaction, to acquire or dispose of assets and ask their auditors, or other tax advisors, for assistance in structuring the acquisition or disposition. For purposes of maintaining independence under Proposed Rule 3522(c), we request clarification that the “transaction” (for purposes of evaluating whether or not it was recommended by the audit firm), is the decision to acquire or dispose of assets, not the identification and evaluation of alternative tax treatments performed by the audit firm.

There are also many smaller transactions within the larger context of the business decision made by the audit client. We believe that the overall transaction should be used to determine whether the “initially recommended” test has been met.

With respect to the “more likely than not” standard, there may be situations where a third-party tax advisor brings a tax transaction to an attest client, and the auditor is asked to review the transaction in order to obtain an objective opinion on the appropriateness of the transaction. As part of the review, the auditor may determine that the transaction does not meet the more likely than not standard, but can offer tax advice to alter the transaction so that it does meet or exceed the more likely than not standard. We believe that if the auditor is not directly or indirectly related to the third party tax advisor, the auditor should be able to consult on the transaction without impairing his or her independence. This type of advice is intended to enhance compliance with the tax laws, which is clearly in the public’s interest. Additionally, the requirement that the auditor has an affirmative duty to ascertain who recommended the transaction is unclear and burdensome. We suggest that the Rule be amended to allow the auditor to be able to rely on representations from their client as to whether or not the transaction was “initially recommended” by a tax advisor, unless the auditor has knowledge that such representation is contradicted by other evidence.

### Proposed Rule 3523 – Tax Services for Senior Officers

The Board’s proposal prohibits the performance of *all* tax services for senior officers (i.e., those in a financial reporting oversight role) of the audit client. From a conceptual level, we cannot support the proposal as drafted because we do not believe that the performance of routine tax return preparation and compliance services or general tax planning and advice for the audit client’s senior officers result in a threat to the auditor’s independence. Tax services to senior officers have been a mainstay of the tax practices of the majority of the Center’s member firms without creating independence problems for many years.

We would, however, support a prohibition with respect to tax services for senior officers involving listed transactions, confidential transactions and aggressive tax positions (as defined in Rule 3522) but believe that tax compliance and routine planning should be permitted. As a further control, we suggest that the services provided to senior officers be disclosed to and require the approval of the audit committee under the procedures of Rule 3524 whether the services are paid for by the officer or by the audit client.

The Proposing Release states that the “*proposed rule would address concerns that performing tax services for certain individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and those individuals.*” Conceptually, we do not see how the performance of certain types of tax services that the Board has proposed to *permit* for the audit client itself (e.g., tax compliance services) would create a mutuality of interests when performed for the client’s senior officers. In fact, under the Board’s discussion of *General Tax Planning and Advice* in the Proposing Release, the Board concluded that (with respect to the audit client) “*...these types of routine services do not appear to create the mutuality of interest that exists with regard to aggressive tax transactions.*” We agree with the Board on this point and further believe that there is no mutuality of interest created when the same types of routine services are provided to the senior officers of the audit client. Furthermore, the Board has concluded that “*in preparing a tax return, the auditor is not acting as an advocate for its client.*” We agree with the Board on this point as well and further believe that the auditor would not be acting in an advocacy role when preparing the tax return of an audit client’s senior officers. We simply don’t see how the same activity creates a mutuality of interest (or advocacy) for the senior officers of a client, when it does not create such a threat for the client itself.

### Proposed Rule 3524 – Audit Committee Pre-approval of Certain Tax Services

Proposed Rule 3524 would require significant audit committee involvement in the pre-approval of permitted tax services and is intended to ensure that the auditor provides the audit committee with sufficient information to make its own informed judgments about the potential effects a tax service may have on the firm’s independence. We believe that the audit committee’s involvement in approving the firm’s tax services is an excellent safeguard to preserve auditor independence and we support greater audit committee participation in the evaluation and approval of permitted tax services as an alternative to greater proscriptions. However, we believe that certain clarification is necessary in order for the audit committee’s involvement to be most effective.

*Rule 3524 (a)(i)*

Proposed Rule 3524 requires that the auditor provide the audit committee a copy of the engagement letter, which would include a description of the scope of the service and the fee structure. In order to comply with this requirement, the Proposing Release states that the backup documentation provided to the audit committee for tax compliance services, such as preparation of federal, state, local and other tax returns, “*must identify clearly each return and provide sufficient information for the audit committee to evaluate the impact of the filing of that return on the auditor's independence. This would require information on each jurisdiction where a return is filed, the type or types of tax (income, property, real estate, etc.) owed in each jurisdiction, how often each return is prepared and filed, and any other appropriate information.*”

For certain audit clients, the volume of information provided to the audit committee could be significant and its evaluation of that information may not be the best use of its resources. Additionally, in many situations it may be impractical or unnecessary for the audit committee to receive overly detailed information on *each* jurisdiction where a return is filed. Furthermore, the auditor may not be able to identify each jurisdiction that requires a filing at the time he or she is engaged to perform the services. We suggest that a more flexible model be established that would allow the auditor to describe the type(s) of tax return(s) or other tax services in sufficient detail to provide the audit committee with a sufficient understanding of the nature of the services that will be performed.

*Rule 3524 (a)(ii)*

Proposed Rule 3524(a)(ii) requires that the firm provide the audit committee “*any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service.*” We are unclear as to the specific requirements of this provisions and request clarification on the specific types of fee arrangements the Board is proposing to cover under this proposal. For example, the AICPA Code prohibits a member from accepting a fee from a third-party for referring or recommending to an audit client any product or service from such third-party (see AICPA Rule 503 – *Commissions and Referral Fees*). We are concerned that as drafted, the Board’s proposal could be interpreted to permit such arrangements provided disclosure is made to the audit committee. Accordingly, we recommend that the Board clarify what types of fee arrangements are specifically being contemplated under this proposal.

*Rule 3524(b) and (c)*

Proposed Rule 3524(b) requires that the auditor discuss the potential effects of permitted tax services on the firm's independence and Proposed Rule 3524(c) requires documentation of the substance of that discussion. While we support enhanced communications with the audit committee and believe that the audit committee is in the best position to evaluate and approve such services, we believe the Board should provide additional guidance regarding the substance of these discussions in order to make them practical and meaningful.

The Proposing Release states that, “...*the Board would expect registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence – such as compliance services that, in effect, made up for the absence of a competent internal tax department and risked placing the firm's personnel in the position of making decisions that should be made by management – and those that would be unlikely to have a detrimental effect – such as compliance services for a competent tax director who is capable of exercising sound judgment in the best interest of the company.*”

We find the aforementioned example to be confusing and are concerned that it may be misinterpreted by auditors and audit committees. Specifically, we do not believe it should be the Board's intent to require all issuers to employ a tax director (or equivalent), or for that matter, an internal tax department. In fact, most small public companies do not have such tax departments or personnel in place. However, there are still individuals at the company who can make an informed judgment on the tax services, make all decisions regarding the tax positions taken, and take responsibility for the work of the accountant. We recommend that the Board eliminate this example, or if the example is included in the Final Release, clarify that it would not be necessary, in all cases, for an issuer to employ a tax director.

#### Effective Date

The Board proposes that the rules become effective on the later of October 20, 2005, or 10 days after the date that the SEC approves the rules. Specifically, the Board will not consider a firm as not independent due to –

- (a) *tax services, in connection with a transaction described in proposed Rule 3522, that were completed by the registered public accounting firm no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later; and*
- (b) *tax services provided to audit client officers described in proposed Rule 3523 that were provided by the registered public accounting firm in connection with original returns filed no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later.*

While the proposed effective date would permit the auditor to perform tax services for senior officers of the audit client in connection with those officers' 2004 federal income tax returns, it does not contemplate the provision of follow-up services that may be necessary in connection with the 2004 tax returns or any other previously filed tax returns, such as assisting with an examination of the subject tax returns. We believe that the Board should permit the auditor to perform such follow-up services for the audit client and its senior officers and therefore, recommend that the effective date allow for the provision of follow-up tax services related to tax services rendered prior to the effective date.

We also recommend that the Board provide for a transition period to allow for the completion of tax services for senior officers in cases when an employee who is not in a financial reporting oversight role is promoted to or hired into such a role. In cases where the firm was in the process of performing tax services for the employee prior to the promotion or hiring, there could be a

significant hardship to the employee if the firm had to immediately discontinue the tax services. Accordingly, we recommend that the firm be permitted to complete the tax services for the employee provided they were commenced prior to the employee's promotion or hiring. Furthermore, if the services are related to the filing of a tax return, we would recommend that such services be completed no later than the extended due date of the return. In addition, this transitional rule date should allow for the provision of follow-up tax services related to permitted tax services.

### Editorial Comments

#### *Audit and Professional Engagement Period*

We support the proposed definition of "audit and professional engagement period" and agree that the professional engagement period should begin when the firm either signs the initial engagement letter or begins the audit, review, or attest procedures (whichever is earlier). However, footnote 45 in the Proposing Release states that the proposed rule "*includes both the period covered by the financial statements under audit or review and the period beginning when a registered public accounting firm signs, or submits to the audit client, an engagement letter...*"

If the Board includes the footnote in the Final Release, we recommend that it delete the words "or submits" since we believe it is the signing of the engagement letter that triggers the professional engagement period, not when the firm *submits* the engagement letter to the audit client. In addition, this deletion would conform the discussion in the Release to the language used in the proposed rule and eliminate any potential confusion.

#### *Financial Reporting Oversight Role / Board of Directors*

The Proposing Release states that, "*...proposed Rule 3523 would apply only to tax services provided to officers in a financial reporting oversight role at an audit client; directors whose only role at an issuer audit client is to serve on the board would not be covered by the rule.*"

However, the definition of financial reporting oversight role specifically includes "a member of the board of directors" and Proposed Rule 3523 states that "*A registered public accounting firm is not independent of its audit client if the firm...provides any tax service to an officer in a financial reporting oversight role at the audit client.*" We recommend that the Board clarify in the rule itself that the auditor is not prohibited from providing tax services to members of the board of directors who are not officers.

We appreciate the opportunity to comment on the Board's Proposed Rules. We are firmly committed to working with the PCAOB and would welcome the opportunity to meet with you to clarify any of our recommendations.

Sincerely,



Steven B. Rafferty  
Vice-Chair, Center for Public Company Audit Firms



Bruce Webb  
Chair, Professional Ethics Executive Committee



Thomas J. Purcell, III  
Chair, Tax Executive Committee

cc: Mr. William J. McDonough, Chairman, PCAOB  
Ms. Kayla J. Gillan, Member, PCAOB  
Mr. Daniel L. Goelzer, Member, PCAOB  
Mr. Willis D. Gradison, Member, PCAOB  
Mr. Charles D. Niemeier, Member, PCAOB



**Air Products and Chemicals, Inc.**  
7201 Hamilton Boulevard  
Allentown, PA 18195-1501  
Telephone (610) 481-7932  
Fax 610-481-7009  
E-mail huckpe@airproducts.com

**Paul E. Huck**  
Vice President and  
Chief Financial Officer

10 February 2005

Office of the Secretary  
PCAOB  
1666 K Street, N.W.  
Washington, DC 20006

Re: PCAOB Rulemaking Docket Matter No. 017

Gentlemen:

We appreciate this opportunity to comment on the PCAOB's "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees." Air Products is a multinational major supplier of chemicals, industrial gases and related equipment, operating in 30 countries with annual sales exceeding \$7.4 billion, assets of \$10 billion, and a worldwide workforce of 19,900 employees.

We support the Board's goals to foster high quality audits and promote investor confidence in the financial statements of public companies and generally support the proposed rules. However, we wish to comment on practical considerations as you requested in the proposal.

#### Contingent Fee Arrangements

The public accounting firms offer a valuable service to companies in specialized, complex tax areas. It is not cost efficient for any company's tax department to have the in-depth knowledge of specific areas such as R&D tax credits to take full advantage of the tax benefits available to them. Public accounting firms can offer this service more efficiently by making it available across a large number of companies. By offering this service on a contingent fee basis, the shareholder benefits by the company not having to expend funds unless and until the accounting firm brings value to the process. In cases with which we are familiar, the final settlement with the accounting firm would not occur until and to the extent that the item is actually accepted by the taxing authority.

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The proposed rule would deem the auditor not independent if, during the engagement period, the accounting firm provided the contingent fee service or received a contingent fee. We agree the auditor should not undertake contingent fee services during the engagement period. On the other hand, we don't believe that the payment of a contingent fee for a past service rendered when the firm was not the auditor of record should taint the independent relationship if the firm ultimately became the registrant's auditor.

Practically speaking, the proposed rule severely hampers a company's ability to change public accounting firms. We would consider only the largest of firms, i.e. the Big Four, to conduct our global audit. These are the same firms who offer the tax services that benefit the registrants. To stay eligible for future audit engagements, none of the firms would offer the contingent fee services. Therefore, the company's inability to avail themselves of specialized tax expertise and the inability to engage new auditors is not in the best interests of the shareholders. We believe the rules could be improved by retaining the proposed prohibition on the current auditors of record from accepting contingent fee work during the engagement period but allowing the receipt of contingent fees for services rendered prior to the appointment of the firm as auditor.

#### Audit Committee Pre-Approval

We believe the requirements for detailed review of tax services by the Audit Committee are burdensome and would not provide value. We operate in 30 countries and use the tax services of our auditor principally for tax compliance. Under our current policies, we will, on very limited occasion, use our auditor for tax planning and general tax advice in some of those countries. These services are pre-approved by our Audit Committee. We believe by presenting the tax services as an overall program with some specificity is sufficient. The process allows the Audit Committee to ask detailed questions about the services if the members believe it is necessary or prudent.

The proposed rules would require Audit Committee members, who have more responsibilities than ever before, to review, in our case, an additional 20 or more engagement letters and have detailed discussions on each engagement for services. The nature of the services are such as are permitted by the Sarbanes Oxley Act and the SEC rules. Requiring the committee to scrutinize each engagement for what is normally a routine compliance matter would not provide any value nor improve the independent relationship perception. We believe that summary reports, with specific details as requested, should continue to be sufficient. The Audit Committee is in the best position to decide the appropriate level of review.

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We agree investor confidence in the integrity of publicly reported financial information is of paramount importance and many of the proposed rules would improve the perception of auditor independence. We do not believe the proposals noted above would improve the perception; in fact, we believe they could be detrimental to the investor/shareholder by limiting the registrant in its ability to engage auditors, take advantage of benefits to which it is entitled, and take valuable time from Audit Committee members for non-value added detailed reviews of tax services.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Huck", written in a cursive style.

Paul E. Huck

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**From:** Marlys de Alba [mdala@mindspring.com]  
**Sent:** Wednesday, January 19, 2005 6:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Marlys de Alba  
704 Holden St  
Raleigh, NC 27604-1951

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**From:** Willis Alderson [willisb@cox-internet.com]  
**Sent:** Wednesday, January 19, 2005 11:20 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Willis Alderson  
40 Acceso Cir  
Hot Springs Village, AR 71909-3713

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**From:** Alyce Allen [alyce\_allen@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 4:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Alyce Allen  
2382 Osprey Ln  
Kelso, WA 98626-5408

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**From:** Bruce Allen [abe54@msn.com]  
**Sent:** Tuesday, January 18, 2005 4:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bruce Allen  
38822 Farwell Dr Apt 23D  
Fremont, CA 94536-7280

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**From:** john Alexander [alexander\_jm@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:39 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. john Alexander  
177 Main St Ste 307  
Fort Lee, NJ 07024-6936

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**From:** Christian Ambrose [hypatia1128@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Christian Ambrose  
2611 Oakley Ave  
Kansas City, MO 64127-4849

*American Accounting Association ♦ Auditing Section  
Auditing Standards Committee*

February 10, 2005

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

Via email to [comments@pcaobus.org](mailto:comments@pcaobus.org)

**RE: Invitation to Comment on PCAOB Rulemaking Docket Matter No. 017**

Dear Board Members:

The Auditing Standards Committee of the Auditing Section of the American Accounting Association welcomes the opportunity to comment on *Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*. We offer the comments below to enhance the clarity of the proposed standard and to address a few more substantive questions. We find the proposed rules and discussion to be very well constructed and firmly grounded in existing tax rules and SEC requirements.

The views expressed in this letter are those of the Auditing Standards Committee members and do not reflect an official position of the American Accounting Association. In addition, the comments reflect the overall consensus view of the Committee, not necessarily the views of every individual member.

**1. Rule 3522 and related discussion of general tax planning and advice.**

We acknowledge the discussion and support for the proposed rule regarding allowable tax planning subject to specific approval of the audit committee, yet offer several observations suggesting that auditors' provision of general tax planning services should be prohibited.

First, the goal of tax planning services is to facilitate management decision-making to reduce taxes. As a result, the audit firm is acting in a consulting role and working with management toward a common decision-making objective – structuring business transactions in a manner that is advantageous from a tax perspective. In our opinion, the very nature of this service results in the audit firm and the client having a shared interest of reducing future taxes. This role for the audit firm appears to us to be quite different than an attest role or a compliance role.

Second, from a public perception standpoint, we question whether investors view the auditor as truly independent when the auditor provides significant tax planning services to the client. In such a case, the perception may be that the auditor and client are “too close” due to their working together to reduce taxes.

Third, we wonder exactly where the line is drawn between tax planning services that are appropriate versus those that are inappropriate. For example, how would one assess whether management truly “makes all decisions relating to, and takes responsibility for, . . . the tax work . . .”? A trusted tax advisor involved in tax planning work could reasonably be expected to have a significant impact on the decisions of management. As a result, it is unclear how close the audit firm can get to driving management’s decisions without impairing its own independence. As a public policy matter, we wonder about the impact on the market if some audit firms cross this “fuzzy” line and must resign from audits due to independence violations.

We believe the proposed rule provides an improvement from the current environment and should be approved, with the recommendation that the Board remain sensitive to the independence risks posed by allowing tax planning for audit clients. In the best of circumstances the professional judgment of the audit committee can be relied upon to monitor the first and third issues raised above. Unfortunately, the public perception of independence is not within the control of audit committees or management. In the final analysis, there are many available providers of tax planning services, and in today’s environment, the risks of allowing auditors to provide tax planning services may outweigh the advantages.

## **2. Rule 3522 and clarification of opining on tax treatment.**

The Board should clearly define when opining on a tax transaction is separate from the audit process. Clearly, an auditor has to opine on transactions as part of the audit process. If a client asks whether their accounting for a tax transaction is appropriate, is that opining? If the client asks about proposed accounting for a proposed tax transaction (whether or not the auditor subsequently determines the transaction is restricted under Rule 3522) is the auditor’s independence impaired by virtue of having provided that opinion? This issue was raised during the Board’s December 14, 2004 meeting to approve release of these proposed changes, and we agree that clarification would be beneficial.

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February 10, 2005  
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**3. Rule 3523 and related discussion of provision of tax services for senior officers.**

We believe that auditor independence is impaired if the audit firm provides personal tax services to any person in a financial reporting oversight role. The restriction should not be limited to officers in financial reporting oversight roles as proposed. All employees in a financial reporting oversight role are in critical positions, and the auditor should be independent of these parties.

Finally, while the role of audit committees and the approval required for the provision of tax services by the auditor is present in the proposed rules, we note the lack of discussion of audit firms' quality control procedures regarding tax services and the related threats to independence. We encourage the Board to consider quality control procedures in the future to provide guidance on the appropriate level of review and safeguards within audit firms related to threats to independence.

We hope that our suggestions are helpful and will assist in finalizing the auditing standard. Please feel free to contact our committee Chair for elaboration on or clarification of any comment.

Respectfully Submitted,

Auditing Standards Committee  
Auditing Section, American Accounting Association

*Committee Members:*

Roger D. Martin, University of Virginia (Chair)  
434-982-2182, [rdm3h@virginia.edu](mailto:rdm3h@virginia.edu)  
Robert Allen, University of Utah (Vice Chair)  
Dana R. Hermanson, Kennesaw State University (Past Chair)  
Thomas M. Kozloski, Wilfrid Laurier University  
Evelyn Patterson, University at Buffalo  
Robert J. Ramsay, University of Kentucky  
Stuart Turley, University of Manchester

Section of Taxation

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740 15th Street N.W.  
Washington, DC 20005-1022  
(202) 662-8670  
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February 10, 2005

**Via E-Mail: Comments@pcaobus.org**

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

**Attention:** William J. McDonough  
Chairman, PCAOB

**Re: PCAOB Release No. 2004-015; PCAOB Rulemaking Docket Matter No. 017  
Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees**

Ladies and Gentlemen:

I am enclosing comments on PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees," dated December 14, 2004. The views expressed in these comments represent the position of the Section of Taxation of the American Bar Association, as approved by a majority vote of its Council, and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association or of any American Bar Association entity other than the Section of Taxation. The Section of Taxation is the principal organization of tax lawyers in the United States, with more than 18,000 members nationwide.

These comments are limited to certain technical aspects of Proposed Rule 3522 - Tax Transactions. Proposed Rule 3522 includes several cross references to specific regulations promulgated under provisions of the Internal Revenue Code directed to tax shelter transactions, and incorporates in several significant instances standards utilized in the tax shelter regulations. The Tax Section has particular expertise concerning this area of the law. It has spoken out regularly and consistently about the dangers to the tax system inherent in abusive corporate tax shelter transactions. In addition, the Tax Section has worked with Congress, the Treasury Department and the Internal Revenue Service as they have responded to these transactions through legislation, regulations and revisions of professional standards.

We appreciate the opportunity to submit these comments, and are available to meet with the Board or its Staff to respond to any questions. Please contact the undersigned at (214) 969-4850 (dbdrapkin@jonesday.com), or Stuart J. Offer at (415) 268-7052 (soffer@mofo.com), if that might be helpful.

Respectfully submitted,



Dennis B. Drapkin  
Chair-Elect, Section of Taxation

cc: Robert J. Grey, Jr.  
R. William Ide, III  
Bruce M. Stargatt  
Kenneth W. Gideon  
Christine A. Brunswick

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Washington, DC  
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Lincoln, NE  
*DIRECTOR*  
Christine A. Brunswick  
Washington, DC



February 14, 2005

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

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

Dear Sir/Madam:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the Public Company Accounting Oversight Board's ("PCAOB's") proposal to establish rules relating to the independence of registered public accounting firms. The proposal would build on the auditor independence rules adopted by the Securities and Exchange Commission ("SEC") in 2003.

The Sarbanes-Oxley Act of 2002, which created the PCAOB, gave the PCAOB the authority to oversee and regulate the public company auditing profession. It also established independence requirements for public accounting firms, which were implemented by the SEC's 2003 rulemaking. That rulemaking limited the types of non-audit services that public auditors could provide to audit clients. After reviewing public comments on a proposed rule, the SEC did not include in the final rule specific prohibitions on the ability of an auditor to provide tax services to an audit client. However, the SEC said that certain proposed tax services should receive increased scrutiny by a company's audit committee before the services are approved.

The PCAOB proposal would specifically prohibit a public accounting firm registered with the PCAOB from providing certain types of tax services to audit clients. The specific services would include providing planning, or opining on the tax treatment of, a transaction that is a listed or confidential transaction under the Internal Revenue Code. These are transactions that the Internal Revenue Service has identified as likely to violate tax law. The accounting firms also would not be permitted to provide tax services for a transaction initially recommended by the firm or another tax advisor if a significant purpose of the transaction is tax avoidance, unless the tax treatment is at least more likely than not to be allowable under tax law. Finally, the proposal

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<sup>1</sup> America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

Proposed Ethics and Independence Rules  
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Page 2

would prohibit a registered public accounting firm from providing services for a contingent fee or commission and from providing any tax services to an officer who is in a financial reporting oversight role at the audit client.

The proposal would continue to allow a registered public accounting firm to provide routine tax return preparation, tax compliance, and general tax planning and advice provided such services are consistent with the SEC's independence requirements. The rule would require the auditing firm to provide specific information to the audit committee with regard to the proposed tax services before the audit committee approves the services. The rule also would allow the firm to provide tax services to employees of the audit client other than those officers performing in a financial reporting oversight role.

### **ACB Position**

ACB is pleased that the PCAOB proposal would allow auditing firms to continue to provide basic tax preparation and advisory services to their audit clients. It is a more efficient and less burdensome approach than requiring companies to retain a second firm to provide these services. This is especially true for the smaller companies who already are working to comply with stringent internal control standards and have seen significant increases in auditing costs. The PCAOB's reasoned approach in letting the external auditor continue to provide certain tax services will help prevent further burden without jeopardizing the public's interest in accurate and complete financial statement reporting.

As the PCAOB explains in its release, there is little indication that the provision of these services impairs the auditing firms' ability to provide an independent audit of financial statements. Adding further assurance that independence will be preserved, the PCAOB and the SEC both require that these non-audit services first get approved by the audit committee. The committee must receive specific information about the services and weigh all of the facts and circumstances before determining that the services will not impact the auditor's independence and can be approved.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at [cbahin@acbankers.org](mailto:cbahin@acbankers.org), or Diane Koonjy at (202) 857-3144 or via e-mail at [dkoonjy@acbankers.org](mailto:dkoonjy@acbankers.org).

Sincerely,



Charlotte M. Bahin  
Senior Vice President, Regulatory Affairs

---

**From:** Pratik Amin [pratikamin@hotmail.com]  
**Sent:** Monday, January 24, 2005 1:14 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 24, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Pratik Amin  
295 Turnpike Rd Apt 520  
Westborough, MA 01581-2820

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**From:** Eric Anderson [eric@2live4.com]  
**Sent:** Tuesday, January 18, 2005 1:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Eric Anderson  
1382 Hastings Ln  
Gardnerville, NV 89410-5878

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**From:** Jose Aquino [additionhills28@yahoo.com]  
**Sent:** Thursday, January 20, 2005 11:09 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jose Aquino  
6747 183rd St  
Flushing, NY 11365-3507

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**From:** Joseph Armstrnog [jjarmstrong@olg.com]  
**Sent:** Tuesday, January 18, 2005 7:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joseph Armstrnog  
43081 Coles Dr  
Hollywood, MD 20636-2483

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**From:** Richard Arrindell [arrindell@tstt.net.tt]  
**Sent:** Tuesday, January 18, 2005 3:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Arrindell  
415 Molino St  
Los Angeles, CA 90013-2223

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**From:** Leo Arsenault [parsenau@msn.com]  
**Sent:** Wednesday, January 19, 2005 9:10 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Leo Arsenault  
55 William St  
Portland, ME 04103-4843

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**From:** Eric Ashby [leashby@quickscrip.com]  
**Sent:** Wednesday, January 19, 2005 7:21 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I worked for Arthur Anderson as an auditor for a short while in the 70's and could see the conflicts of interest even then. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Eric Ashby  
6440 Harrison Pike  
Chattanooga, TN 37416-1413

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**From:** Brian Askins [bleba891012@juno.com]  
**Sent:** Tuesday, January 18, 2005 9:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brian Askins  
15 Sterling Pl  
Millville, NJ 08332-4681



By Electronic Mail and Federal Express

February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

Re: PCAOB Rulemaking Docket Matter No. 017

Ladies and Gentlemen,

We are pleased to have this opportunity to submit this written comment to the Public Company Accounting Oversight Board regarding PCAOB Rulemaking Docket Matter No. 017. Our comment is directed to Proposed Rule 3523, which would prevent a registered public accounting firm from providing routine tax services to any officer in a financial reporting oversight role at a public audit client. We support the other rules as proposed.

We believe that Proposed Rule 3523 is not warranted by the evidentiary record. Any potential concerns about an audit firm's independence arising from the fact that it may also provide routine tax return preparation, compliance and advisory services to officers of the SEC registrant would be adequately addressed by requiring audit committee pre-approval of such services and by extending the prohibitions against providing certain aggressive tax services contained within Proposed Rule 3522 to the officers and directors of the SEC registrant.

Firm Background

Arthur F. Bell, Jr. & Associates, L.L.C. (the "Firm") is a small public accounting firm approved by the PCAOB to conduct audits of SEC registrants. We are located in Hunt Valley, Maryland. The Firm was founded in 1974 by Arthur F. Bell, Jr., who is the Managing Member of the Firm. In addition to Mr. Bell, the Firm has four other Members, eight Associates and approximately 55 professional and support staff. We provide tax, audit, accounting and consulting services to a diverse number of for-profit entities, investment funds, charities, not-for-profit foundations, and individuals. The Firm has not offered and will not offer tax shelters or other "aggressive" tax avoidance strategies to any clients and has not accepted or charged and will not accept or charge contingent fees for any services.

In addition to general tax and accounting services, we have developed a specialty in providing tax, audit, accounting and consulting services for the managed futures industry. In that connection, the principals of the Firm serve on numerous government and industry committees such as the Commodity Futures Trading Commission Global Markets Advisory Committee, the National Futures Association Special Committees, the AICPA Investment Companies Expert Panel, the AIMR Leverage and Derivatives Sub Committee and the Pension Research Accounting Group in London, England. Mr. Bell also has been an active executive member of the Managed Funds Association since 1994.

### Lack of Adequate Justification for Proposed Rule 3523

We find it peculiar that the proposed rules as drafted would allow registered accounting firms to provide routine tax return preparation, compliance and advisory services to audit clients that are SEC registrants without impairing independence, but would automatically prevent such accounting firms from providing such routine tax services to individual officers in financial reporting oversight roles with those SEC registrants. There does not appear to be any adequate justification for this distinction.

In Release 2004-015, the PCAOB explained that it has published Proposed Rule 3523 based on “concerns that performing tax services for individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and those individuals.”<sup>1</sup> The PCAOB also noted that “audit firms have been criticized for providing tax services, including tax shelter products, to senior executives of their public company audit clients.”<sup>2</sup> Any concern about an audit firm providing tax shelter or other aggressive tax strategies to audit client executives can be adequately addressed by applying the restrictions in Proposed Rule 3522(a), (b) and (c), which the Firm fully supports, to such officers and directors. However, we do not believe that the blanket prohibition set forth in Proposed Rule 3523 on providing individual tax services is justified by any generalized concerns about the appearance of a mutual interest between the auditor and the individuals for whom it is providing tax services in the absence of involvement with aggressive tax avoidance schemes.

The provision of routine tax services to the officers of an audit client is not prohibited under the Sarbanes-Oxley Act or the SEC’s existing regulations. The SEC staff concluded in 2003 that audit committee review of the provision of such services alone would be sufficient to ensure that the auditor’s ability to exercise objective and impartial judgment had been maintained.<sup>3</sup> The PCAOB in Release 2004-015 concluded that a “per se prohibition” on providing routine tax services to audit clients “appears to be unnecessary and inappropriate” and noted that such services remain subject to the general auditor independence standard and its requirement that all non-audit services be pre-approved by the audit client’s audit committee.<sup>4</sup>

We believe that the same protections would suffice (in lieu of a per se prohibition) where audit firms provide routine tax return preparation, compliance and advisory services to officers in a financial reporting oversight role with an audit client. This conclusion is particularly mandated when any theoretical justification for the proposed prohibition is weighed against the lack of any evidence of any abuses in the past relating to such routine tax services and the harmful consequences that such a prohibition will have on small issuers and the specialized accounting firms that service them.

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<sup>1</sup> PCAOB Release 2004-015 at p. 35.

<sup>2</sup> PCAOB Release 2004-015 at p. 8.

<sup>3</sup> Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U. S. Securities and Exchange Commission (June 24, 2003), at 5.

<sup>4</sup> PCAOB Release 2004-015 at p. 15.

### One Size Doesn't Fit All -- Proposed Rule 3523 Needlessly Disadvantages Small Issuers and Their Investors

In evaluating the need for Proposed Rule 3523, the PCAOB should consider the particular difficulties faced by small public issuers in obtaining competent auditing and accounting services and the likely negative impact of Proposed Rule 3523 on these issuers. The larger accounting firms have recently made it clear that they are focusing their audit practices on larger Fortune 500 companies and dropping smaller clients.<sup>5</sup> For any size accounting firm, it takes specialized expertise and economies of scale to build a competent, qualified and successful audit practice for smaller public clients. Consequently, the pool of such accounting firms for any particular type of small issuer, especially in niche industries, may be relatively small. Adopting an absolute prohibition on providing audit and routine tax services to certain officers and directors will require these firms to cease providing either tax compliance for the officers and directors or audit services to their public clients. For these reasons, we firmly believe Proposed Rule 3523 will harm rather than benefit investors in small public issuers by further reducing the qualified pool of accounting firms that are willing and able to serve their audit needs.

### Further Evaluation of Impacts Required

If the PCAOB believes at this time that audit committee pre-approval would not provide adequate protection against any potential independence concerns arising from the provision of such individual tax services by audit firms, we urge the PCAOB to conduct further studies on the likely impact of Proposed Rule 3523 on smaller public issuers and the smaller accounting firms that serve them before finalizing any rules on this subject. Due to the likely hardships that will be imposed on smaller issuers by a mandated change, we urge the Board to withhold such a prohibition pending the results of further PCAOB evaluation. In this regard, the PCAOB's evaluation of this issue would likely benefit from the information that it will learn from inspections of smaller registered accounting firms, and from the results of the SEC's February 8, 2005 announced study of Section 404 impacts on small issuers. For the reasons stated above, we believe enactment of Proposed Rule 3523 will have a disproportionately negative impact on smaller accounting firms and their public company clients without any corresponding benefit to investors.

### Proposed Revision to Rule 3523

In light of the concerns expressed above, if the Board determines to adopt a rule along the lines of Proposed Rule 3523, we offer for the PCAOB's review and consideration the following alternative language for Proposed Rule 3523:

“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, (i) provides any tax service to an officer in a financial reporting oversight role at the audit client without obtaining pre-approval to provide such services from the audit committee of the audit client, or (ii) provides any tax services prohibited under [Rule 3522] to an officer or director of such audit client. These requirements apply regardless of whether the issuer audit client, the individual officer or director, or another person or entity pays for such tax services.”

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<sup>5</sup> See Lynnley Browning, Sorry, The Auditor Said, But We Want A Divorce, N.Y. Times, Feb. 6, 2005, Sunday Business at 5.

Page 4

We believe this alternative proposal will adequately address the concerns that led the PCAOB to develop Proposed Rule 3523 (as initially drafted) without unduly harming the small public issuers that often rely on specialized accounting firms to provide audit and tax advice. This approach allows the audit committee to make an informed decision about whether the audit firm's independence might be impaired by providing such routine tax services to affiliated individuals.

Conclusion

We appreciate the PCAOB's consideration of our comments. We would welcome the opportunity to discuss our concerns about Proposed Rule 3523 with the Board or members of the staff in order to develop rules that take all relevant considerations into account and are consistent with the public's best interest. If you have any questions about the foregoing comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Arthur F. Bell, Jr.".

Arthur F. Bell, Jr. & Associates, L.L.C.

cc: Alan J. Berkeley  
Charles R. Mills  
Edward J. Fishman  
Kirkpatrick & Lockhart Nicholson Graham LLP

---

**From:** Karen Austin [austink@animail.net]  
**Sent:** Wednesday, January 19, 2005 11:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Karen Austin  
19607 Stillhouse Dr  
Tomball, TX 77375-7771

---

**From:** Elena Avallone [lilly777777@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elena Avallone  
PO Box 7952  
Delray Beach, FL 33482-7952

---

**From:** Zaven S. Ayanian [zsayanian@juno.com]  
**Sent:** Tuesday, January 18, 2005 5:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Zaven S. Ayanian  
20 Sunset Ave  
Matawan, NJ 07747-3334

---

**From:** Bruce Babcock [thurber51@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 11:45 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Bruce Babcock  
1620 Thurber Pl  
Glendale, CA 91201-1255

---

**From:** Phyllis Bagheri [phyllis.bagheri@pbsg.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Phyllis Bagheri  
11621 Fernald Ave  
Dallas, TX 75218-1519

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**From:** John Bailes [jebailes@rcn.com]  
**Sent:** Tuesday, January 18, 2005 2:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Bailes  
76 Columbus Ave  
Somerville, MA 02143-2040

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**From:** James Baldocchi [baldooch@msn.com]  
**Sent:** Thursday, January 20, 2005 10:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Baldocchi  
337 S Rose St  
Palatine, IL 60067-6853

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**From:** gerald ball [buzzball@webtv.net]  
**Sent:** Tuesday, January 18, 2005 8:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. gerald ball  
7416 Worthington Ter  
Port Charlotte, FL 33981-6634

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**From:** Dave & Tami Ballard [royalflight@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dave & Tami Ballard  
2607 Camp Phillips Rd  
Wausau, WI 54403-9267

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**From:** Wanda S. Ballentine [wsb2001@adelphia.net]  
**Sent:** Tuesday, January 18, 2005 4:06 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Wanda S. Ballentine  
1195 Sylvania Rd  
Cleveland Hts, OH 44121-2523

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**From:** Dale Barber [golfer363@comcast.net]  
**Sent:** Wednesday, January 19, 2005 2:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dale Barber  
33079 Garfield Rd  
Fraser, MI 48026-1859

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**From:** William Barber [williebarb@comcast.net]  
**Sent:** Tuesday, January 18, 2005 7:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Barber  
11351 Durland Ave NE  
Seattle, WA 98125-5931

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**From:** Edmund bARON [norab835@aol.com]  
**Sent:** Friday, January 21, 2005 8:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edmund bARON  
94 Bagatelle Rd  
Melville, NY 11747-4103

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**From:** John Barrera [jfbarrera@aol.com]  
**Sent:** Tuesday, January 18, 2005 10:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. No need to include the standard language. All I know is that had you enforced existing standards of conduct we might still have the Anderson Accounting firm around. We might not have lost Enron and all those retirement funds. We must be very strict regards the "sleeping" of accountants with their clients by use of these tax shelters that they sell. All accounting firms must be strictly held accountable for their actions. Please enforce this proposal and all other laws and regs on the books. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Barrera  
5384 Davis Cup Ct  
El Paso, TX 79932-3014

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**From:** james barry [wolfmanbarry@aol.com]  
**Sent:** Tuesday, January 18, 2005 7:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. james barry  
1716 Winding Dr  
North Wales, PA 19454-3627

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**From:** uwe bartsch [raffaella.bartsch@att.net]  
**Sent:** Wednesday, January 19, 2005 8:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

uwe bartsch  
67lelandave.  
plainfield, NJ 07062

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**From:** Martin Baskin [mbaskin320@aol.com]  
**Sent:** Monday, February 14, 2005 10:24 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 14, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Martin Baskin  
2121 Jamieson Ave Unit 1201  
Alexandria, VA 22314-5713

---

**From:** CATHY BATAILLE [c.bataille@att.net]  
**Sent:** Tuesday, January 18, 2005 3:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. We have seen enough examples of executive abuse of financial matters. It is time to put a halt to any more. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. CATHY BATAILLE  
68 Prince Charles Dr  
Toms River, NJ 08757-6569

---

**From:** Ruth Anne Baumgartner [ruthanneb@mindspring.com]  
**Sent:** Wednesday, January 19, 2005 10:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Ruth Anne Baumgartner  
159 Fairview Ave  
Fairfield, CT 06824-5216

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**From:** Kevin Bayhouse [secretary@idahogreenparty.org]  
**Sent:** Tuesday, January 18, 2005 3:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Kevin Bayhouse  
706 Opal St  
Boise, ID 83705-1767



**BDO Seidman, LLP**  
Accountants and Consultants

330 Madison Avenue  
New York, NY 10017  
Telephone: (212) 885-8000  
Fax: (212) 697-1299

February 10, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006

**Re: PCAOB Rulemaking Docket Matter No. 017  
Proposed Ethics and Independence Rules Concerning Independence,  
Tax Services, and Contingent Fees**

Dear Mr. Secretary:

BDO Seidman, LLP respectfully submits our comments on the Board's Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees ("the Proposal" or "Release").

**Summary of Our Views**

The financial reporting scandals of recent years have demonstrated that behavior by some participants in all sectors of the financial markets can be driven by a form over substance mentality, where painstaking rationalization of what is permissible can take priority over the essence of what is right. While most market participants will act responsibly regardless of the rules, there is a clear *perception* that certain services may be more susceptible to undesirable influences. In that environment, the goal of reliable financial statements can only be achieved with an unfettered trust in auditor independence. Clearly such trust is based on a financial statement user's belief that the auditor's behavior is not influenced by factors that impair his or her objectivity or that *reasonably could be perceived* as doing so.

Accordingly, we strongly support the broad objectives of the Proposal that would classify services related to listed transactions, confidential transactions, and aggressive tax positions as impairing auditor independence. While a listed transaction is not necessarily indicative of whether the tax treatment is correct, there is a general perception in the marketplace that such transactions create an aura of a substantial risk of disallowance. In our view, such perceptions must be recognized. However, we believe there are certain elements of the Proposal relating to tax services for issuers that require additional clarity to limit their current broad sweep in order to avoid unintended and undesirable consequences.

We also support the portions of the Proposal that would continue to permit auditors to provide other tax services to issuers provided they are pre-approved by the audit committee. We agree with the Board that these other "non-controversial" services have not raised independence concerns in the past. In that regard, we agree with the Proposal's continued permissibility of international assignment tax services and tax services to most employees.



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Accountants and Consultants

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In contrast, we do not agree that all tax services for executives in a financial oversight role should impair independence *per se*. It would seem logical to apply the same restrictions to these individuals as to issuers. Accordingly, routine tax return preparation and tax planning should continue to be permitted for these individuals, subject to audit committee pre-approval.

In evaluating the effect of certain services on independence, we support the use, as *general guidelines*, of the four overarching principles of the SEC referred to in footnote 6 of the Proposal. However, we would caution against a literal application of these principles because, taken to an extreme, this could prohibit even some audit-related services, as illustrated in a subsequent section of our letter.

We also support the prohibition on contingent fees since it would substantially conform with the recent SEC staff interpretation and add clarity to a troublesome area. In addition, we agree with the portion of the Proposal relating to the fundamental independence requirement.

Finally, we generally agree with the proposed additional information required to be provided to the audit committee, although some minor elements of the proposed rule might be impractical. In that connection, we suggest that the Board place significant emphasis in the final Release on the important role played by the audit committee in evaluating independence. A strong audit committee that is knowledgeable of all relevant facts and circumstances is in the best position and should be allowed sufficient flexibility to act on behalf of investors in making the tough calls on independence matters. While certain tax services are appropriately deemed to impair independence *per se* (e.g., listed transactions), the perception caused by other services may not be so clear.

Our more specific comments on the proposed rules and various other recommendations are set forth below.

### **Application of the Four Overarching Principles**

In applying its independence rules, the SEC looks in the first instance to four factors or overarching principles:

1. The auditor cannot function as management or employee.
2. The auditor cannot audit his or her own work.
3. The services cannot create a mutual or conflicting interest with the client.
4. The auditor cannot be an advocate for the client.



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Accountants and Consultants

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At the July 14, 2004 Auditor Independence Tax Services Roundtable leading to the Proposal, there appeared to be virtual unanimity that these principles should apply to tax services. However, there was a range of views as to how to apply the principles to different situations—from a literal reading to practical guidelines dependent on the nature of the services.

As stated in Section 602.01 of the SEC Codification of Financial Reporting Policies:

“These factors are general guidance and their application may depend on particular facts and circumstances. Nonetheless, we believe that these four factors provide an appropriate framework for analyzing auditor independence issues. We had proposed to include these four factors in the general standard of Rule 2-01(b). While some commenters agreed with including the four principles in the rule, others did not. Some commenters believed that the principles were too general and difficult to apply to particular situations. Others suggested that the principles should more appropriately be used as ‘guide posts’ and included in a preamble instead of in the rule text.

While the principles were derived from current independence requirements, because of these concerns, we are including them in the Preliminary Note. In the context of this Preliminary Note, the four factors play a role comparable to that of the Ethical Considerations in the American Bar Association's Model Code of Professional Responsibility. The Model Code contains three separate but interrelated parts. Ethical Considerations ‘represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.’ Like those Ethical Considerations, the four principles constitute a body of principles to which accountants and audit committees can look for guidance when an independence issue is raised that is not explicitly addressed by the final rule.

The Preliminary Note states that ‘these factors are general guidance only and their application may depend on particular facts and circumstances.’ The Preliminary Note also reflects the notion that the influences on auditors may vary with the circumstances and, as a result, Rule 2-01 provides that the Commission will consider all relevant facts and circumstances in determining whether an accountant is independent.”

In our view, the above quoted section makes it clear that the four principles should be used as ideals or goals, rather than definitive criteria for evaluating independence. As applied to tax services, this approach is not inconsistent with the Senate Report preceding the Sarbanes-Oxley Act of 2002 (“the Act”). The report states that Congress intended “to draw a clear line around a limited list of non-audit services.” The list of prohibited services in the Act does not include



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Accountants and Consultants

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tax services, which are expressly permitted under Section 201 of the Act. The report goes on to explain how the “simple principles” apply. Nowhere in this explanation does it state that these principles lead to a prohibition on providing tax services. However, as mentioned earlier in our letter, the intense public focus on implementation of overly aggressive tax strategies in the last few years has contributed to the diminution of the public’s perception of auditor independence. Therefore, these types of services need to be evaluated based on the four principles, and they clearly fail at least three of these criteria: mutuality of interests, auditing one’s own work, and advocacy. When it comes to other tax services, however, the line is not quite so clear, as exemplified by the following analysis:

- *Functioning as Management* – When an audit firm suggests a tax saving idea to a client (not involving one of the services proscribed by the Proposal), it is providing professional advice, similar to when it suggests improvements in internal controls or other cost savings ideas. It is not acting as management. Even when the tax planning ideas are complex, management is responsible for obtaining sufficient understanding of the issues to enable it to decide its course of action. Under a recent revision to AICPA standards (Rule 101-3), management must acknowledge this responsibility in the terms of engagement with the auditor.
- *Auditing One’s Own Work* – While this principle might seem non-controversial, its literal application could create problems, particularly for auditors of smaller issuers. Such companies frequently do not have sophisticated in-house expertise and must turn to others (often their auditors) for advice on routine but essential issues, such as new accounting pronouncements and the accounting and systems characteristics of potential acquisitions. In addition, auditors of smaller companies are more likely to propose adjusting journal entries. If the client records such entries, is the auditor deemed to be auditing his or her own work? As another example, while routine tax return preparation and compliance work would clearly be permitted by the Proposal and have not raised independence issues for the reasons cited in the Release, completion of the annual tax returns and related tax compliance work after release of the audited financial statements may produce results that require subsequent period adjustments to the tax accruals reflected in those financial statements. These types of services have been an integral part of the relationship between auditors and their clients for many decades and are simply not perceived as auditing one’s own work. Based on this analysis, this principle should be applied with sensitivity so that it does not cause auditors to refrain from providing these services, to the detriment of issuers and their stockholders.
- *Creating a Mutual or Conflicting Interest with the Client* – The clearest examples of situations that could create a mutual or conflicting interest with the client are contained in Section 602.02e of the SEC Codification of Financial Reporting Policies. This section refers to direct and material indirect business relationships other than as a consumer in the



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normal course of business. Among the examples of such relationships are “sales by the accountant of *items other than professional services*” (emphasis added). If professional services were not excluded, a literal application of this principle could construe an audit in accordance with PCAOB standards to impair independence since both the auditor and the client have a mutual interest—reliable financial statements. By rightfully excluding professional services from this prohibition, the SEC clearly views this not to be an issue with respect to this principle. We recognize, however, that professional services provided under contingent fee arrangements would create a mutuality of interest, but it is the fee arrangement that causes the problem, not the nature of the services.

- *Serving as an Advocate* – The advocacy principle is reflected in the SEC’s independence rules in the prohibition on providing expert opinions or being a legal representative of the client. It does not preclude the auditor from providing factual accounts of work performed or explaining the positions taken or conclusions reached during the performance of any service. Therefore, the SEC recognizes that the general prohibition on advocacy should not be taken literally so as to prohibit an audit firm from explaining how it concluded that the client’s accounting for a transaction is in conformity with GAAP or with applicable tax laws and regulations (e.g., participating in a conference call with the SEC staff to discuss the client’s accounting issues, or providing assistance in connection with tax audits).

### **Role of the Audit Committee**

The Act and the resulting SEC rulemaking recognized the significant benefit that an effective audit committee can bring to the financial reporting process by vesting the audit committee with additional responsibilities, enhancing auditor communications, and providing more detailed disclosures relating to services performed. In doing so, however, certain non-audit services were prohibited *per se* and, as such, were not left to the judgment of the audit committee.

We agree with the PCAOB that the types of “aggressive tax positions” discussed in the Proposal can have an adverse effect on the perception of auditor independence and, thus, should be prohibited *per se*. However, we believe that other tax services, including those for executives with financial oversight responsibility, do not create the same level of concern and should be left to the audit committee for evaluation and approval. There are many important issues that are subject to the judgment of the audit committee, such as the appropriateness of the company’s accounting and disclosures. It would be entirely consistent with this role to permit the audit committee to pre-approve all tax services, except for those prohibited by Rule 3522. To do otherwise could prevent the audit committee from approving services it legitimately believes are in the best interests of the company and its investors.



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Accountants and Consultants

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As an additional safeguard, the PCAOB inspectors could speak directly with audit committee chairs to discuss how they evaluated the effect on independence of any tax services performed by the auditors.

## **Services to Issuers**

### ***Aggressive Tax Matters – (Rule 3522)***

As we stated earlier, we strongly support the broad objectives of the Proposal that would classify services related to listed transactions, confidential transactions, and aggressive tax positions as impairing independence. While a confidential transaction, for example, is not necessarily indicative of an unacceptable risk of disallowance, the public's general perception is that there is such a risk and, therefore, it must be dealt with as such.

Our specific comments on this aspect of the Proposal are as follows:

#### 1. Listed Transactions

In determining where to draw the line as to unacceptable tax services to issuers, we believe the Board has taken a reasonable approach by focusing on specific areas of major concern (e.g., listed transactions). In our view, these transactions may involve the mutuality of interest principle. While this bright line approach is useful in providing clear guidance to auditors and issuers, there is an aspect of the "listing" definition that can lead to practical implementation issues. In that regard, determining whether a transaction is "the same as or substantially similar to" is extraordinarily vague and difficult to ascertain. The transactions described in an IRS Notice are typically broadly described and have many elements or facts. There is minimal guidance as to how many features must be shared by two transactions in order for them to be substantially similar, or how to weigh the importance of various facts that are presented in the notice. This vagueness has been noted by many tax commentators, and the IRS has tried to be more precise in its pronouncements, but substantial vagueness still exists. However, there seems to be no "good faith" exception to the loss of independence. Thus, if an audit firm and the client separately and in good faith reach the conclusion (perhaps even supported by the advice of special outside advisors) that some transaction is *not* substantially similar to a listed transaction, and if the IRS later determines that it *was* substantially similar, the audit firm would have apparently violated this rule, impairing its independence.

In order to provide relief in appropriate cases, we suggest that the rules provide that independence would not be impaired by the past provision of services if the original determination by the auditor was made in good faith. In that regard, "good faith" could be evaluated based on planning or opining on a transaction that was not inconsistent with or



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in violation of Circular 230 (as recently revised by the Treasury Department) and any anti-shelter provisions of the American Jobs Creation Act of 2004.

The Board has requested comments on the possible impairment of independence if the auditor advised on a transaction that becomes listed after it is executed. While, theoretically, we believe that this may create the same independence concern in the year of the listing as it would had the transaction been listed at the time of its execution, from a practical perspective, we do not believe that it should impair independence *per se*. Instead, the audit committee of the issuer should evaluate the situation, including the reason why the transaction was listed, and implement appropriate safeguards. One such safeguard could be obtaining an independent third party opinion on the issuer's tax treatment in order to evaluate the appropriateness of the related financial reporting and disclosure. Moreover, if a transaction is subsequently listed, it may have been an aggressive tax position, which should be covered by Rule 3522(c), rather than in this section of the rule.

2. Confidential Transactions

We agree that confidential transactions should be treated as *per se* impairments of independence. Even if the underlying transactions were not potentially abusive, the mere fact that there is a disclosure limitation is likely to create a negative impression concerning the objectivity of the auditor.

3. Aggressive Tax Positions

We agree with the thrust of the proposed rule with respect to services relating to planning or opining on a transaction that is based on an "aggressive tax position" for the reasons cited in the Release. While the proposed rule comprises a 3-pronged test, we assume that the first two prongs, for all practical purposes, will virtually always be met, leaving the last prong (i.e., the "more likely than not" criterion) as the only judgmental area that we believe should contain a "good faith" component. Our analysis is as follows:

- The first prong places the onus on the auditor to determine that the transaction was not initially recommended by the audit firm or another tax advisor, notwithstanding a representation from the client that it initiated the transaction. An issuer can learn of transactions from a variety of sources, including seminars; presentations by outside firms; magazines, newspapers, and other media; its own staff of experts; and unsolicited advice. Given the practical difficulties in ascertaining the sources of ideas that were not initiated by the audit firm itself, even through exercise of "reasonable, good faith diligence by the auditor," it is likely that most auditors will (to be conservative) assume that the idea was recommended by another tax advisor.



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Accountants and Consultants

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- The second prong (the significant purpose test) is also extremely broad and easily satisfied. The Proposal states that the types of transactions covered include those to accelerate deductions into earlier years or defer income to later years. Since many tax planning techniques do just that, this broad standard will also likely cause the auditor to assume the second prong is satisfied in virtually all of those situations.
- The final prong (“more likely than not” test) would require the audit firm to form its own conclusion, without sole reliance on a third party opinion. We agree that “more likely than not” is the right line to be drawn in determining potentially prohibited services and that an audit firm should not recommend or opine on transactions where it believes there is a 50% or less chance that the tax treatments will be upheld. However, determining that the “more likely than not” criterion is met is extremely judgmental and, as such, brings with it the potential for second-guessing initial judgments made in good faith. For example, if the IRS asserted a penalty based on *its* belief that the “more likely than not” test was not met or a court ultimately upheld such an assertion, would the auditor’s independence for the year of the services automatically be impaired even if the audit firm could demonstrate *its own* reasonable, good faith determination that it was more likely than not that the tax effect of the transaction in question would be upheld?

Through its knowledge of the clients’ businesses and its knowledge of the tax laws, an audit firm is generally in a unique position to suggest tax planning ideas to clients. However, unless a good faith safe harbor is incorporated in the proposed rule, the potential for the PCAOB or SEC to have a different view in the event that the ultimate tax treatment is not upheld may discourage audit firms from bringing tax planning ideas to their clients’ attention unless they are virtually certain to be upheld, an obviously much higher threshold than “more likely than not.” We would suggest that the good faith safe harbor require, among other things, that an independent third party opinion be obtained in support of the tax treatment.

The background behind proposed Rule 3522 clearly appears to apply to situations where the auditor is an integral part of the planning or opining on a tax transaction. However, it is not clear from the language of the proposed rule whether “services, other than auditing services, related to the planning or opining...” includes situations where the client asks the audit firm’s tax department to review a transaction brought to it by an outside tax advisor with respect to which the audit firm concludes that the recommended tax treatment will not likely be upheld and advises the client not to enter into the transaction. It would seem that, in this case, the audit firm has performed a valuable service for both the client and the public and should not be prohibited from performing such services. While these services would literally seem to fit the phrase “opining on a transaction,” it does not seem that they are of the type addressed by the



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rationale for this provision. Accordingly, we recommend that the Board clarify in the final rule that such services are permitted.

### ***International Assignment Tax Services***

The Release states that where an accounting firm provides international assignment tax services (“IATS”) for an audit client, these are permissible services as long as they are limited to “routine tax preparation services” and do not include “bookkeeping services” or “(holding or transferring) funds for the company or its employees.” IATS can comprise not only the preparation of foreign and domestic country tax returns for the assignee, but typically can also involve additional services such as calculation of “hypothetical” taxes that are then withheld by the company from an assignee, and calculation of advances to be made to an employee or to a foreign payroll provider to fund foreign taxes (where these are a contractual liability of the company, e.g., where the employee is “tax equalized” or “tax protected”). We believe that this typical range of IATS does not create an appearance that independence is impaired, because they are tax driven mechanical computations related solely to compliance work. However, in view of the arguably close similarity of some elements of IATS to prohibited payroll services, we believe the final rule should provide further clarification in this regard.

### ***Other Tax Services***

We are extremely supportive of the Board’s efforts to draw a bright line around specific services to issuers that would be deemed to impair independence and to permit other tax services, such as those described on pages 14-16 of the Release, subject to audit committee pre-approval. We agree that these permitted services have not caused independence concerns and are clearly not one of the catalysts for eroding ethics that have caused so much concern in the financial marketplace.

As mentioned in the Release, the SEC made it clear in its adopting release accompanying its 2003 independence rules “that it did not consider conventional tax compliance and planning to be a threat to auditor independence.” In addition to the general perception that these services do not impair independence, one should also consider the environment and constraints under which such services are performed.

Traditional tax planning and compliance services are ultimately subject to the rigor of review and enforcement by the taxing authorities and are required to be performed under regulations and professional ethics rules that drive professional behavior. This is similar in some respects to an audit of financial statements in a filing that is subject to SEC review.

The Treasury Department and IRS have recently issued final regulations amending Treasury Department Circular 230, which applies to tax professionals practicing before the IRS. These



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amendments reflect current best practices for written tax advice that are intended to ensure that tax professionals provide adequate advice and to disclose whether the advice is incomplete. In that regard, for written advice in areas of greater potential concerns, the amendments prohibit rendering advice that relies on incorrect factual assumptions or representations, does not consider all relevant facts, or fails to analyze important legal issues. IRS Commissioner Mark W. Everson has stated that “[t]hese new provisions give us more tools to battle abusive tax avoidance transactions and to rein in practitioners who disregard their ethical obligations.” Circular 230 also describes penalties prescribed by federal and state laws.

In addition to the Treasury Department/IRS regulations, the AICPA has developed its own enforceable standards governing members’ responsibilities to taxpayers, the public, the government, and the accounting profession. These standards are contained in Statements on Standards for Tax Services (“SSTS”) and related Interpretations. The courts, the IRS, and professional organizations have recognized and relied on the predecessor standards (Statements on Responsibilities in Tax Practice) that are largely embodied in the SSTS as the appropriate articulations of professional conduct in a CPA’s tax practice. Most of the standards to date deal with tax planning and tax return positions. Paragraph 6 of SSTS No. 1, which provides ethical standards, states as follows: “In addition to a duty to the taxpayer, a member has a duty to the tax system.” In that regard, for example, Interpretation 1-2 of SSTS No. 1 requires an AICPA member to do all of the following when issuing an opinion on the results of tax planning:

- Establish the relevant background facts
- Consider the reasonableness of the assumptions and representations
- Apply the pertinent authorities to the relevant facts
- Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction
- Arrive at a conclusion supported by the authorities

In addition to these regulatory and professional constraints, there are other factors that should be considered in understanding the environment in which these “other” tax services are provided:

- Tax has become an increasingly complex area, particularly for multi-national companies. Because of the significant interplay between tax law and financial accounting standards, it is essential for an auditor to be able to draw upon the resources within his or her firm to be able to gain a thorough understanding of the tax and financial statement consequences of a myriad of transactions. In that regard, not only is the audit more efficient (and less costly)



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if the source of the tax knowledge is within the audit firm, but it is likely to be more effective as well. In that regard, a study produced by William Kinney and others at the University of Texas and University of Kansas demonstrated that there was an inverse relationship between the number of financial statement restatements and the amount of tax service fees paid to the auditors, providing evidence that audit quality can be enhanced when the auditor provides tax services to the client.

- All permitted tax services to be provided by the audit firm require pre-approval by the audit committee. However, tax services performed by others do not require such pre-approval. Not only does audit committee oversight provide a significant control over independence concerns relating to tax services, but the absence of such mandatory oversight with respect to services performed by other parties increases the potential for troublesome tax positions to be taken by issuers.

We believe the discussion of permitted services contained in the Release is generally sufficiently comprehensive. However, we suggest that to clarify what is intended to be covered in that discussion, the Board include the following services, which, if performed in accordance with professional ethics standards, are examples of those that should be acceptable under the proposed rules:

- Representing a client in an examination by the IRS or other tax authority (excluding representation in tax court)
- Transfer pricing services (specifically permitted by SEC Release No. 33-8183)
- Cost segregation services (specifically permitted by SEC Release No. 33-8183)
- Representing a client seeking to obtain relief for an overlooked tax election
- Preparing or submitting a ruling request to the IRS or other tax authority in connection with providing advice on the tax structure of a proposed business combination
- Assistance in applying for tax incentives

#### **Audit Committee Pre-approval of Certain Tax Services (Rule 3524)**

We agree with the communications proposed in Rule 3524 that provide more transparency to implications of the tax advisory process and greater substance to allow audit committees to evaluate the effect of tax services on independence. In addition to the proposed elements of the rule, we recommend that the communications to the audit committee include a discussion of the quality of the tax positions taken by the company—both those suggested by the audit firm and



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those suggested by others or originating from within the company's tax department. This would be similar to the required communication regarding the quality of accounting principles used by the company. This discussion would help the audit committee to evaluate the risks related to the company's tax positions and their implications for the financial statements and related disclosures.

The proposed rule indicates that "compliance services that, in effect, made up for the absence of a competent tax department" could be detrimental to the firm's independence because of the risk of "placing the firm's personnel in the position of making decisions that should be made by management." This view seems biased against a smaller issuer situation, where tax departments are normally not required because of the size and nature of the business. Accordingly, in our view, the guidance provided in this quoted section may unduly pressure audit committees of smaller issuers not to engage auditors for tax compliance services, to the detriment of the issuer and its shareholders. Moreover, this guidance does not recognize the recent revision to AICPA Ethics Rule 101-3 under which, as previously mentioned, management must acknowledge its responsibility for obtaining a sufficient understanding of the issues involving non-attest services to enable it to decide its course of action. This responsibility would be relatively easy to fulfill with respect to tax compliance services.

There is one element of the proposed rule that we believe requires excessive detail and hence may become impractical to implement on a timely basis. In describing the extent of documentation that should be sufficient to provide the audit committee information about preparation of tax returns, the Release refers to an example that indicates that the information provided to the audit committee should include each jurisdiction where a return is filed, the types of tax owed to each, and how often each return is prepared and filed. For a multi-national issuer doing business in many jurisdictions, the composition of its worldwide locations (and consequent tax jurisdictions) may be subject to frequent change, apparently necessitating frequent (and often minor) updates to the information to be communicated. This would create logistical issues around the need to gather the information on a timely basis. Moreover, this degree of specificity goes beyond the provisions of the Act. It seems to us that more flexibility could be built into this example such that it would be acceptable for the communication to simply indicate that tax returns are to be prepared for subsidiaries, without listing the specific jurisdictions or the types of tax returns. These are, after all, true compliance services and this type of disclosure should provide the audit committee a sufficient basis on which to pre-approve the services.

### **Services for Senior Officers in a Financial Reporting Oversight Role (Rule 3523)**

The basis for proposed Rule 3523 apparently is that these services create "an appearance of a mutual interest between the auditor and those individuals." We do not agree with this rationale. As previously discussed in this letter, the mutuality of interest principle is exemplified in



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Section 602.02e of the SEC Codification of Financial Reporting Policies, which refers to direct and material indirect business relationships and specifically excludes professional services. Therefore, the underpinning of this proposed rule does not seem to be related to the principle on which it is based. As we previously discussed, performance of tax services is covered by specific governmental and professional rules, which constrain the tax persons from acting in an unprofessional manner.

It also seems to us that a complete prohibition of tax services to these senior officers is over-reacting to the highly publicized abuses relating to personal tax shelters. As such, we believe it is appropriate to place the same constraints on personal tax services as the Board is proposing for issuer-related services (i.e., listed and confidential transactions and aggressive tax positions). This would result in consistent application of the rules in all cases and would permit the audit committee to exercise its judgment in evaluating the impact of the services on independence. If such judgments are appropriate in the corporate arena, they should similarly apply to personal tax services. In that regard, we recommend that proposed Rule 3524 require audit committee pre-approval of “permitted” tax services to be performed for such executives, regardless of who pays for the services.

If the Board decides to adopt Rule 3523 as proposed, it would seem logical to include members of the client’s audit committee among those affected by the rule because they have significant responsibility for oversight of the financial reporting process. In addition, if the proposed rule is adopted, we suggest that it apply only to individuals who were already functioning in their positions prior to the time that tax planning/preparation services commence for the ensuing tax year. Otherwise, newly appointed or hired persons would be required to change tax advisors at an inconvenient time. This one-time provision for what are routine services should not have an appreciable effect on the appearance of independence.

### **The Fundamental Independence Requirement (Rule 3520)**

We agree with the proposed fundamental ethical obligation for a firm to be independent of its audit client throughout the audit and professional engagement period. We also agree that it is appropriate to make it clear that the auditor’s independence obligation is governed by the rules of both the PCAOB and the SEC.

### **Contingent Fees (Rule 3521)**

A contingent fee is a prime example of a mutuality of interest that can impair independence. Therefore, we agree with the proposed rule prohibiting contingent fees since it would substantially conform to the existing SEC rule, as recently interpreted by the SEC Chief Accountant, and would apply to affiliates of the firm and indirect contingent fees through intermediaries.



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Accountants and Consultants

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**Responsibility Not to Cause Violations (Proposed Rule 3502)**

We have no comments on this aspect of the Proposal, at least until we can see how the Board intends to proceed with this enforcement policy.

**Effective Date**

We generally agree with the proposed effective date provisions, since they reflect practical consideration of the timing relating to the filing of personal tax returns and the need to complete other transactions or modify or resolve contingent fee arrangements. However, we recommend that the rules permit the auditor to continue to represent officers in a financial reporting oversight role in connection with IRS examinations of their tax returns prepared by the auditor prior to the effective date. To require officers to retain a new tax advisor in these circumstances could adversely affect them and should not have an appreciable effect on the appearance of independence.

\* \* \* \*

We appreciate your consideration of our comments and suggestions, and would be pleased to communicate or meet with the PCAOB and its staff to clarify any of them.

Please direct any questions to Wayne Kolins, National Director of Assurance at 212-885-8595 or [wkolins@bdo.com](mailto:wkolins@bdo.com).

Very truly yours,

A handwritten signature in cursive script that reads "BDO Seidman, LLP". The signature is written in dark ink and is positioned above the typed name of the firm.

BDO Seidman, LLP

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**From:** Edwin Beale [edwin.beale@usa.net]  
**Sent:** Wednesday, January 19, 2005 5:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edwin Beale  
24719 Coshocton Rd  
Howard, OH 43028-9335

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**From:** Richard Beerkircher [rbeerk2759@aol.com]  
**Sent:** Tuesday, January 18, 2005 11:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Beerkircher  
23402 Berry Rd  
Elsah, IL 62028-3008

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**From:** Jonathan Beiler [jbeiler@aol.com]  
**Sent:** Saturday, January 22, 2005 1:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jonathan Beiler  
148 Hawthorne Ave  
Haddonfield, NJ 08033-1402

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**From:** Janet Beller [jbeller@nyc.rr.com]  
**Sent:** Tuesday, January 18, 2005 2:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Janet Beller  
228 W 72nd St  
New York, NY 10023-2831

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**From:** Regina Bengé [regina.benge@eku.edu]  
**Sent:** Tuesday, January 18, 2005 4:20 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Regina Bengé  
PO Box 395  
Brodhead, KY 40409-0395

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**From:** John W. Bennett [jwb-bmb@ntin.net]  
**Sent:** Tuesday, January 18, 2005 8:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John W. Bennett  
403 Rosedale Dr  
Gainesville, TX 76240-4504

**Dennis R. Beresford**  
**Ernst & Young Executive Professor of Accounting**  
**J. M. Tull School of Accounting**  
**The University of Georgia**  
**Athens, Georgia 30602-6252**

December 20, 2004

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

Rulemaking Docket Matter No. 017

Dear Board Members:

I am pleased to provide these comments on PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees." I believe the proposal represents an appropriate balance between permission (with audit committee approval) for accounting firms to provide specified tax services while prohibiting those services that could create an actual or perceived independence problem. Thus, I support the issuance of a final rule in substantially the form proposed.

By way of background, I presently serve as Chairman of the Audit Committee for three large public companies: Kimberly-Clark Corporation, Legg Mason, Inc., and MCI, Inc. The views in this letter, however, are solely mine and should not be attributed to those companies.

I believe that audit committee members take very seriously their responsibility to pre-approve any non-audit services to be performed by the accounting firm engaged to perform the annual audit of a company's financial statements and internal controls. There are good business reasons to use a company's auditors to perform certain other services based on their knowledge of the company and other factors. At the same time, audit

committee members recognize that the independence of external auditors must be carefully protected. Some audit committees apparently will permit no non-audit services to be performed by the company's auditors in an excess of caution. And most audit committees probably will err on the side of non permission in any "close calls." But audit committees should be allowed to exercise professional judgment and approve non-audit services to be performed where there are business reasons to do so and the services in question would not undermine auditor independence.

I do have a couple of minor comments for your consideration as you debate a final rule on this matter.

Proposed Rule 3524(a)(i) calls for the accounting firm to provide certain information to the audit committee including "the engagement letter relating to the service." For a large, multi-national company, there may be dozens of separate projects requiring audit committee review and approval. If engagement letters must be submitted to the audit committee for each of these projects, the committee members would be faced with reading literally hundreds of pages of mostly boilerplate legal matters. You might respond that it isn't necessary for the committee members to read every page of every engagement letter but in these days of great scrutiny of corporate governance activities, I think it would be a bad policy to require submission to the audit committee of materials that they aren't expected to read.

I am not suggesting that engagement letters are unnecessary. It is a good practice for accounting firms and their clients to have a written understanding of any special project. And there will probably be cases where the audit committee will want to see the engagement letter, particularly if the project is for a large dollar amount or if the project is very unusual. However, I recommend that your final rule should require only that the accounting firm be required to submit a summary of each project. This should include a good description of the service involved, an explanation of why the services are compatible with independence rules, and the related fees.

Page 17 provides an explanation of the Board's reasoning with respect to the proposed rule on aggressive tax shelters. In the third paragraph on that page the explanation states that a firm would not be independent if it "planned, opined on, or marketed certain tax transactions to audit clients." Those words might be read literally to cause a firm to lose its independence for all

clients if it planned, opined on, or marketed certain tax transactions to any of its clients. Proposed Rule 3522 seems to make clear that the Board did not intend such a broad interpretation. Rather, I read the words of the proposed rule to say that independence concerns arise only if the inappropriate tax transaction is planned, opined on, or marketed to the individual audit client in question. Assuming that my interpretation is correct, I suggest that you review the words in the explanation section of the final rule to be sure that they can't be read to conflict with the actual rule.

Please let me know if you have any questions about my comments in this letter.

Sincerely,

Dennis R. Beresford

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**From:** andrea berg [loulou5302@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. andrea berg  
5302 Marburn Ave  
Los Angeles, CA 90043-2134

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**From:** John J. Berger [john555b@cs.com]  
**Sent:** Tuesday, January 18, 2005 9:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John J. Berger  
7610 Roeper Rd  
Parma, OH 44134-6110

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**From:** Jeff Berka [jmihstb@comcast.net]  
**Sent:** Tuesday, January 18, 2005 6:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jeff Berka  
530 Melrose Ave E Apt 703  
Seattle, WA 98102-4756

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**From:** Jill Berman [jberm@verizon.net]  
**Sent:** Wednesday, January 19, 2005 4:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Jill Berman  
144 W 86th St  
New York, NY 10024-4028

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**From:** Nancy Berman [nancyknitwitch@aol.com]  
**Sent:** Wednesday, January 19, 2005 4:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nancy Berman  
2140 Shattuck Ave  
# 2374  
Berkeley, CA 94704-1210

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**From:** John Bernard [johndbernard@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 7:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. John Bernard  
56 Mildred St  
South Portland, ME 04106-2727

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**From:** Robert S. Berry [pennacle2002@yahoo.com]  
**Sent:** Thursday, January 20, 2005 1:04 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Robert S. Berry  
3139 W Holcombe Blvd  
Houston, TX 77025-1505

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**From:** Steve Berry [berrys@us.ibm.com]  
**Sent:** Wednesday, January 19, 2005 9:26 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Steve Berry  
103 Eagle Lake Dr  
West Monroe, LA 71291-8753

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**From:** KEN BIASCO [biasco@flash.net]  
**Sent:** Wednesday, January 19, 2005 9:45 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

KEN BIASCO  
417 Canyon Ridge Dr  
Richardson, TX 75080-1806

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**From:** robert biehl [rbiehl@optonline.net]  
**Sent:** Tuesday, January 18, 2005 2:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. robert biehl  
94 Princeton St  
Williston Park, NY 11596-1327

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**From:** Kenneth Biggs [la1940@sbcglobal.net]  
**Sent:** Tuesday, January 18, 2005 6:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kenneth Biggs  
1460 Kooser Rd  
San Jose, CA 95118-3428

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**From:** John Binkley [jtinkle@yahoo.com]  
**Sent:** Sunday, January 23, 2005 11:15 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Binkley  
34 Tisdale Dr  
Dover, MA 02030-1600

---

**From:** Roger Bintz [rogerbintz@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 11:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Roger Bintz  
2800 S Le Capitaine Cir  
Green Bay, WI 54302-5110

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**From:** margo birkenhead [ladymargot@optonline.net]  
**Sent:** Thursday, January 20, 2005 10:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. margo birkenhead  
6 Pagnotta Drive  
6 Pagnotta Dr  
Prt Jeff Sta, NY 11776-4453

---

**From:** John Bisson [jhbisson@hotmail.com]  
**Sent:** Saturday, January 22, 2005 12:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Bisson  
5817 Saint Johns Ave  
Edina, MN 55424-1821

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**From:** Robert Bisson [robert.f@berk.com]  
**Sent:** Tuesday, January 18, 2005 3:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Bisson  
735 County Route 25  
Stuyvesant, NY 12173-3211

---

**From:** E Bittel [eve29@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 10:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. E Bittel  
PO Box 5572  
Santa Fe, NM 87502-5572

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**From:** Chuck Blethen [blethen@roadnews.com]  
**Sent:** Tuesday, January 18, 2005 2:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Chuck Blethen  
10239 N 125th St  
Scottsdale, AZ 85259-5220

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**From:** garrett blood [garretteb@juno.com]  
**Sent:** Tuesday, January 18, 2005 6:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. garrett blood  
1671 Calathea Rd  
Hemet, CA 92545-9000

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**From:** William Bodden [bbodden@bendcable.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Bodden  
3261 SW Yew Ave  
Redmond, OR 97756-9492

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**From:** randall boland [rbolando@bresnan.net]  
**Sent:** Tuesday, January 18, 2005 7:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

randall boland  
304 8th St N  
Great Falls, MT 59401-1518

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**From:** Richard Bond [rbond007@comcast.net]  
**Sent:** Tuesday, January 18, 2005 8:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Richard Bond  
20 Ridings Way  
Chadds Ford, PA 19317-9164

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**From:** Tom Bono [viper33@tri-countynet.net]  
**Sent:** Tuesday, January 18, 2005 4:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tom Bono  
4961 Kelly Rd  
Bath, NC 27808-9098

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**From:** Joan Bossart [joan\_bossart@chiron.com]  
**Sent:** Tuesday, January 18, 2005 2:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Joan Bossart  
36 Emery Bay Dr  
Emeryville, CA 94608-2932

---

**From:** Jack Boyd [jackboyd@att.net]  
**Sent:** Wednesday, January 19, 2005 7:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jack Boyd  
50634 N 33rd Ave  
New River, AZ 85087-8120

---

**From:** Patrick Boyle [pat.boyle@bovislendlease.com]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Patrick Boyle  
27 Forest Ave  
Medford, NJ 08055-3447

---

**From:** Elizabeth Bradley [wooters7@yahoo.com]  
**Sent:** Friday, January 21, 2005 8:52 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elizabeth Bradley  
10007 SW 222nd St  
Miami, FL 33190-1564

---

**From:** Natasha & Noah Brenner [brenners@optonline.net]  
**Sent:** Tuesday, January 18, 2005 5:20 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Natasha & Noah Brenner  
19 Warren Ln  
Jericho, NY 11753-1452

---

**From:** Lisa Briggs [li\_brig@hotmail.com]  
**Sent:** Sunday, January 23, 2005 1:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Lisa Briggs  
5625 Shorewood Ln  
Excelsior, MN 55331-9542

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**From:** Diane Britton [dianebritton@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 6:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Diane Britton  
8634 10th Ave SW  
Seattle, WA 98106-2524

---

**From:** Carol Bronder [swansonteam@hotmail.com]  
**Sent:** Friday, January 21, 2005 11:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. What happened to this government's promise of "accountability"? I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Carol Bronder  
444 Lexington Pkwy S  
Saint Paul, MN 55105-2965

---

**From:** Michael Bronson [mikecbronson@aol.com]  
**Sent:** Wednesday, January 19, 2005 9:59 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Michael Bronson  
7310 5th Ave N  
St Petersburg, FL 33710-7520

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**From:** Benita Bowen [benita@parkercorporation.com]  
**Sent:** Tuesday, January 18, 2005 5:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Benita Bowen  
1212 Woburn St  
Bellingham, WA 98229-2207

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**From:** Lee Brown [leebrown@uslink.net]  
**Sent:** Tuesday, January 18, 2005 3:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Lee Brown  
726 3rd St S  
Virginia, MN 55792-3008

---

**From:** Susan Browne [sebrown@emory.edu]  
**Sent:** Tuesday, January 18, 2005 1:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Susan Browne  
46 Oakridge  
Atlanta, GA 30317

---

**From:** Bantu K BRYANT [bkbryant@bellsouth.net]  
**Sent:** Tuesday, January 18, 2005 5:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bantu K BRYANT  
2431 Minford PI  
Jacksonville, FL 32246-1706

---

**From:** Sally Buckner [quenell@mindspring.com]  
**Sent:** Tuesday, January 18, 2005 2:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. We have had more than enough scandals in our markets during the past few years. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. Auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Sally Buckner  
3231 Birnamwood Rd  
Raleigh, NC 27607-6703

---

**From:** Paul Buechler [pbuechler1@bigplanet.com]  
**Sent:** Tuesday, January 18, 2005 2:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Paul Buechler  
2211 La Costa Dr  
Rowlett, TX 75088-6205

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**From:** Denny Burbeck [dburbeck@650dialup.com]  
**Sent:** Tuesday, March 01, 2005 12:57 PM  
**To:** INFO  
**Subject:** Thank you for what you are doing!

Please keep the pressure on the accounting firms, and don't cave in.  
Senator Levin's proposals should be accepted.

D. Burbeck  
Omaha

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**From:** Troy Burkard [t.burkard@worldnet.att.net]  
**Sent:** Tuesday, January 18, 2005 11:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Troy Burkard  
2439 Desplaines Ave  
North Riverside, IL 60546-1560

---

**From:** Linda Burns [sobren@chartermi.net]  
**Sent:** Tuesday, January 18, 2005 4:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Linda Burns  
20895 Winifred Ct  
Pinckney, MI 48169-9730

---

**From:** stephen Burton [burtonsd@erols.com]  
**Sent:** Tuesday, January 18, 2005 2:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. stephen Burton  
801 Soouth Pitt St  
Alexandria, VA 22314



## Business Roundtable

1615 L Street NW  
Suite 1100  
Washington, DC 20036-5610

Telephone 202.872.1260  
Facsimile 202.466.3509  
Website [businessroundtable.org](http://businessroundtable.org)

February 14, 2005

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. 017***  
***PCAOB Release No. 2004-015: Proposed Ethics and Independence Rules***  
***Concerning Independence, Tax Services, and Contingent Fees***

Henry A. McKinnell, Jr.  
Pfizer  
Chairman

Edward B. Rust, Jr.  
State Farm  
Co-Chairman

John J. Castellani  
President

Larry D. Burton  
Executive Director

Johanna I. Schneider  
Executive Director  
External Relations

Ladies and Gentlemen:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States and \$4 trillion in revenues. We appreciate the opportunity to provide our views on the auditor independence rules proposed by the Public Company Accounting Oversight Board (“PCAOB”) on December 14, 2004. Business Roundtable supports the PCAOB’s efforts to promote the independence of registered public accounting firms that audit the financial statements of public companies. Although not all of the PCAOB’s proposals impact Business Roundtable companies directly, there is one aspect of the proposals, relating to audit committee pre-approval of permitted tax services, that Business Roundtable believes is impractical and unnecessary.

The PCAOB’s proposed Rule 3524, on audit committee pre-approval, would impose specific responsibilities on the outside auditor in connection with the process of obtaining pre-approval of permitted tax services. The rule would require that a company’s outside auditor: (a) provide the audit committee detailed documentation of the nature and scope of the proposed tax service, including an engagement letter describing the scope of the tax service and the fee structure for the engagement; (b) discuss with the audit committee the potential effects of the proposed tax service on the auditor’s independence; and (c) document the auditor’s discussion with the audit committee.

If adopted, the proposed rule would require audit committee pre-approval of each separate engagement to provide tax services, including pre-approval of a separate engagement letter relating to each proposed tax service. Mandating that audit committees review each engagement letter and approve each individual engagement to provide tax services raises enormous practical problems for audit committees charged with responsibility for engaging the outside auditor to provide tax services at locations and for employees around the world. By way of example, in 2004, one Business Roundtable member company had approximately 660 different engagements with its outside auditor to provide tax services, approximately 630 of which involved fees less than \$50,000. If the company’s audit committee had reviewed and approved each of

these engagements separately, as the PCAOB's proposed rule would require, the committee would have devoted approximately 170 hours (or three to four 40-hour work weeks) just to discussing proposed tax services with the outside auditor and approving these services. In other words, the audit committee would have discussed with the outside auditor and approved tax services engagements at the rate of nearly two engagements per day in 2004.

In addition to spending time discussing individual engagements with the outside auditor, under the PCAOB's proposed rule, audit committee members would be required to spend time outside of meetings preparing for these discussions and reading engagement letters and other written materials relating to proposed engagements. Companies would be required to expend additional resources collecting detailed information, in a centralized location, about engagements to be performed throughout the world and preparing materials related to these engagements for audit committee review. Audit committees would assume the responsibilities relating to the pre-approval of tax services on top of the responsibility to pre-approve other types of services and all of their other work. Given the substantial responsibilities that audit committees must perform, Business Roundtable does not believe that requiring pre-approval of individual engagements to provide tax services is practical for the audit committees of large, multinational companies with business operations throughout the world.

Business Roundtable also has concerns that the PCAOB's proposed rule effectively would preclude audit committees from relying on pre-approval policies to authorize the provision of permitted tax services. The PCAOB states in its proposing release that the proposed rule "does not dictate, or even express a preference as to, whether the documentation and discussions required . . . should take place pursuant to an audit committee's policies and procedures on pre-approval or on an ad hoc basis." As a practical matter, however, the detailed nature of the documentation and discussions that are required under the proposed rule would necessitate pre-approval of tax services on an "ad hoc," engagement-by-engagement basis. We understand that there may be circumstances where an audit committee believes it is appropriate to approve a particular engagement to provide tax services or review an engagement letter relating to the provision of specific tax services. However, particularly for engagements that are small or routine, pre-approval policies can serve as an effective, administratively feasible way of enabling audit committees to fulfill their pre-approval duties consistent with their responsibility to oversee the independence of the outside auditor. In this regard, the PCAOB's proposed rule essentially would eliminate pre-approval policies as an avenue for approving tax services.

In determining whether to pre-approve specific services, the focus of the audit committee should be on whether the tax services in question have the potential to impact the outside auditor's independence, rather than on whether the audit committee and the auditor have followed a specific process. Requiring audit committees to review a host of detailed documentation and to discuss every proposed tax services engagement with the outside auditor is likely to result in "information overload" that will produce little, if any, benefit in terms of promoting auditor independence and diligent audit committee oversight of auditor independence. We believe that audit committee members at public companies take seriously their responsibility to pre-

approve services provided by the outside auditor and to consider what impact, if any, providing tax or other non-audit services may have on the auditor's independence. To facilitate meaningful, thoughtful consideration of the pertinent issues, audit committees should have the flexibility to structure their processes in the manner they believe will be most effective in promoting effective, diligent oversight of the outside auditor's independence.

For the reasons discussed above, Business Roundtable believes that the PCAOB's proposed rule on audit committee pre-approval of permitted tax services would create practical problems for audit committees without furthering the goal of promoting auditor independence. Accordingly, we believe that the proposed rule is unnecessary and should not be included as part of the PCAOB's auditor independence rules that are submitted to the Securities and Exchange Commission for approval.

\* \* \* \* \*

Thank you for considering our comments. Please do not hesitate to contact Thomas Lehner at Business Roundtable at (202) 872-1260 if we can provide you with further information.

Sincerely,



Steve Odland  
Chairman, President & CEO  
AutoZone, Inc.  
Chairman  
Corporate Governance Task Force  
Business Roundtable

cc: William J. McDonough, Chairman  
Kayla J. Gillan  
Daniel L. Goelzer  
Bill Gradison  
Charles D. Niemeier

---

**From:** Robin Butler [robinyrbutler@aol.com]  
**Sent:** Wednesday, January 19, 2005 6:50 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Robin Butler  
4501 Fritchey St  
Harrisburg, PA 17109-2812

---

**From:** Ralph Butterfield [drlakers@tekstar.com]  
**Sent:** Wednesday, January 19, 2005 11:15 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ralph Butterfield  
25482 Heilberger Ln  
Erhard, MN 56534-9449

---

**From:** Allison Byrum [allisonbyrum@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 9:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Allison Byrum  
9 Country Ln  
Wimberley, TX 78676-2510

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250  
SACRAMENTO, CA 95815-3832  
TELEPHONE: (916) 263-3680  
FACSIMILE: (916) 263-3675  
WEB ADDRESS: <http://www.dca.ca.gov/cba>



January 24, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006

Subject: PCAOB Rulemaking Docket Matter No. 017

The California Board of Accountancy (CBA) commends the PCAOB for its effort to establish additional guidelines that are designed to ensure the independence of auditors of public companies. We are pleased to have the opportunity to respond to these proposed ethics and independence rules concerning independence, tax services, and contingent fees. For convenience, our comments will refer to the page numbers of PCAOB Release No. 2004-015.

**General Comment.** (Page 17, Para. 1)

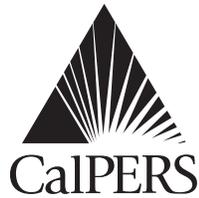
*“The Board invites comment on this discussion. In particular, the Board seeks comment on whether any of the types of services discussed in this section of the release raise independence concerns the Board has not identified. The Board also seeks comment on whether there are other types of tax services that could appropriately be included in this discussion.”*

Representation of an audit client in tax audit and/or appeal proceedings where the auditor becomes an advocate for the client is a type of service not included in the Release discussion. Providing this type of service could raise independence issues (client advocacy functions) and the CBA believes this area should be considered for discussion.

**Rule 3502. Responsibility Not to Cause Violations.** (Page 19, Para. 2)

*“The Board invites comments on any aspect of proposed Rule 3502 and encourages commenters to consider certain issues in particular. First, are there categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason? Second, in a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation?”*

The CBA agrees that both individuals (associated persons) and firms have a responsibility to know and follow professional standards and laws applicable to the practice of public accountancy. The CBA supports the position advanced in proposed

**Investment Office**

P.O. Box 2749  
Sacramento, CA 95812-2749  
Telecommunications Device for the Deaf - (916) 795-3240  
(916) 795-3400  
FAX (916) 795-2842

February 14, 2005

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

Re: Rulemaking Docket Matter 017

Attn: Office of the Secretary

I am writing to you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS is the nation's largest public pension system with approximately \$182 billion in assets and more than 1.4 million members.

CalPERS is pleased to provide the Board with comment regarding its proposed ethics and independence rules. We offer our compliments to the PCAOB for proposing rules aimed at increasing and maintaining the independence and objectivity of public accounting firms. As a significant institutional investor with a very long-term investment horizon, CalPERS has a vested interest in maintaining the integrity and efficiency of the capital markets. For this reason, we have been strong supporters of reform in the role of public accounting firms even prior to the devastating financial market crisis sparked by the collapse of Enron in 2001.

Investor's reliance upon and trust in the integrity of public financial statements should not be taken for granted. CalPERS focused on the independence and objectivity of the external auditor as a major component of its Financial Market Reform objectives for a number of reasons. Chief among these reasons is the conviction that when audit firms perform non-audit consulting work for their audit clients it has the very real potential to impair their objectivity and affect independence. CalPERS pointed to two very significant concerns related to this situation in its early evaluation of proposed reform in the Sarbanes-Oxley Act. First, these services may place the auditor in the position of providing an audit opinion on its own consulting advice, a clear conflict of interest. Second, any consulting work unrelated to the audit that the audit firms perform, or even attempt to perform for existing audit clients, places the auditor in the position of maintaining a special client relationship with the company.

Part of CalPERS' concern over the provision of non-audit services stems from a belief that, generally speaking, Audit Committees had done a poor job in fulfilling their oversight role in ensuring auditor independence. Take for example the fact that existing industry guidelines already prohibit firms from performing consulting work that would result in the firm auditing its own advice. Despite these guidelines and additional emphasis from the Sarbanes-Oxley Act, investors still are faced with, and harmed by, situations in which firms are allowed to perform tax consulting and advice including very aggressive tax avoidance schemes.

In another example, also referenced by the Board in the proposed rule, it is apparent that the audit industry intentionally adopted a very liberal interpretation of the Securities and Exchange Commission's (SEC) rule prohibiting contingency fee arrangements. This ultimately prompted a clarification from the Chief Accountant of the SEC.

These types of situations have served to further raise investor's concern over the role of the external auditor and the responsibility of the Audit Committee to ensure their independence. The PCAOB has appropriately placed additional emphasis on the role of the Audit Committee in ensuring the independence of the auditor. CalPERS agrees with this emphasis and strongly supports the proposal; however, CalPERS also suggests having greater transparency in the decisions made by the Audit Committee to permit greater investor oversight as well. We believe the combination of Audit Committee responsibility (and flexibility to approve certain non-audit work) with greater transparency for shareowners when Audit Committees approve this work will serve the capital markets well.

CalPERS' response to the specific questions raised by the PCAOB is attached. CalPERS is pleased to offer strong support for the Board's proposed rule. We also offer several suggestions to clarify and strengthen the rule. The most prominent of these suggestions are related to the scope of the rule in the prohibition on audit firms providing personal tax services and the disclosure of Audit Committee pre-approval justification.

### Personal Tax Services

CalPERS is supportive of the provisions in the proposed rule that would effectively prohibit audit firms from providing tax services to officers in a financial oversight reporting role. However, we believe the scope of the current proposal is too narrow in this regard and should be expanded to include a broader definition of management. We would recommend the broader definition of management to include any senior officer who has "significant influence" over the financial statements. For example, this may include the Vice President of Sales as someone who is in an oversight role and has "significant influence" over the financial statements. Further, we believe it is also appropriate to include Audit Committee members within the scope of this provision as it appears to also create a clear conflict of interest if firms are providing tax services to these individuals while engaged as the company's external auditor.

### Audit Committee Pre-Approval

CalPERS is strongly supportive of the provisions in the proposed rule that place additional emphasis on the Audit Committee to ensure the independence of the external auditor. In particular, we feel it is imperative to require any audit firm seeking pre-approval to:

- Provide the Audit Committee detailed documentation of the nature and scope of the proposed tax service including the audit engagement letter and any side letters or other related agreements;
- Discuss with the Audit Committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the Audit Committee.

To further strengthen this provision and to permit investor oversight, CalPERS suggests that the PCAOB require disclosure of the justification for any non-audit work approved by the Committee. Again, we are supportive of the flexibility the proposal will provide the Audit Committee to approve some non-audit work. Further, we are strongly supportive of the provisions that will ensure that Audit Committees will have a robust foundation of information upon which to make these determinations. However, current disclosure of audit services (in the proxy) is not adequately granular to permit investors to truly evaluate the types of services that Audit Committees approve. CalPERS proposes that the PCAOB require this disclosure in an effort to permit investors greater ability to evaluate Audit Committee performance by transparency of the justifications for their decisions.

Appendix A provides a response to the specific questions posed by the PCAOB in its release. We would be pleased to discuss our responses with the Board and/or its staff.

Once again, CalPERS compliments the PCAOB on its efforts and we appreciate the opportunity to provide input into your rule making process. If you have any questions regarding our comments, please contact Ted White, Portfolio Manager, Corporate Governance at (916) 795-2731.

Sincerely,



Mark Anson  
Chief Investment Officer

Rulemaking Docket Matter 017

## Appendix A

### Responses to Questions

**Question 1 on Pages 16 and 17.** Provision of Routine Tax Return Preparation and Tax Compliance, General Tax Planning and Advice, International Tax Services and Employee Tax Services.

“Like international assignment tax services, registered firms' provision of personal tax services for employees of their audit clients has not raised significant independence concerns, except for personal tax services for officers who function in a financial reporting oversight role at the audit client. Accordingly, the Board's proposed rules to restrict auditors from providing personal tax services to audit client employees are limited to those officers who serve in a financial reporting oversight role.

The Board invites comment on this discussion. In particular, the Board seeks comment on whether any of the types of services discussed in this section of the release raise independence concerns the Board has not identified. The Board also seeks comment on whether there are other types of tax services that could appropriately be included in this discussion.”

#### **Response**

Tax services such as developing international tax strategies, international inter-company pricing agreements, result in an auditor having to audit their own work. Accordingly, we believe such services should be prohibited. In addition, we do not believe expatriate tax return work, which has recently resulted in violations of existing SEC independence rules by international accounting firms, contribute in any meaningful way to the quality of the audit.

**Question 2 on Page 19.** **Proposed Rule 3502** Regarding Responsibility Not to Cause Violations.

“As discussed in Section B1, Rule 3520 requires registered firms to be independent of their audit clients. When an associated person negligently causes the registered firm to not be independent, Rule 3502 would allow the Board to discipline that associated person for that action.

The Board invites comments on any aspect of proposed Rule 3502 and encourages commenters to consider certain issues in particular. First, are there categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason? Second, in a circumstance in which a firm is found to have

Office of the Secretary  
 PCAOB  
 February 14, 2005  
 Appendix - Page 2

committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation?"

### **Response**

There should be a finding against an individual in a case where it is found a firm knowingly or recklessly engaged in misconduct. We note that disregard of the SEC independence rules is considered a violation that can result in a Rule 102(e) sanction by the Commission.

We do not believe any actions should be exempted from the proposed rule at this time.

**Question 3 on Page 20. Proposed Rule 3520** Regarding Fundamental Ethical Obligation of Registered Public Accounting Firm to be Independent Throughout the Audit and Professional Engagement Period.

"The Board invites comments on any aspect of proposed Rule 3520, and encourages commenters to consider one issue in particular. Would the scope of the ethical obligation described above impose any practical difficulties? Commenters who foresee any such difficulties are encouraged to describe in detail any ways in which the proposed scope of the rule would cause or require auditors to follow any different practices and procedures than they currently follow to comply with existing legal requirements."

### **Response**

We believe the proposed rule is consistent with the SEC rule, Regulations S-X, 210.2-01, adopted in November 2000 which became effective in 2001. We would also incorporate into the rule the language from the AICPA's code of conduct which states that an auditor should avoid any subordination of their judgment.<sup>1</sup>

Accordingly, provided a registered public accounting firm and its staff have complied with the rules of the SEC, there should not be any practical difficulties in implementing the rule proposed by the PCAOB.

**Question 4 on Page 23. Proposed Rule 3521.** Contingent Fees.

"Accordingly, the exception would permit fees that are contingent on "the amount [being] fixed by courts or other public authorities and not dependent on a finding or result."<sup>2/</sup>

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<sup>1</sup> Principles of Professional Conduct. ET Section 55. AICPA. Paragraph.02 states: "Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity and avoid any subordination of their judgment."

<sup>2/</sup> Proposed Rule 3501(c)(i)(2).

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Although the approval of a bankruptcy court is the most obvious contingency that may be imposed on auditors' fees from audit clients, the proposed exception extends to other "courts or other public authorities." The Board invites comment as to whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary."

### **Response**

We believe an auditor should not be permitted to provide services or products for contingent fees or commissions with the exception of fees set by courts or other public authorities. Such fees should not be permitted either through direct or indirect payments.

We are not aware of "other public authorities" that would fall within the language of the proposed rule. Accordingly, if the PCOAB continues to use this language, which we believe should be deleted, we would urge it to clarify what other public authorities it is referring to.

### **Question 5 on Page 29. Proposed Rule 3522 Aggressive Tax Positions and Listed Transactions.**

"Although the proposed rule does not address situations in which a transaction planned, or opined on, by the auditor becomes listed after it is executed, the Board seeks comment on whether the rule should address the possible impairment of an auditor's independence in such situations. The Board also seeks comment, more generally, on whether proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor's independence."

### **Response**

We believe certain tax services such as the preparation of expatriate tax returns, tax planning and providing tax opinions do not enhance the quality of the audit or the independence of the registered public accounting firm.

We believe an auditor's independence would become impaired if a listed transaction it planned or advised on was listed subsequent to its advice or opinion. That is because we believe the independence is impaired as the firm would be placed in the position of auditing its own work. Accordingly, we believe tax planning and strategy services, in addition to developing or marketing tax shelters, listed or confidential transactions should be prohibited to avoid unnecessary conflicts and complexity in the rules.

26 C.F.R. defines listed and confidential transactions as follows:

"(2) Listed transactions. A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue

Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) Confidential transactions--(i) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) Minimum fee. For purposes of this paragraph (b)(3), the minimum fee is:

(A) \$250,000 for a transaction if the taxpayer is a corporation.

(B) \$50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is \$250,000.

(iv) Determination of minimum fee. For purposes of this paragraph (b)(3), a minimum fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property."

We believe the minimum fee amount of \$250,000 in the above regulations should be eliminated such that regardless of the fee amount, a listed transaction would be prohibited. We believe an auditor providing services in connection with a listed transaction, regardless of the fee amount may impair independence.

We believe the final rule should incorporate the following language in the 26 C.F.R. 1.6662-4(g) including defining what constitutes a tax shelter:

“(2) Tax shelter--(i) In general. For purposes of section 6662(d), the term “tax shelter” means--

- (A) A partnership or other entity (such as a corporation or trust),
- (B) An investment plan or arrangement, or
- (C) Any other plan or arrangement, if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax.

The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose. Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

(ii) Principal purpose. The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose.”

**Question 6 on Page 31. Proposed Rule 3522 (b) Confidential Tax Positions.**

“The Board seeks comment on whether confidential transactions should be treated as *per se* impairments of a registered public accounting firm's independence from an audit client. More broadly, the Board also seeks comment on whether other provisions of the Treasury's regulation on reportable transactions – that is, other than the provisions on listed and confidential transactions included here – should be incorporated by reference in the Board's rules on tax-oriented transactions that impair independence.”

**Response**

We note 26 C.F.R. 1.6011-4 includes six categories of transactions. These include (1) listed transactions, (2) confidential transactions, (3) transactions with contractual protection, (4) loss transactions, (5) transactions with a significant book-tax difference, and (6) transactions involving a brief asset holding period. A transactions with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained.

A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. We believe transactions with contractual

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protection result in an auditor who has advised on such a transaction, and the company who has paid a fee for such services, as having a mutual interest, in addition to requiring the auditor to audit their own tax advice and work. Accordingly, such services should be specifically prohibited. The Board may also consider these transactions prohibited by the nature of the contingent fee.

**Question 7 in Footnote 70 on page 34. Proposed Rule 3522 (c) Aggressive Tax Positions.**

“Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. 1.6662-4(d)(3)(ii) for analysis of whether a tax treatment has "substantial authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax). The Board seeks comment on whether the analysis described in the Treasury's regulations provides useful guidance on the application of proposed Rule 3522(c).”

**Response**

Regulations 1.6662-4(d) discusses substantial authority as follows:

“The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in Sec. 1.6662-3(b)(3). The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.”

We believe the appropriate standard to be applied to Listed, Confidential, Aggressive and Contractual protection transactions is the “more likely than not” standard rather than the less stringent “substantial authority” standard. We believe transactions that do not meet the “more likely than not” standard for prevailing with the taxing authorities and courts, result in the auditor having to advocate for a transaction they have advised or opined on when there is less than a 50 percent chance of prevailing. This creates a very significant conflict for an auditor as the applicable criteria for determining the proper accounting for a tax position in financial statements is the “probable” standard included in Statement of Financial Standard No. 5.

**Question 8 on Page 35. Proposed Rule 3522 (c) Aggressive Tax Positions.**

“The Board invites comments on any aspect of proposed Rule 3522(c) and encourages commenters to consider certain issues in particular. First, is the term "initially recommended by the registered public accounting firm or another tax advisor" sufficiently clear? Is there a better way to describe aggressive tax transactions, strategies, and

products that a registered public accounting firm ought not to sell to an audit client? Second, does the "more likely than not" standard draw the right line between aggressive tax strategies and products that a registered public accounting firm ought not to plan, or opine on the tax treatment of, for an audit client and routine tax planning and advice? In addition, the Board invites comments on whether the Board also should require a registered public accounting firm to obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have a material effect on the audit client's financial statements."

### **Response**

As previously noted, we believe auditors should be prohibited from providing tax services other than tax compliance. However, should the PCOAB determine to permit such services in some circumstances, it should be narrow and the Audit Committee should be required to disclose its justification for approving the work. We believe:

- The more likely than not standard is an appropriate standard.
- The PCAOB should clarify what is meant by "initially recommended."
- This rule should prohibit an auditor from providing a tax opinion on a transaction the auditor must then examine in the course of the audit.

### **Question 9 on Page 37. Rule 3523 Tax Services for Senior Officers of Audit Client.**

"The Board invites comments on any aspect of proposed Rule 3523 and encourages commenters to consider certain issues in particular. Are there other classes of employees to whom an accounting firm should not offer tax services? Would a registered public accounting firm's independence be perceived to be impaired if it offered tax services to members of an audit client's Audit Committee, or to other members of the audit client's board of directors?"

### **Response**

As previously stated, we believe an auditor should not provide any services to the Section 16(b) officers, including any officers in a financial reporting oversight role and any directors on the Audit Committee. We also believe senior officers in a financial reporting oversight role should be expanded to include the officer with key responsibility for sales, because misstated sales are often the cause of misstated financial statements.

### **Question 10 on Pages 42 and 43. Rule 3524 Audit Committee Pre-approval of Certain Tax Services.**

"The Board welcomes comment on any aspect of proposed Rule 3524 and encourages comment on certain matters in particular. Should additional information or documentation that is not described in proposed Rule 3524 be provided to Audit Committees in the pre-approval process? In addition to the communications required by

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proposed Rule 3524, should auditors be required to have additional communications with the Audit Committee with regard to the tax advice that has been provided to the audit client?"

### **Response**

The SEC has defined the test for determining an auditor's independence as a reasonable investor with knowledge of all relevant facts and circumstances. The Audit Committee is the investors' elected representative and accordingly, is put in the position of assessing whether an auditor's independence is impaired and accordingly should not be pre-approved. In making that judgment, we believe the Audit Committee should be provided with all the relevant facts and circumstances. To meet that test, we believe it is imperative the Audit Committee obtain copies of the actual engagement letters. We believe the failure of auditors to disclose circumstances to Audit Committees such as contingent fees support this requirement.



California State Teachers'  
Retirement System  
Investments  
7667 Folsom Blvd., Ste. 250  
Sacramento, CA 95826  
(916) 229-3723 Fax (916) 229-3299  
cailman@calstrs.com

February 14, 2005

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

RE: PCAOB Rulemaking Docket Matter No. 017

Dear Board Members:

This letter is sent on behalf of the California State Teachers' Retirement System's (CalSTRS) members. CalSTRS is the third largest public pension system in the U.S., with over \$120 billion in assets. CalSTRS manages retirement benefits on behalf of over 735,000 members and beneficiaries. CalSTRS is pleased to provide comment on the Public Company Accounting Oversight Board (PCAOB) on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (The Proposal). As an investor and a fiduciary, CalSTRS is interested in the reliable transparency of the investment marketplace. Investors, professional and individual, must have audited financial statements when making decisions on public companies. Independent auditors play a critical role in this process and their independence must be assured. CalSTRS believes that its beneficiaries can only be well served by its staff and delegated fiduciaries when the audit committee and the audit firm put the concerns of the marketplace on this matter at the top of their duties. CalSTRS understands and respects the arguments of those who are concerned about regulation's impact on the ability of companies to raise capital, but the investor who risks capital must be considered as well.

CalSTRS applauds the PCAOB's leadership in this area. CalSTRS has used its judgment in assessing the independence of the auditor and established a tolerance level of 70% in favor of audit and audit related fees compared with tax and "other fees." The guidance that will be provided after the comments are completely reviewed may cause us to review our policies in this area. We believe that the proper place for this judgment to be exercised is at the audit committee level; but the audit committee must have all the facts and should pre-approve the services after finding that the services are in the best interests of the shareholders. Shareholders may not be well served when auditors provide tax planning, structuring, shelters or expatriate type services to a company that

Office of Secretary

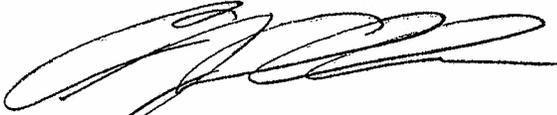
2/14/2005

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they audit, but we are concerned about the shortage of auditing firms in this area and that is why we have adopted the tolerance level described above. We recognize that this may not be an appropriate guideline for all investors and welcome the PCAOB's final rules on the matter.

Thank-you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Ailman', written in a cursive style.

Christopher Ailman  
Chief Investment Officer

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Rule 3502 that both associated persons as well as registered firms have a responsibility to comply with the Sarbanes-Oxley Act.

We have not identified categories of circumstances in the rule as proposed that we would recommend for deletion.

**Rule 3520. Auditor Independence.** (Page 20, Para. 4)

*“The Board invites comments on any aspect of proposed Rule 3520, and encourages commenters to consider one issue in particular. Would the scope of the ethical obligation described above impose any practical difficulties? Commenters who foresee any such difficulties are encouraged to describe in detail any ways in which the proposed scope of the rule would cause or require auditors to follow any different practices and procedures than they currently follow to comply with existing legal requirements.”*

The CBA supports the adoption of proposed Rule 3520 and endorses the PCAOB’s comment that rules of good conduct for auditors can and should encompass a duty by the auditor to maintain independence necessary to ensure compliance with independence requirements in the circumstances of the particular engagement.

At present, the CBA has not identified any practical difficulty issues were identified within the scope of ethical obligations as proposed in Rule 3520.

**Rule 3521. Contingent Fees.** (Page 23, Para. 1)

*...The Board invites comment as to whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary.”*

The CBA is not aware of any courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term “courts or public authorities” is necessary.

**Rule 3522(a). Tax Transactions – Listed Transactions.** (Page 29, Para. 2)

*“Although the proposed rule does not address situations in which a transaction planned, or opined on, by the auditor becomes listed after it is executed, the Board seeks comment on whether the rule should address the possible impairment of an auditor’s independence in such situations. The Board also seeks comment, more generally, on whether proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor’s independence.”*

The CBA urges the PCAOB to consider expanding Rule 3522(a) to address situations in which a transaction becomes listed after it is executed, including the possible

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impairment of an auditor's independence in such situations. A transaction that becomes listed before or shortly after the audit report is released would be particularly significant and further guidance would be useful.

Proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor's independence.

**Rule 3522(b). Tax Transactions – Confidential Transactions.** (Page 31, Para. 1)

*“The Board seeks comment on whether confidential transactions should be treated as per se impairments of a registered public accounting firm's independence from an audit client. More broadly, the Board also seeks comment on whether other provisions of the Treasury's regulation on reportable transactions – that is, other than the provisions on listed and confidential transactions included here – should be incorporated by reference in the Board's rules on tax-oriented transactions that impair independence.”*

CBA agrees that confidential transactions should be treated as per se impairments of a registered public accounting firm's independence from an audit client.

The CBA is not aware of any provisions of the Treasury regulations on reportable transactions that should be incorporated by reference in the Board's proposed rules on tax-oriented transactions that impair independence.

**Rule 3522(c). Tax Transactions – Aggressive Tax Positions.** (Page 34, √ 70)

<sup>70/</sup> Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. 1.6662-4(d)(3)(ii) for analysis of whether a tax treatment has "substantial authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax). *The Board seeks comment on whether the analysis described in the Treasury's regulations provides useful guidance on the application of proposed Rule 3522(c).*

The CBA believes the analysis described in the referenced Treasury regulations does provide useful guidance.

**Rule 3522(c). Tax Transactions – Aggressive Tax Positions.** (Page 35, Para. 2)

*“The Board invites comments on any aspect of proposed Rule 3522(c) and encourages commenters to consider certain issues in particular. First, is the term "initially recommended by the registered public accounting firm or another tax advisor" sufficiently clear? Is there a better way to describe aggressive tax transactions, strategies, and products that a registered public accounting firm ought not to sell to an audit client? Second, does the "more likely than not" standard draw the right line between aggressive tax strategies and products that*

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*a registered public accounting firm ought not to plan, or opine on the tax treatment of, for an audit client and routine tax planning and advice? In addition, the Board invites comments on whether the Board also should require a registered public accounting firm to obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have a material effect on the audit client's financial statements."*

The description for "aggressive tax positions" offered in Rule 3522(c) appears sufficient. However, the CBA believes that the independence of a registered public accounting firm is compromised where such public accounting firm initially recommends a transaction having tax avoidance as a significant purpose. Moreover, while such accounting firm should not be able to overcome the impairment by rendering its own opinion on its own tax plan, a third party opinion on such tax treatment could satisfy the impairment problem.

In other circumstances, where the transaction was not initially recommended by the registered accounting firm, the firm may independently choose to obtain a third party opinion though ultimate responsibility for the tax treatment of the transaction remains with the accounting firm.

The "more likely than not" standard is a reasonable measurement standard for this proposed rule due to its historical use in the regulations of the IRS and the Treasury.

### **General Comment Regarding Rule 3522.**

Each of the three "transactions/tax positions" listed under (a), (b) and (c) of Proposed Rule 3522 are standards and definitions that uniquely apply under the US Internal Revenue Code.

They readily apply to US-based tax treatment and transactions and provide the accounting firm and audit committee appropriate guidelines in determining whether a proposed US tax service is a permissible non-audit service.

The proposed rule is silent with respect to any definition or rationale when tax laws in foreign jurisdictions are applicable to foreign-based transactions and related tax service is to be rendered to a foreign subsidiary or affiliate of a US audit client.

The CBA recommends that the PCAOB give consideration to this issue.

### **Rule 3523. Tax Services for Senior Officers of Audit Client.** (Page 37, Para. 2)

*"The Board invites comments on any aspect of proposed Rule 3523 and encourages commenters to consider certain issues in particular. Are there other classes of employees to whom an accounting firm should not offer tax services? Would a registered public accounting firm's independence be perceived to be*

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*impaired if it offered tax services to members of an audit client's audit committee, or to other members of the audit client's board of directors?"*

The CBA concurs that there should be a restriction on the tax preparation services that a registered public accounting firm may offer to individuals in roles that may influence the financial reporting process for the audit client.

We do believe that the registered public accounting firm's independence would be perceived to be impaired if it offered tax services to members of the audit client's audit committee or other members of the audit client's board of directors.

**Rule 3524. Audit Committee Pre-approval of Certain Tax Services.** (Page 42, Para.4)

*"The Board welcomes comment on any aspect of proposed Rule 3524 and encourages comment on certain matters in particular. Should additional information or documentation that is not described in proposed Rule 3524 be provided to audit committees in the pre-approval process? In addition to the communications required by proposed Rule 3524, should auditors be required to have additional communications with the audit committee with regard to the tax advice that has been provided to the audit client?"*

The CBA concurs that the Proposed Rule 3524 would strengthen the auditor's responsibilities in seeking the audit committee's pre-approval of tax services. The process and documentation suggested appear appropriate and reasonable.

In addition to the communications required by proposed Rule 3524, auditors should be required to have additional communications with the audit committee with regard to tax advice that has been provided in situations where there has been a material change in facts, circumstances, or scope of tax services provided. An example would be that a transaction becomes listed after it is executed.

Thank you for the opportunity to express our views. Should you have questions or need additional information, please contact Carol Sigmann, Executive Officer, at (916) 561-1718.

Sincerely,



Renata M. Sos  
President

c: Members, California Board of Accountancy

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**From:** Carlotta Camacho [carly.camacho@sbcglobal.net]  
**Sent:** Tuesday, January 25, 2005 11:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Carlotta Camacho  
5503 Vickery Blvd  
Dallas, TX 75206-6232

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**From:** Judith Campbell [judyc1994@aol.com]  
**Sent:** Tuesday, January 18, 2005 6:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Judith Campbell  
5723 Hoover St  
Houston, TX 77092-3324

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**From:** Frank Cannon [frankcannon\_@excite.com]  
**Sent:** Tuesday, January 18, 2005 7:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Frank Cannon  
PO Box 14581  
South Lake Tahoe, CA 96151-4581

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**From:** Peggy Cannon [cannon@pacifier.com]  
**Sent:** Tuesday, January 18, 2005 2:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Peggy Cannon  
202 W Fourth Plain Blvd Apt C  
Vancouver, WA 98660-2251

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**From:** Peter A. Cantele [politics@cantele.org]  
**Sent:** Tuesday, January 18, 2005 5:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter A. Cantele  
3624 Shannon Ct  
Joliet, IL 60431-8805

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**From:** m canter [mcanter@infoasis.com]  
**Sent:** Tuesday, January 18, 2005 7:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. m canter  
167 Blackfield Dr  
Tiburon, CA 94920-2036

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**From:** Cecelia Capaul [capaul56@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Cecelia Capaul  
406 E. Fairview Ave.  
Olivia, MN 56277

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**From:** Roand Capek [capek@ticon.net]  
**Sent:** Tuesday, January 18, 2005 11:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Roand Capek  
641 Monroe St  
Fort Atkinson, WI 53538-1335

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**From:** Bob Carlough [skimmer@dandy.net]  
**Sent:** Wednesday, January 19, 2005 6:59 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bob Carlough  
10 Wahl Ave  
Cape May Court House, NJ 08210-1718

**JOHNSON, MILLER & CO.***Certified Public Accountants**A Professional Corporation**An Independent Member Of BDO Seidman Alliance*Midland, Texas  
Odessa, Texas  
Hobbs, New Mexico

February 9, 2005

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. 017

We appreciate the opportunity to comment on the PCAOB's proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. We respect the difficult job that the PCAOB has in assuring the independence of auditors to assist in protecting the public interest. At the same time, allowing the auditors and their firms the ability to work with clients to legally and properly minimize their tax liability is also in the best interest of the investing public.

The comments below are focused on public companies that are "small business issuers," as defined by Regulation S-B. Most of the public companies that we serve are in this category. We understand some of the issues related to tax shelters and other tax positions taken by large public companies, but the public interest issues impacting small business issuers are different as they relate to tax services. Small business issuers are much more limited in their access to professionals and expertise in tax planning. In fact, many small business issuers are start-up companies that desperately need tax planning advice, but their capacity for hiring professional advisors is extremely limited because investors apply pressure to minimize expenses in order to become profitable as soon as possible. Our small business issuer clients desire to obtain tax planning advice in a very economical manner in order to remain in compliance with the tax law while taking full advantage of the common benefits and deductions that are available. Whenever possible, we believe the PCAOB's rule-making process should provide allowances for small business issuers that avoid costly burdens that limit their growth.

1. The PCAOB's Proposed Rule 3522 (c) includes a provision that would treat a registered public accounting firm as not independent if the firm provides services related to planning or opining on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations. While independence of the auditor is essential to the confidence of the public investors, those same investors are concerned that the value of their investments continue to grow. They also hold the officers and board of directors in a somewhat fiduciary capacity to assure that the company and its finances are properly managed.

Part of the proper financial management by the board of directors, audit committee and the officers of any company is the duty to consult in those situations where their own

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February 9, 2005  
Page Two

knowledge is not sufficient to allow them to make the best decisions on behalf of their employees and their investors. In any publicly held company, the minimization of taxes is an important part of the financial management of the company. It is not illegal for a company, its officers and its board of directors to arrange the financial affairs for the company in such a manner to minimize its tax liability, even to the extent of taking an aggressive position of tax matters. In fact, it might be argued that these persons had violated their responsibility to the shareholders and investing public if they did not work to minimize the taxes as well as other significant costs to the company.

To prohibit the firm that audits a company from also working with that same company regarding its tax planning, is to take away one of the major tools that the company has to work with in meeting its financial goals. The proposed rule would require that the audited company go to another firm - that is not auditing its financial statements - for its tax planning. We believe that it is more hazardous to the investing public to have a second or third firm involved in planning or opining on an isolated transaction. These firms are not already familiar with the total company operations as the auditor's firm would be. In addition, requiring that another firm provide this tax planning is an unnecessary risk for the company; and would require further financial outlay for the company and its investors because of the time that would be required by the second or third firm to learn all it needed to know about the company before it could adequately assist the firm in its planning for tax issues.

This proposed rule would also give companies an excuse to go outside the firm performing their audits to another firm to structure transactions that they do not wish to bring to the auditor's attention. We believe that anytime a company starts fragmenting its auditing and tax services among firms that there is an increased audit risk to their financial statements. This fragmentation should cause every auditor concern that the management of the company has availed itself of a means to handle certain transactional planning away from the eyes of the auditor who might view the transaction differently and, potentially, require reserves or disclosure of contingent liabilities in the audited financial statements.

We therefore request that the PCAOB reconsider this proposed rule in its present form. We suggest that more clarification of "aggressive interpretation" is needed. For small business issuers, good business and tax planning advice from auditing firms that are familiar with their operations is essential for their future survival.

2. The PCAOB's Proposed Rule 3523 would set a new requirement to treat a registered public accounting firm as not independent if the firm provided tax services to officers in a financial reporting oversight role of an audit client. This proposed rule appears to require that all financial officers, the chief executive officer and the board of directors have their income tax returns prepared by a firm or person other than the firm auditing the financial statements of the company they represent since it could be construed that all of these individuals have financial reporting oversight.

Public Company Accounting Oversight Board  
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Rules presently in effect require that the selection of the audit firm and determination of its independence of judgment is no longer a decision by the management of the public company, but is now the responsibility of the company's audit committee or board of directors. The members of the audit committee are to be independent and certified as such by the company's board of directors. The stated intent of these rules are to establish a relationship between the audit committee and the audit firm above the relationship between management and the audit firm. The burden is on the audit committee to act independently of management and in accordance with its fiduciary responsibility. With these rules and relationships already in place, it seems the proposed new rule seeks to correct a presumption of influence from a party truly relegated to the outside of the decision making process. The audit committee is charged with watching for undue influence by management over the audit firm.

We find this particularly interesting since we think that the auditor for the company is in the best possible position to assist the board and officers of the company in accurately filing their own income tax returns. The taxability and amount to be included in taxable income from various fringe benefits, and the correct reporting of these fringe benefits by the company to the IRS as well as to the officers and board of directors, is best addressed by the auditor with his or her awareness of the various benefits being earned by these individuals.

Example: If the company owns an airplane, it would not be unusual for the higher-level executives to have the opportunity to use the airplane for personal trips, but the IRS regulations are specific in their direction regarding the computation of the amount of compensation to be reported to the executive who uses the company airplane for personal purposes. The auditing firm is in position to know about the company airplane as a result of its review of the company's fixed assets whereas the firm that does not perform the audit would not necessarily be aware that the compensation of the executive should include any amounts for the personal use of the company airplane.

Because so much of the executive compensation package in many companies is not in the form of bank deposits to the executive's checking account, it is even more important that the tax returns for the executives are prepared by the firm that has a clear understanding of the company and its various compensation and benefit plans. Prohibiting the auditing firm from preparing the individual income tax returns of the officers and members of the board of directors in essence allows those persons more opportunity to commit errors in reporting their taxable income, which is contrary to the interests of another government agency, the IRS.

In addition, Proposed Rule 3523 would require that auditing firms make determinations of which executives are in "a financial reporting oversight role." This determination could be subject to some interpretation. In many companies, it may not be clear whether some employees would come within that definition. This would also require the auditing firm to determine each year if a change in title or duties has occurred that would affect the auditing firm's eligibility to serve as an executive's tax preparer. Again, this would

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seem to undermine compliance with the tax laws and IRS regulations in that changing preparers increases the risk that tax attributes such as carryover items and basis adjustments to assets will be lost in the transition, which further undermines tax compliance.

Again, we request that the PCAOB reconsider this proposed rule and withdraw it from its final passage.

\*\*\*\*\*

Representatives from our firm would be pleased to discuss these comments with you if you desire. Please contact Charles L. Carlson at 423-362-3800 if you have any questions.

Very truly yours,

JOHNSON, MILLER & CO.



Charles L. Carlson, CPA  
Director

CLC/tkb

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**From:** Bennie Carnahan [glassman66@fastfreedom.net]  
**Sent:** Wednesday, January 26, 2005 12:50 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bennie Carnahan  
1936 Jaguar Rd  
Joplin, MO 64804-7884

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**From:** gaile carr [bgcarr@finestplanet.com]  
**Sent:** Wednesday, January 19, 2005 5:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. gaile carr  
1821 Eddy Dr  
Mount Shasta, CA 96067-9617

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**From:** Cory Carter [cory-carter@wildmail.com]  
**Sent:** Tuesday, January 18, 2005 7:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I own small amounts of stock in a retirement plan. Small investors like me are depending on the integrity of our financial system, including the trustworthiness of audits. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Cory Carter  
51 Ridge Rd Unit N  
Greenbelt, MD 20770-7713

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**From:** Dan Carter [balanced12002@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 8:45 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dan Carter  
1725 Locust St  
Chico, CA 95928-6665

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**From:** Harry Carter [hcarter1@socal.rr.com]  
**Sent:** Wednesday, January 19, 2005 5:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Harry Carter  
101 Gannet Ln  
Fountain Valley, CA 92708-5707

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**From:** Elma Cartrhon [baileyread48@prodigy.net]  
**Sent:** Wednesday, January 19, 2005 12:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elma Cartrhon  
11411 Harwin Dr Apt 17  
Houston, TX 77072-1468

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**From:** Paul Cassidy [phoppy4@juno.com]  
**Sent:** Tuesday, January 18, 2005 3:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Paul Cassidy  
1639 N Hudson Ave  
Chicago, IL 60614-5608

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**From:** Gregory Catacalos [gccmc14@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 8:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gregory Catacalos  
1335 Liberty Ave  
Union, NJ 07083-4129



16 February 2005

Public Company Accounting Oversight Board  
 Attention: Office of the Secretary  
 1666 K Street, NW  
 Washington, DC 20006-2803  
 USA

Dear Sir,

**PCAOB Consultation - docket no 017**

We understand that you have just consulted on rules regarding the provision of tax services by auditors to senior officers of the audit clients. The effect of the suggested new rules has only just become apparent to us.

Essentially, we understand that the rules will prohibit a firm of auditors from providing personal tax advice to a client's directors and others who exercise influence over the contents of a company's financial statements. However, we understand that there is no *de minimis* exemption and that it is not clear whether this would apply only to quoted companies or only to executive directors or to all directors including the non-executives. If the latter, and if those non-executive directors are on several boards, they may find themselves in a position where they are unable to appoint any of the Big Four accounting / auditing firms. However, it is our understanding that the Sarbanes-Oxley Act did not prohibit the provision of tax advice and we do not think that advice of this type for non-executive directors is likely to prejudice the independence of the auditors.

We do not wish to dispute the principle that audit firms must be independent and be seen to be independent and that there must be a clear dividing line between services provided to the company and services provided to directors. Our main concern, however, is that the effect of such a rule could be that auditors will be constrained in their ability to tender for or seek new audits to those companies, where they already provide tax services to any director. This could narrow the choice of audit firms available to companies, as they would be unable to select any audit firm already providing tax advice to a director. For larger listed companies, the choice of auditors is in reality already restricted to the Big Four and further narrowing of choice would be undesirable and would make SEC registration even more unattractive to foreign issuers.

We would therefore ask that the PCAOB should provide an appropriate exemption or narrower application, such as limitation of any prohibition to a few key executive directors such as the CEO, CFO and Treasurer, or linkage to s309 / 906 certificates and that any rule be limited to quoted companies.

Yours sincerely  
 John Cridland

John Cridland  
 Deputy Director-General

John Cridland – Deputy Director-General

DL: +44 (0)20 7395 8005 DF: +44 (0)20 7836 0645 E: john.cridland@cbi.org.uk



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**From:** Jon Cecil [jonpcecil@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 2:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jon Cecil  
620 N Mineral Wells Ave  
Meridian, ID 83642-7610

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**From:** george ceraulo [aceraulo@optonline.net]  
**Sent:** Tuesday, January 18, 2005 2:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. george ceraulo  
31 Adamson St  
Selden, NY 11784-4403

---

**From:** Mark Chaffin [chaffin@bapthealth.com]  
**Sent:** Friday, January 21, 2005 4:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Mark Chaffin  
435 Ballston Rd.  
#2 - Apt. 30  
Glenville, NY 12302

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

DAVID T. HIRSCHMANN  
SENIOR VICE PRESIDENT

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5609 • 202/955-1152 FAX

February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006-2803

Re: Rulemaking Docket Number 017

Dear PCAOB Board Members:

The U.S. Chamber of Commerce has watched with keen interest the PCAOB's review of rules pertaining to the provision of tax services by auditors to their public company audit clients. Indeed, we have previously expressed our view that many of the reforms ushered in by the Sarbanes-Oxley Act, particularly the pre-approval responsibilities assigned to audit committees, have helped strengthen auditor independence and contributed to renewed confidence in our capital markets.

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million business organizations of every size, sector and region, strongly supports efforts to strengthen our capital markets and restore investor confidence. However, as we also have made clear on a number of occasions, our desire to achieve these important goals should not become an excuse for redundant or unnecessary regulation.

We are pleased that the Board has recognized that both audit quality and the reliability of corporate tax filings can be enhanced when public companies engage their audit firm for tax services upon pre-approval by the audit committee. As noted in our letter of September 15, 2004, we believe that the pre-approval process provides sufficient safeguards to assure auditor independence and protect shareholders.

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We believe, however, that as now drafted some elements of the Board's proposed rules may inadvertently compromise the ability of audit committees to do their job. We also are concerned that, in one instance, the rules may wrongly discourage public companies from seeking appropriate assistance from their auditor. We believe these concerns can be addressed with some modest adjustments.

We understand the Board's desire to prevent the auditor from providing tax advice on an aggressive tax position that was initially recommended by the audit firm. We do not take issue with the Board's proposed restriction on such advice. But, as currently drafted, rule 3522(c) also seems to restrict the auditor from offering advice on a strategy proposed by "another tax advisor." In this regard, we note Commissioner Goelzer's observation in the December 14 public meeting that a public company would 'naturally' turn to its auditor in this circumstance. We believe the words "or another tax adviser" could wrongly prevent public companies from obtaining valuable and appropriate assistance. We would strike the four words "or another tax adviser" from the proposed rule.

We also are troubled by the proposed new documentation requirements for audit committee pre-approval of tax services in proposed rule 3524. We agree with the directive that auditors must inform the audit committee about the scope of the proposed tax work and the fee arrangement and also discuss the potential impact on independence. But we believe that requiring auditors to provide audit committees with engagement letters "relating to the service" could overload audit committees with hundreds of engagement letters in the case of larger companies. That would mean hundreds and possibly thousands of pages of unnecessary reading for audit committee members.

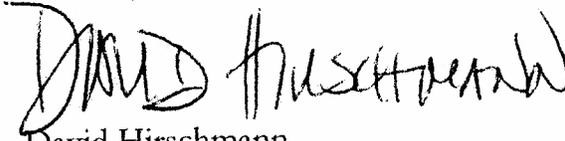
Our member companies tell us that audit committees have established effective pre-approval policies and practices. We are concerned that layering the committees with additional paper could unintentionally interfere with successful processes already in place. We believe the Board can achieve its goal with a simple requirement that the auditors inform the audit committee about the scope of the work, the fee arrangements and the impact on independence – but without the specific mandate to provide engagement letters. The Chamber believes audit committees should have access to the documentation they require. But the Chamber also believes that the audit committee is in the best position to determine what specific documentation it requires from the auditor to do its job. The Chamber would modify this rule by removing the requirement that the auditor provide the audit committee with engagement letters.

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Page 3

We believe the modifications identified above would enhance the effectiveness of the proposed rules and also reduce the chance of unintended consequences that would diminish audit quality or interfere with the effectiveness of the audit committee.

We appreciate the opportunity to provide our views on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hirschmann". The signature is written in a cursive, somewhat stylized font.

David Hirschmann

Cc: William J. McDonough  
Kayla J. Gillen  
Daniel L. Goelzer  
Bill Gradison  
Charles D. Niemeier

---

**From:** Patricia Chang [tpc1133@aol.com]  
**Sent:** Wednesday, January 19, 2005 12:54 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Patricia Chang  
1133 Stockton St  
Indianapolis, IN 46260-2860

## PCAOB Rulemaking Docket Matter No. 017

**Re: PCAOB Release 2004-015**

**Comments of Donald H. Chapin**

### Summary Statement

Except for allowing tax services for Audit Committee members, the proposed ethics rules are appropriate, as far as they go. But the Board should do more towards satisfying the stated SEC's public policy goals of:

- Promoting investor confidence, and
- Minimizing the possibility that external factors will influence auditors' judgment.

There are needed changes in auditing standards that would further these goals. I believe the Board should:

- Adopt the responsibility concepts enunciated in United States vs. Arthur Young & Co. This expansion of auditor responsibilities will increase auditor attention to both the concept of independence and the principles and rules of independence. The recognition of these responsibilities in the standards will increase investor confidence in the markets.
- To the fullest extent possible, deal with bias arising from some permitted non-audit services and from other known factors affecting relationships with management. With appropriate warnings and supportive changes in the standards, auditors will be better able to both overcome their own bias, and deal with management's. These steps will reduce the influence of external factors on auditors' judgment.

Strengthening auditor independence, and its corollary auditor objectivity, is critical. Changes in standards that will do this should not wait until the Board finds the time to make the much needed overhaul of AU 110 and the General Standards of Auditing.

The ethics rules could be a temporary home for my suggested changes. But they, and the essence of certain of the Board's proposed ethics rules, belong in the auditing standards. There, they will receive the full attention they deserve.

### **United States vs. Arthur Young & Co. – Auditor Responsibility**

Auditor responsibility should be expanded by inclusion in the standards of an appropriate version of the concepts enunciated by Chief Justice Burger in the 1984 decision *United States vs. Arthur Young & Co.* Those were: (a) the auditor owes "ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public" and (b)

the auditor has a “public watchdog” function that “demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust”.

Arthur Wyatt articulated these concepts in his 2002 paper on professionalism where he stated that the auditor should place “primary emphasis on protection of investors and the furtherance of the public interest”.

Sarbanes-Oxley was enacted to protect potential investors as well as stockholders. By all accounts, trust in the auditing profession by investors continues to be limited. Investors are concerned. Judging from views expressed by the investor representatives on the Board’s Standing Advisory Group, investors believe that auditor responsibilities to the investing public should be clearly and unequivocally stated, as soon as possible.

### **Bias and its Effects on Auditor Judgment**

Fraud is not the same as bias, although it is sometimes hard to draw the between the two. Fraud has been and is being addressed in the auditing standards. But, the causes and cures of auditor bias and the effects of management bias on auditors have not been sufficiently addressed.

The many restatements where no fraud is alleged and the many criticisms by analysts of financial reporting provide evidence that many financial statements are in error or lack representational faithfulness. I believe that bias is a major contributor to this problem and should be addressed in the standards.

If the auditor can overcome his own bias and deal with management’s then, not only will auditor judgments about material error and fraud be improved, but also issues of representational faithfulness are more likely to be raised with the audit committee for discussion and resolution.

### Auditor Bias

While much has already been done to eliminate auditor bias, auditors’ judgment will still be affected by:

- Non-audit services such as tax planning and advice, as useful as they clearly are, that will sometimes create significant common interests between the auditor and management and result in pro-management bias. The proposed ethics rule is an important, but perhaps insufficient remedy.
- Other factors affecting relationships with management that are also contributors to bias:
  - Management’s limited, but still continuing influence over auditor compensation, tenure and retention for non-audit services. This results in an economic incentive to accept management positions.

- Close working relationships and related personal associations with management during years of auditor tenure. This makes auditors more receptive to management positions.
- Difficulties in understanding large and complex businesses, auditing fair value accounting and intangibles, and evaluating IT systems. This tends to make auditors management dependent.
- The latitude provided for management estimates and choices of accounting principles, and that resulting from the materiality concept. These provide flexibility to agree with management positions, and avoid the stressful “push back” of disagreement.

My views on the causes of bias are based on experience and observation. They are buttressed by authors of a 2002 Harvard Business School publication “Why Good Accountants Do Bad Audits”. The authors relied upon psychological research in making the case that many good auditors have an unconscious bias.

Auditor pro-management bias contributes to borderline opinions and non-comparable financial statements. It inhibits appropriate discussions with the Audit Committee about specific matters as well as the overall quality of the financial statements. It is a serious behavior problem.

The standards should address this problem and the Board’s upcoming review of the Quality Control standards should consider it. Unconscious bias, perhaps a bigger problem than conscious bias, will be reduced by warning auditors of the aforementioned dangers to objectivity. Conscious bias may be reduced by the threat of exposure coming from recital of these dangers in the standards and responsive audit committee questioning.

More can be done. The definition of Independence discussed above can be further strengthened by stressing the importance of “character” (John Cary’s concept) in living up to the requirements of independence, and by emphasis on the auditor’s personal responsibility to act in a truly independent manner. This would be a positive standards’ counterpart to the Board’s proposed “associated persons” ethics rule.

#### Undue Respect for Management Bias

The existing independence standard calls for judicial impartiality that recognizes the auditor’s obligation for fairness not only to management (emphasis supplied) and the owners of a business, but also to others who may rely on the auditor’s report. This sends the wrong signal. Management is an integral part of the audited company, and may often be biased in its financial reporting. The auditor should not, as too often happens, seek ways to support management positions within the latitude provided by accounting standards.

Responsive changes in auditing standards should help auditors deal with management bias.

**Legal Jeopardy**

Adoption of the concepts of the Arthur Young case and asking auditors to overcome and deal with bias has some legal implications. Potential legal liability costs to auditors can be justified by a cost benefit analysis that considers both the costs to investors and the economy of financial statement error and lack of representational faithfulness, and by the economic benefits to auditors provided by the Board's expansion and strengthening of the auditing function.

**Tax Services to Audit Committee Members**

I question the advisability of permitting this, but not only because of possible perception of impairment of the auditor's independence. I believe that the resulting favorable bias of audit committee members toward the auditor may inhibit the Committee's objectivity in discharging its own obligations, a view I believe that was held by many of the members of the Blue Ribbon Committee.

**Conclusion**

I hope that the Board will consider these issues. If the Board has already done so, and the decision has been taken that these issues are not critical to the SEC's public policy goals, or that these issues should be left to the SEC for resolution, then I hope that the Board will discuss the issues and their resolution in the final PCAOB rule.

**Donald H. Chapin, CPA**

January 25, 2005

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**From:** Joe Chasse [jtruck@willapabay.org]  
**Sent:** Tuesday, January 18, 2005 1:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joe Chasse  
22313 V St  
Ocean Park, WA 98640-3513

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**From:** marietta cheeks [amaryhome1@junp.com]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. marietta cheeks  
305 Ashby St  
Alexandria, VA 22305-2904

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**From:** gary childers [demojudge@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. gary childers  
127 Fairfax Ave  
Asheville, NC 28806-3223

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**From:** Dennis Chin [chindini@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dennis Chin  
6519 Legacy Park Dr  
Mechanicsville, VA 23111-4699

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**From:** Evangeline Chinn [vanchinn@ev1.net]  
**Sent:** Tuesday, January 18, 2005 8:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Evangeline Chinn  
1690 Bandtail Ln  
Paradise, CA 95969-4406

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December 22, 2004

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

Re: PCAOB Rulemaking Docket No. 017:  
Proposed Ethics and Independence Rules  
Concerning Independence, Tax Services and Contingent Fees

Dear Board Members:

I am an attorney with no affiliation with any public accounting firm required to register with the Public Company Accounting Oversight Board (the "Board"). I commend the Board on its proposed rules relating to ethics, independence and tax services and offer several comments.

As a preliminary matter, I urge the Board to help restore investor confidence in the independence of auditors and the integrity of their audits of public companies by adopting a rule which prohibits the audit firm from providing tax services which are unrelated to the audit. For example, if an audit firm receives \$5 million for tax services from its audit client concerning reorganization plans (mergers, acquisitions, divestitures) contemporaneously with performing an audit of the client's financial statements for which it is paid \$2 million, investors, creditors and other third parties who rely upon the financial statements may perceive that the audit firm lacks the objectivity and independence to challenge management's financial statement assertions since to do so may affect the client's retention of the auditors for similar tax services in the future. In other words, as a practical matter, the \$5 million fee for tax services may distort the

mental attitude, objectivity and independence required to perform the audit of the financial statements.

I believe the Board has clear and ample legal authority to prohibit such non-audit related tax services. I further believe the Board should exercise leadership in this area to persuade the SEC to the position that an audit firm should perform audits and not commingle that function with the performance of unrelated tax services.

**Point I:**

**The Board Should Adopt a Rule that Restricts the Audit Firm to Performing Those Audit Services Necessary to the Audit and Not Allow it to Perform Other Unrelated Tax Services**

Section 201(g) of the Sarbanes-Oxley Act (“Act”) permits an audit firm to provide “tax services” to an audit client “if the activity is approved in advance by the audit committee of the issuer.” The definition and scope of such permissible “tax services” is not set forth in the Act, but at first blush it would appear that “tax services”, however defined, are acceptable. However, after listing eight other non-audit services in Section 201(g)(1) through (8) that are prohibited, Section 201(g)(9) grants the Board authority to prohibit “any other services that it determines, by regulation, is impermissible.” Thus, as a legal matter, I believe that despite the Act’s permitting “tax services” approved by the audit committee, the Board may, nonetheless, prohibit certain “tax services” from being provided by an audit firm to its audit client. The Board may prohibit certain of those tax services based upon its determination under Section 101 of the Act that it is necessary in order “to protect the interests of investors and further the public interest of informative, accurate and *independent* audit reports...”

The provision of “tax services” by audit firms in connection with the audit of the financial statements of its audit client has been limited until the recent past to examining management’s calculation and allocation of tax liability, and auditing the income tax accounts to be reasonably assured they are fairly stated and accompanied by adequate disclosure. PCAOB Release 2004-015, December 14, 2004, at page 15. However, in more recent decades, other tax services unrelated to the audit have been performed by audit firms for their audit clients.

As to those other non-audit related “tax services,” the SEC recently determined that it will not adopt a rule that prohibits them. It reasons that such non-audit related “tax services” should not be prohibited “partly because audit firms--both large and small--have historically played a part in return preparation and have advised their clients on the complexities of the tax code and how it affects the client’s tax liabilities.” PCAOB Release 2004-015, December 14, 2004, at page 7, citing SEC Release No. 33-8183, Section II.B.11, note 103 (January 28, 2003).

I do not believe that these “historical” practices and the SEC decision to permit such non-audit related tax services should be determinative of the Board’s rule making in this area. Rather, if the Board believes an audit firm should perform audits and not other unrelated tax services (aside from those few tasks listed above which relate to the audit), it has ample authority to adopt such a rule under the aforementioned broadly stated statutory mandates. Moreover, it has been assigned a separate and specific role by the Act to address issues that affect audits and audit reports so as to restore public confidence in financial statements.

The fact that Board rules are subject to the prior approval of the SEC under Section 107 of the Act should not, *ipso facto*, deter the Board from taken a different position by deciding that unrelated “tax services” may (i) interfere with the audit firm’s focus on the audit, (ii) distort its judgment, mental attitude and approach to the audit client, (iii) impair its ability to be truly impartial and objective since the firm may be reaping large fees from the same client for unrelated tax services, and (iv) affect the public’s confidence in the audited financial statements as being the product of an audit (and only an audit) and not of unrelated tax services provided by the audit client. I use the word “may” because no empirical or scientific data can be brought to bear on this subject: it is a matter of how an audit firm behaves or may behave when in addition to the audit it is providing other unrelated “tax services” to a client.

In light of the foregoing, I urge the Board to step back and ask: *why should the audit firm provide any tax services to the audit client which are unrelated to the audit?* Surely, the client can obtain such services from a host of other tax advisors, including tax lawyers and other audit firms. To answer this basic question, the Board might look to the criteria used by the SEC. It has indicated that an audit firm should not have a relationship with the audit client or provide a service to it that (1) creates a *mutual interest* or conflicting one with the client; (2) puts the audit firm in the position of *auditing its own work*; (3) results in the audit firm acting in a management capacity; or (4) places the audit firm in the position of being an *advocate* for the client. See 17 C.F.R. Sec. 210.2-01, Preliminary Note, cited in PCAOB Release 2004-015 at page 4.

Does not the provision of tax services unrelated to the audit by the audit firm to its audit client conflict with and compromise several of those principles? First, by providing tax services such as tax planning for a reorganization transaction, is not the audit firm creating a “mutual interest” with the client in the tax services so provided? Do not both the client and the audit firm have the same or mutual objective of seeing that the tax plan is adopted and implemented?

In addition, do not such tax services inevitably place the audit firm “in the position of being an *advocate* for the audit client”? For example, is not the audit firm an advocate when its client is deliberating over whether to adopt a tax reorganization plan

and implement it? Is it not, inevitably, an advocate of the client if the plan is challenged or opposed by others affected by it (e.g. stockholders, creditors, third parties) who may believe the plan is counter to the entity's best interests? And, will not the audit firm be an "advocate" of the client if the plan is challenged by the Internal Revenue Service, State tax authority or any other regulatory body?

And, finally, if the audit firm prepares the tax returns of an audit client is not the audit firm to some extent auditing its own work?

Since tax planning and other tax services unrelated to the audit are a significant part of the revenues and profits of the "Big 4" and many of the other audit firms subject to the Board's jurisdiction, any such prohibition will be resisted and unwelcomed. The Board, however, has demonstrated that it will not hesitate to adopt bold and far reaching rules when it deems it necessary to restore confidence in financial statements.<sup>1</sup> Thus, at this moment of time when it has the broad public support to act boldly I urge it to decide that audit firms are to do audits only and that the tax services they provide should be restricted to those few audit matters that call for measuring the adequacy of

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<sup>1</sup> To date, in other areas, the Board has taken a bold stance that differed from prior SEC positions: for example, in the standard concerning internal controls over financial reporting, the Board has required the outside auditor to perform an audit of such controls in conjunction with its audit of the financial statement; further, that the outside auditor report on the effectiveness of such controls. See "An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements", PCAOB Release No. 2004-001, March 9, 2004, adopting Auditing Standard No. 2. Neither of these positions had been adopted by the SEC before the Board was created. In addition, the Board's rule was both far reaching and controversial in that it stretches the language and intent of Sections 103(a)(2)(A)(iii) and 404(b) of the Act. Thus, it can be argued that the Act does not require the outside auditor to either audit the internal controls or report on their effectiveness, but rather only to "attest to" and "report on" *management's* assessment of the controls required by Section 404(a). However, in view of the public interest and the Board's mandate to restore public confidence in the reliability of financial statements, it adopted a more stringent and far reaching standard than had been the prior position of the SEC.

Similarly, the Board has adopted rules concerning audit documentation that go beyond the rules previously adopted by the SEC, including the rule that in multi-location audits the audit documentation supporting the work done by others be retained by or be accessible to the office issuing the auditor's report. See Audit Documentation and Amendment to Interim Auditing Standards, PCAOB Release No. 2004-006, June 9, 2004 at page 8, adopting Auditing Standard No. 3.

tax accruals and income tax liabilities. The Board should not allow the audit firm to provide other tax services that have nothing whatsoever to do with the audit.

### **New Legislation Needed to Separate Auditors from Non-Auditors**

Along with this rule, I urge the Board to propose legislation to Congress that would require audit firms to separate themselves legally from other parts of their firm that perform tax services and other non-audit services. Thus, all auditors would be in one firm and all other personnel (tax advisors, management consultants, etc.) in another, with the management and profits of each firm separate. This will not only promote a greater degree of professionalism in the audit firm but also assist the Board in its regulatory responsibilities to inspect such firms.<sup>2</sup>

### **Point II: Proposed Rule 3522(c) re Aggressive Tax Positions Should Be Clarified**

In the event the Board does not adopt the rule proposed in Point I, I urge it to clarify proposed rule 3522(c) which introduces the concept of a “tax advisor.” The rule would consider the audit firm not to be independent if a significant purpose of the transaction, if recommended by the audit firm or a tax advisor, is tax avoidance and not likely to be allowed under tax laws.

The reference to a “tax advisor” sets up contradictory possibilities that may be confusing: for example, the tax advisor may propose a transaction it believes has many purposes but not a “significant” one of tax avoidance, while the audit firm may believe it has such a significant purpose. Does it matter what the tax advisor believes since the Board has no jurisdiction of such person or entity? Is not the rule focused on the audit firm’s independence, and if so, does it matter who originated or recommended the transaction? A similar confusion arises if the tax advisor disagrees with the outside audit firm as to the probable allowance of the transaction under applicable tax laws? Does it matter what the tax advisor believes?

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<sup>2</sup> See the author’s article: “Accountant Regulation One Year After Sarbanes-Oxley: Are More Reforms Needed?” BNA’s Securities Regulation and Law Report, Vol. 36, No. 6, February 9, 2004, attached to this letter as a “PDF” document.

I urge the Board to delete all references to “another tax advisor” and simply provide that the audit firm will not be deemed independent if it engages in any tax planning for the audit client which has as a principal purpose tax avoidance and which the audit firm believes is not likely to be allowed under applicable tax laws.

### **Point III**

#### **Use Simpler Language Concerning Disallowance of a Tax Transaction**

I urge the Board to use simpler language in proposed Rule 3522(c) in place of “not at least more likely than not to be allowed under applicable tax laws.” How about: “if the proposed tax treatment is more likely than not to be disallowed under applicable tax laws.”

Respectfully submitted,

Robert Chira

# Analysis & Perspective

## Accounting

### Accountant Regulation One Year After Sarbanes-Oxley: Are More Reforms Needed?

By ROBERT CHIRA

A general consensus exists amongst regulators and legislators that now is not the time to address the issue of whether additional reforms of public accounting firms are needed to prevent further audit failures. Instead, almost all interested parties agree that before further reforms are considered a careful assessment must be made of the impact on the firms of the Sarbanes-Oxley Act of 2002 (the "Act")<sup>1</sup> as well as the system of regulation by the Public Company Accounting Oversight Board ("PCAOB") it established.

It is also generally agreed that *professionalism* (as defined below) in the largest public accounting firms must be restored. The audit failures of the past few years demonstrate the need for such reparation. However, one leading commentator believes that while the Act and its new system of regulation correct many problems, the underlying malady, which afflicts the largest firms, is a lack of professionalism which cannot be so simply remedied. Instead, he asserts that they must change their leaders and internal culture, areas essentially outside the Act's purview and beyond the PCAOB's regulatory authority.

Professionalism embodies a variety of attributes, including: (i) independence by the outside auditor of the company's management in fact, attitude and mental approach to the audit; (ii) skepticism toward management's financial statement assertions; (iii) thoroughness of verification of management's proposed financial results; (iv) willingness to disagree with management's estimates, assumptions and judgments, even at the risk of impairing the relationship between the parties; (v) willingness to present more preferable and less aggressive accounting treatment of transactions to the audit committee or board of directors; (v) awareness that the

outside auditor has been granted a franchise under the federal securities laws and is thus vested with a public trust;<sup>2</sup> and (vi) recognition that the auditor's certification and report constitute "the principal external check on the integrity of the financial statements."<sup>3</sup>

This article is written to stimulate discussion. It suggests additional reforms that should be considered by the PCAOB and Congress if future major audit failures continue to occur.

**PCAOB's Initial Regulatory Efforts.** The PCAOB had its first anniversary on January 6, 2004; it has achieved much under the substantial time pressures mandated by Congress. For example, in order to regulate accounting firms that audit public companies, the Act requires that they register with, and be inspected by, the PCAOB.<sup>4</sup> Approximately 740 firms have so registered. In addition, with a small start up inspection staff in 2003, the PCAOB conducted limited inspections of each of the "Big 4" audit firms. These firms audit almost 80% of the more than 15,000 U.S. public companies that file financial statements with the Securities and Exchange Commission (the "SEC").<sup>5</sup> In 2004, the PCAOB should reach a full cadre of several hundred inspectors and each year the Big 4 firms will be more rigorously inspected along with three other firms that audit more than 100 such companies. The remaining accounting firms, including more than 650 that audit fewer than five public companies, will also be inspected beginning then, but only once every three years.

In addition to registering and inspecting public accounting firms, the Act also gave the PCAOB authority to (i) conduct investigations and disciplinary proceedings of firms and their personnel; (ii) enforce compliance with the Act, PCAOB rules, securities laws pertain-

<sup>1</sup> Public Law 107-204, July 30, 2002.

*The author, an attorney in private practice, was formerly the inside general counsel of a national accounting firm. He also has served as a special advisor to the general counsel of the Securities and Exchange Commission on accounting issues and regulation. He does not represent any accounting firm subject to regulation by the PCAOB. He can be reached at 488 Madison Avenue, Suite 1100, New York, N.Y. 10022, Tel. 212-826-7179, email: rc@robertchira.com.*

<sup>2</sup> "The independent public accountant . . . owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. . . ." *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-818 (1984).

<sup>3</sup> Report and Recommendations of the Panel on Audit Effectiveness, August 31, 2000, at p. 1.

<sup>4</sup> Section 102 of the Act titled "Mandatory Registration" makes it unlawful for any person that is not a registered public accounting firm to prepare or issue an audit report on a public company's financial statements.

<sup>5</sup> PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young, and KPMG audit 97% of U.S. companies with sales of over \$250 million, and approximately 78% of the more than 15,000 public companies filing financial statements with the SEC. See GAO Report, *infra* at pages 20-21.

ing to audit reports and "professional standards"<sup>6</sup>; and (iii) establish new standards in the areas of auditing, quality control, ethics, independence and, as a catch-all, "other" standards relating to audit reports.<sup>7</sup> Enforcement proceedings are likely to result from the inspection process and new rules have been proposed by the PCAOB to govern those proceedings.<sup>8</sup>

In addition, the PCAOB has begun to review existing auditing standards and make proposals to change them. Thus, it has proposed new standards requiring more extensive written documentation of the audit process that can be reviewed by outside, unrelated persons such as PCAOB inspectors. The retention in one central office of all such work papers has also been proposed so as to facilitate such inspections.<sup>9</sup> Also pending is a proposed audit standard for the outside auditor to attest to and report on management's assessment of the effectiveness of the entity's internal controls over financial reporting.<sup>10</sup> Expected to be proposed are changes to the current standards designed to detect fraud.

In an effort to achieve a greater degree of independence between the audit firm and its public company clients, the Act also prohibits eight specific non-audit services from being performed by registered public accounting firms for such clients.<sup>11</sup> All other services, including tax services, must be pre-approved by the company's audit committee or board of directors.

To address other areas of Congressional concern, the Act required that several significant studies be made, including one on consolidation and competition in the public accounting sector, the reasons for recent financial statement reporting violations and audit failures, and whether to require the mandatory rotation of accounting firms.<sup>12</sup>

<sup>6</sup> The PCAOB has been granted broad authority to enforce compliance with "accounting" principles, not merely "auditing" standards. This follows from the definition of "professional standards" in Section 2(10) of the Act; it encompasses accounting principles established by the Financial Accounting Standards Board and SEC which are relevant to audit reports for public companies. Previous to the Act, only the SEC had such authority.

<sup>7</sup> The inclusion of the term "other standards" gives the PCAOB authority to adopt rules that may not specifically be within the other specific categories but which are within its broad mandate to protect investors and enhance accurate, informative and independent audit reports.

<sup>8</sup> Adopted in PCAOB Release No. 2003-015, September 29, 2003, and submitted for approval to the SEC.

<sup>9</sup> Proposed for public comment in PCAOB Release No. 2003-023, November 21, 2003.

<sup>10</sup> Proposed for public comment in PCAOB Release No. 2003-017, October 7, 2003.

<sup>11</sup> Section 201 of the Act proscribes the following eight specific non-audit services: (1) "bookkeeping or other services relating to accounting records or financial statements. . ."; (2) financial information systems design and implementation; (3) appraisal or valuation services. . .; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions or human resources; (7) broker/dealer, investment adviser, or investment banking services; (8) legal services. . ." It further permits the PCAOB to prohibit "any other services the Board determines, by regulation, is impermissible."

<sup>12</sup> Section 701 of the Act required the U.S. General Accounting Office to study and report on consolidation of public accounting firms. See "GAO Report", *infra*, issued July 2003. Section 704 required the SEC to study and report on enforcement actions involving violations of reporting requirements, including audit failures. It issued its report on January 24,

In recent Congressional testimony, the Chairman of the PCAOB summed up the Board's work and specifically urged the accounting firms' leaders to work harder to restore public trust. He indicated that the passage of the Act and establishment of the PCAOB indicate that public accountants are being given a last chance to redeem themselves. He stated that if they did not meet this challenge, the PCAOB, using "tough love," would do whatever is necessary to restore professionalism. The Chairman further promised that PCAOB's inspections will examine the "tone at the top" of registered firms, including "the nature of the messages that are coming from the leadership of the firms and their frequency, and whether the messages are received and acted on." And, the PCAOB will look at how "behaviors are rewarded and reinforced through compensation and promotions" and the firm's "communication and training practices."<sup>13</sup>

### Limitations of the Act's Regulation of Accounting Firms and Their Personnel.

Although the PCAOB's statutory purpose is broad, that is "to oversee the audit of public companies . . . in order to protect the interests of investors" and to "further the public interest in the preparation of informative, accurate and independent audit reports,"<sup>14</sup> its authority is, in fact, limited to only those parts of accounting firms and those personnel within them who audit public companies. It may not be well understood but the PCAOB does not have any authority over other parts of a registered public accounting firm which perform audit and non-audit services for non-public companies. Nor does it regulate any firms that audit only non-public companies.

The former exclusion is significant when one examines the size of the seven largest public accounting firms which control more than 90% of the number of public companies that require the filing of audited financial statements. These firms have professional staffs of up to 20,000 persons and consist of partnerships of 200 to 2,600 partners.<sup>15</sup> Significantly, a substantial number of these professionals and partners do not perform any services for public company clients and are, thus, outside the purview of the PCAOB's regulatory authority.<sup>16</sup>

2003, available at [www.sec.gov/news/studies/sox704report.pdf](http://www.sec.gov/news/studies/sox704report.pdf). Finally, Section 207 of the Act requires the U.S. Comptroller General "to conduct a study and review of the potential effects of requiring the mandatory rotation of public accounting firms." Its recently published study, GAO-04-216, is available at [www.gao.gov](http://www.gao.gov).

<sup>13</sup> Testimony Concerning the Public Company Accounting Oversight Board, William J. McDonough, before the Committee on Governmental Affairs Permanent Subcommittee on Investigations, United States Senate, Nov. 20, 2003, available at [www.pcaobus.org](http://www.pcaobus.org), hereafter "McDonough Testimony."

<sup>14</sup> Section 101 of the Act.

<sup>15</sup> For example, in 2002, Deloitte & Touche had 2,618 partners and 19,835 professional staff; Ernst & Young had 2,118 partners and 15,078 professional staff; PricewaterhouseCoopers had 2,027 partners and 16,774 professional staff, and KPMG had 1,535 partners and 10,967 professional staff. See GAO Report, Table 1, page 17.

<sup>16</sup> See Table 1, Twenty Five Largest Accounting Firms by Total Revenue, Partners and Staff Resources (U.S. Operations), 2002 in GAO-03-204, U.S. General Accounting Office Report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services,

In addition, the Act does not prohibit tax and tax related services from being provided by the audit firm to its public company client although each service must be pre-approved by the company's audit committee or directors. These services have included creating tax shelters, structuring other tax avoidance transactions and advising on tax litigation.<sup>17</sup> Such services have been a significant source of revenue for the Big 4 firms.<sup>18</sup> An open question is whether the PCAOB will exercise its authority under the Act to now restrict firms from performing all such services since they are not directly related to the audit.

To some observers, the Act also has an additional limitation by not requiring mandatory rotation of audit firms. While the "lead or coordinating audit partner having primary responsibility for the audit or the audit partner responsible for reviewing the audit" must be changed every five years,<sup>19</sup> the firm itself may continue to serve as auditor indefinitely. Congress asked the GAO to study the issue of whether firm mandatory rotation would enhance audits of public companies by providing a "fresh look" at the financial presentation made. Its report concludes that mandatory firm rotation involves complex issues, including ones of costs versus benefits, and it recommends that the Act's reforms should first be given time to take effect before this issue is resolved.<sup>20</sup>

**Will the Act's Reforms and PCAOB's Regulation Be Sufficient to Restore Professionalism?** One of the most important questions of accountant regulation is whether professionalism in the large public accounting firms will be restored by reason of the Act's reforms and the new PCAOB regulatory structure created by it. While most interested parties view the Act as a significant reform bound to change accounting firms by improving their performance in conducting audits, one commentator, with long experience in the profession, thinks not.

A speech by Professor Arthur R. Wyatt on August 4, 2003 at the American Accounting Association's annual

"Public Accounting Firms, Mandated Study on Consolidation and Competition," July 2003, herein cited as "GAO Report."

<sup>17</sup> Both the Chairman and other members of the PCAOB have indicated in speeches and testimony that "heightened scrutiny" will be given to "audit firms promoting and giving tax opinions on complex, structured transactions for their audit clients." See McDonough Testimony, *supra*. Another Board member has indicated that tax services may violate independence standards and require regulation by the PCAOB if not curbed and corrected, stating: "...the marketing to clients of novel, tax-driven, financial products raise serious issues" and that the "auditor almost inevitably becomes an advocate for the client's position that the tax benefits are legitimate. Further, the financial statements may be materially influenced by the supposed tax benefits of the product. Therefore, the auditor may find itself in the position of auditing its own work." See Speech of Board Member Daniel L. Goelzer, September 15, 2003, [www.pcaobus.org/speeches](http://www.pcaobus.org/speeches).

<sup>18</sup> In 2002, the Big 4 firms had revenues ranging from \$979 million to \$1.7 billion derived from tax services provided to clients in the U.S. See GAO Report, p. 17.

<sup>19</sup> The SEC has implemented specific partner rotation rules in Securities Act Release No. 33-8183, dated January 28, 2003, and provided guidance on their application in the Office of Chief Accountant's release dated August 13, 2003.

<sup>20</sup> GAO Report 04-216, "Public Accounting Firms: Required Study of the Potential Effects of Mandatory Firm Rotation", November 2003, available at [www.gao.gov](http://www.gao.gov)

meeting, concluded that "They Just Don't Get It."<sup>21</sup> The "they" are the leaders of the profession, primarily those of the Big 4 firms. He concludes that the profession has, in reality, become a "business" and firms have changed from being associations of professional accountants led by the best of their profession to businesses run by consultants and public relations personnel who are adept as "rainmakers." Moreover, instead of providing leadership in areas of professionalism, ethics and independence, he asserts the American Institute of Certified Public Accountants ("AICPA") has simply evolved into a "trade" association.

Professor Wyatt traces these changes over three periods: First, the period from the 1930s, when the federal securities laws granted the franchise to independent, certified accountants to report on financial statements required to be filed with the SEC, to 1960, when all firms were relatively small. Second, the period of their growth from 1960 to about 1980 when they became more impersonal but still were essentially "accounting" firms. Third, the period since 1980 when they have become multibillion dollar businesses with many on their huge professional staffs not accountants.

For example, Arthur Andersen, the firm Professor Wyatt joined upon graduating from college with an accounting degree, had only 30 partners and each partner knew the other partners and could monitor their work and the firm's reports. In the 1960s, the firm grew to 350 partners, but still was led by the best of its professionals who had risen to the top of the firm because of their "acknowledged know-how, exposure to diverse accounting issues and honed technical skills." At that time, all of its personnel were accountants who had studied accounting before practicing and obtaining their licenses. Education of accountants still focused on "professional responsibilities and the importance of ethical behavior." Their *raison d'être* was to keep clients out of trouble and "reputations were gained . . . from a firm's policy on how tough a stance to take on the interpretation of accounting standards." By the 1980s, the firm had evolved into a "business" due primarily to two factors. First, the advent of rules permitting the solicitation of business gave rise to active competition between firms for audit and other services. At the same time, the rise of computer technology opened up new services for accountants to perform, mostly unrelated to the audit.

As a result of these developments, Professor Wyatt notes the firms changed in their internal culture and

<sup>21</sup> Available at the AAA's website, [www.aaa.org](http://www.aaa.org) under annual meeting, August 2003.

## Note to Readers

The editors of BNA's *Securities Regulation & Law Report* invite the submission for publication of articles of interest to practitioners.

Prospective authors should contact the Managing Editor, BNA's *Securities Regulation & Law Report*, 1231 25th St., N.W., Washington, D.C. 20037; telephone (202) 452-4339; fax (202) 728-5208; or e-mail to [srlr@bna.com](mailto:srlr@bna.com).

personnel. Andersen and the other big firms began to hire non-accountants skilled in marketing, computer technology and other non-audit services.

"The end development in this chain was that men and women could become partners in Andersen . . . even though they were not certified public accountants. . . . As the consulting practices grew, the number of non-accounting trained personnel likewise grew. These people were not professionals, but rather they were relatively high-paid personnel with strong skill sets in areas only distantly, or even unrelated to, accounting or auditing. Their numbers grew rapidly, and their success in generating high-margin fees gave them an increasing voice in firm management."

He also states there developed "enormous pressure on the auditing and tax practice, both to grow revenues and to increase margins." Eventually, "greed became a force to contend with in the accounting firms. In essence, the cultures of the firms had gradually changed from an emphasis on delivering professional services in a professional manner to one on growing revenues and profitability." Instead of protecting "investors and creditors from being misled by financial statements that embraced unacceptable accounting and inadequate disclosures," the firms moved to "the top of the list of entities that failed to meet investors' justifiable expectations."

Although he acknowledges the Act's wide scope and Congress' specific intent to correct the problems that led to massive audit failures, Professor Wyatt thinks the legislation will not cure the deeply rooted and underlying malady which afflicts the large firms:

While that legislation will be helpful in establishing the boundaries on the scope of non-auditing services, and while it helps to establish appropriate qualifications for audit committee members (among other provisions), *the underlying causes of the decline in accounting professionalism remains in place*. The leadership of the various firms needs to understand that the *internal culture* of the firms needs a substantial amount of attention if the reputation of the firm is to be restored. (Italics added).

Thus, Professor Wyatt recommends new leaders, one's skilled in accounting and auditing, who must focus on changing the "internal culture" of their firms; that is, restore the primacy of professional behavior, place greater reliance on quality control, and lead clients to meet the intent of standards rather than engage in financial "engineering."

#### **Some Additional Ideas To Help Restore Professionalism.**

Obviously, it is in the accounting profession's self-interest to do all it can to restore the highest level of professionalism amongst its personnel. Indeed, the firms may find that future audit failures will result in significant pressure to end their exclusive and highly remunerative franchise of auditing public companies with government auditors replacing them. Hence, the firms have the greatest incentive, their own survival, to see that audit failures are prevented and that the public and regulatory authorities are satisfied with the degree of professionalism they exhibit in their conduct of public company audits.

As for the role of the PCAOB and its threat of "tough love," it will no doubt bring about many needed changes. But, it will be difficult for it to assess whether the "tone at the top" of these large firms has changed or whether compensation of audit partners for quality

work is rewarded and promotion based on their audit work. As indicated above, these firms are huge with many professional personnel who are not auditors or who work only on audits of non-public company clients. Due to their size and the intermingling of auditors regulated by the PCAOB with other personnel not regulated, it will be very difficult for the PCAOB to measure who is rewarded in such firms and on what basis. In addition, compensation and promotion policies are inherently subjective and based on factors that cannot easily be measured. For example, interviewing partners and lower level personnel and examining memoranda circulated by the firm is not a particularly reliable means of measuring such intangibles. Indeed, whether a firm is led by the right persons and whether it promotes the highest standards of professionalism can perhaps only be gauged by being within a firm and experiencing on a day to day basis exactly how audit problems are resolved.

In addition, while the rigor of the PCAOB's inspections and its enforcement proceedings may instill greater professionalism in the firms, its limited inspection staff cannot be expected to do more than review a sample of the thousands of audits each of the Big 4 firms conduct. Most audits will not be inspected and some with problems will remain undetected. Moreover, despite the exhortations of the chairman and members of the PCAOB, there are limits to the regulatory process created by the Act noted above and, perhaps, limits to the ultimate sanctions the PCAOB may be able to levy.<sup>22</sup>

In view of these limitations, the author suggests the following additional reforms be considered:

**1. Prohibit All Non-Audit Services.** First, the PCAOB should consider banning registered public accounting firms from performing any non-audit services for its audit clients, including, as further discussed below, any tax services not directly related to the audit.<sup>23</sup> An outright exclusionary rule will help concentrate the audit firm on the audit itself, which, in turn, should enhance professionalism.

**2. Separate the Audit Firm from the Entire Firm.** Second, as part of the first reform and to further enhance professionalism, Congress should consider adopting legislation that would require accounting firms performing audits be a separate legal entity of the overall firm with its services limited to auditing. Thus, for example, KPMG would be essentially a holding entity consisting of one partnership called the *KPMG Audit Firm* and a second partnership called the *KPMG Non-Audit or General Services Firm*. The audit firm's personnel would be restricted to partners and staff who are

<sup>22</sup> What "tough love" measures would result has been left unsaid although the chairman of the PCAOB in various interviews has indicated that it will not hesitate to act against a Big 4 firm even at the risk of reducing the public audit market for large companies to three firms. Of course, as the GAO Report suggested, that sanction cannot be easily sustained and regulators might instead "hold partners and employees rather than the entire firm accountable in view of the implications sanctions on the Big 4 firms would have on the audit market." GAO Report at p. 53.

<sup>23</sup> This idea is not new: it was recommended in the separate statement made by several members of the Panel on Audit Effectiveness in its August 31, 2000 Report at Section 5.33.

CPAs<sup>24</sup> (or new hires training to become CPAs); its revenues would be restricted to the audit and only those limited tax services required to perform audits. Hiring, promotion and compensation would be determined by its own leaders and partners. There would be no participation or ownership interest by its partners in the other partnership called the "Non-Audit or General Services Firm." It too would have its own revenues, hiring, promotion and compensation policies. Overhead and other common costs would be allocated to each firm in proportion to their personnel, size and other factors. If audit personnel need to call upon skills from other experts not in the audit firm, they would do so by contracting with the Non-Audit or General Services Firm or another firm.

Mandating a separate legal structure for the auditing firm probably requires further legislation by Congress.<sup>25</sup> However, since the overall firm would not be broken up, just separated into different legal entities, opposition to this idea should not be a significant political obstacle.<sup>26</sup>

Such a legal separation would not necessarily restore professionalism, but it would most probably result in the leadership of the audit firm being chosen from amongst its best accounting professionals. It would also probably lead to promotion and compensation of auditors in line with quality work. Auditors with direct experience in the standards to be met in that area are also more likely to promote changes in the firm's internal culture. Pressure on growing revenues and increasing profit margins to keep up with the non-audit personnel in the other firm would also be lessened considerably. Finally, by having only audit personnel within the regulated firm, the PCAOB can more easily monitor developments within them and gauge whether the firm is striving to achieve the highest level of professionalism.<sup>27</sup>

A change to the legal structure of the largest firms will also not necessarily eliminate audit failures from occurring. But, neither will the limited inspection program of the PCAOB provide that cure, nor its bringing of a number of enforcement proceedings with stiff sanc-

<sup>24</sup> A limited number of tax attorneys assisting auditors in tax related audit work would also be permitted personnel. The audit firm would also perform audits for non-public companies.

<sup>25</sup> While it may be argued that the Act gives the PCAOB authority under Section 101(a) "to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports," nothing therein relates to power to regulate the legal structure of public accounting firms.

<sup>26</sup> A legal challenge to such legislative separation of the firms might be mounted on grounds that the federal government has no power to regulate such firms under the Constitution's "commerce clause" but since the firms are national in scope and affect interstate commerce that argument lacks merit. The principal legal justification for such separate firms is the same as that underpinning the Sarbanes-Oxley Act, i.e. the need to protect public investors from audit reports that fail to meet professional standards.

<sup>27</sup> An ancillary and long term effect of such legal separation might be greater competition in the public company audit market since the largest audit firms would be reduced in size by such separation while other firms might consolidate and rival them in size. See GAO Report at p. 17.

tions.<sup>28</sup> A commitment to professionalism and performing its auditing role in a professional manner must come from education, training, mentoring, discipline within the firm and other factors; it is not the product of a legal structure. But, the structure can change the environment of the firm, which, in turn, can help to promote a greater degree of professionalism amongst its personnel.

**3. Limit Tax Services by the Audit Firm to Those Directly Related to the Audit.** Another idea is for the PCAOB to use its authority under Section 201 of the Act to prohibit a registered firm from performing any tax service to the audit client that is not directly related to the audit. This would address issues of independence that might arise if auditors had to examine financial statements of companies that had adopted tax avoidance structures suggested by the audit firm.

By limiting the tax services that may be provided to the audit client, the problem of aggressive tax shelters and other tax avoidance schemes would not disappear but be relegated to the other legal entity. That non-audit firm providing tax services to non-audit clients would have to meet with enhanced IRS regulation and public scrutiny. Thus, this is not a solution to the overall problem, but a way for regulated audit firms to be restricted in the tax services they provide to public company clients so that such services are directly and exclusively related to the audit. This too should help the audit firm concentrate on the audit and enhance professionalism.

**4. Require Audit Team Members to Certify the Audit Meets Professional Standards.** A further idea is for the PCAOB to adopt a rule that requires each partner and senior level accountant that requires substantial work on an audit to sign a certificate that he/she has performed the audit in accordance with applicable professional standards. This would be in addition to the standard report signed by the firm. The idea of individual certification has been adopted for management as a way to improve financial reporting. Thus, Section 302 of the Act requires the chief executive and financial officers to sign each quarterly and annual report indicating the financials are not misleading and fairly present the company's financial condition and results of operation. A knowingly false certification is a criminal offense under Section 906 of the Act.<sup>29</sup>

In view of these stringent requirements imposed on management's top officers, it would not be unreasonable for the audit team's significant members to sign a certification as to their work and knowledge. At the same time, taking individual responsibility for an audit, and not simply signing the firm's name to the report, might significantly concentrate each auditor on the responsibilities being undertaken and the public trust re-

<sup>28</sup> For example, in the five year period ended July 30, 2002, the SEC commenced 57 administrative or federal court proceedings against accounting firms or about 10 per year but this has not stopped audit failures from occurring. SEC Report Pursuant to Section 704 of the Sarbanes-Oxley Act, Jan. 24, 2003 at [www.sec.gov/news/studies/sox704report.pdf](http://www.sec.gov/news/studies/sox704report.pdf).

<sup>29</sup> Such officers also must take responsibility for establishing and maintaining internal controls over financial reporting and certify that they have disclosed all significant deficiencies therein to the audit committee and auditors. Under Section 404(a) of the Act, they also must assess the company's internal controls and system once annually and opine as to their effectiveness.

posed in their professional judgment. Too many auditors believe that they are not personally liable, only the firm is, and the firm's insurance policy will take care of any monetary liability.<sup>30</sup> This mentality would change if personnel realized more directly that they might individually also be liable for defective audit work. Finally, as with officer liability under Section 906 of the Act, imposing criminal liability on accountants for a knowingly false certification is bound to have a substantial impact on the degree of diligence taken by each professional signing the certification.

**Conclusion.** Restoring professionalism in public accounting firms is not only in the public interest but also in the vital self-interest of the firms if they are to retain

<sup>30</sup> To insure that firms do not cushion the impact of liability through insurance policies, insurers could insist such policies contain very large deductibles.

the franchise granted to them in the federal securities laws to audit and certify the financial statements of public companies. To enhance the level of professionalism in these firms, four additional reforms should be considered. First, the PCAOB could prohibit all non-audit services from being performed by a registered audit firm except for tax services directly related to the audit. Second, Congress could mandate the legal separation of the audit firm from the rest of the firm. Third, all non-audit related tax services could be prohibited by the PCAOB from being performed by the audit firm. Fourth, the PCAOB could require individual auditors to also certify that the audit was conducted in accordance with professional standards and Congress could impose criminal liability for a knowingly false certification. Taken together, these four measures should improve the level of professionalism in the audit firms and help prevent further audit failures.

January 15, 2004

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**From:** Susan Chizeck [chizper@sbcglobal.net]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Susan Chizeck  
7617 Meadowhaven Dr  
Dallas, TX 75254-8014

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**From:** John Chojnowski [johnchojnowski1@msn.com]  
**Sent:** Wednesday, January 19, 2005 10:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Chojnowski  
745 S 360 W  
Angola, IN 46703-9694

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**From:** JAMES CIANFICHI [jcianfichi@adelphia.net]  
**Sent:** Tuesday, January 18, 2005 4:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. JAMES CIANFICHI  
2132 Farr St  
Scranton, PA 18504-1138

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**From:** Donna Cinelli [d.cinelli@verizon.net]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Conflict of interest is still conflict of interest and it's responsible for most of the problems and government corruption we have in America today. We must stop it and turn the tide. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Donna Cinelli  
75 3rd Ave  
Kingston, NY 12401-3237

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**From:** Jennifer Clagett [jennyclagett@comcast.net]  
**Sent:** Tuesday, January 18, 2005 5:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jennifer Clagett  
4 Martin St  
Annapolis, MD 21401-1716

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**From:** Joe St.Clair [joej1@charter.net]  
**Sent:** Saturday, January 22, 2005 7:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joe St.Clair  
676 N 12th St Apt 11  
Grover Beach, CA 93433-1430

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**From:** Stephanie Clayton [stephcl@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 2:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Stephanie Clayton  
3065 Fair Oaks Ave  
Altadena, CA 91001-4865

---

**From:** Brett Cloud [cloud\_brett@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 10:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The auditing profession MUST reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the SEC that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brett Cloud  
929 Marion St Apt 104  
Denver, CO 80218-3056

---

**From:** William Coan [coan@aol.com]  
**Sent:** Monday, January 31, 2005 8:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 31, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Coan  
2843 Lapey St  
Rockford, IL 61109-1177

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**From:** Allan Cole [arcole71@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 6:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Allan Cole  
1 Willett Dr  
Attleboro, MA 02703-2616

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**From:** Cindy Cole [ccole@seiu925.org]  
**Sent:** Wednesday, January 19, 2005 11:24 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The auditor should remain independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. We need to insure high quality audits by minimizing potential conflicts of interest and promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Cindy Cole  
9802 45th Ave SW  
Seattle, WA 98136-2711

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**From:** Don Colodny [licorice0@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Don Colodny  
PO Box 15362  
Washington, DC 20003-0362

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**From:** Caroline Constant [cbconsta@umich.edu]  
**Sent:** Tuesday, January 18, 2005 3:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Caroline Constant  
247 Mulholland St  
Ann Arbor, MI 48103-4354



## Consumer Federation of America

February 14, 2005

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

**Re: PCAOB Rulemaking Docket No. 017**

Dear Board Members:

I am writing on behalf of the Consumer Federation of America<sup>1</sup> in strong support of the proposed rules to promote auditor independence. While there are areas where we believe the proposed rules can and should be strengthened, prohibiting auditors from providing the most troubling types of tax services to audit clients, enhancing the ability of the audit committee to offer appropriate oversight, and prohibiting auditors from accepting contingent fees are all necessary steps that should significantly enhance the independence and integrity of the audit process.

### **The Need for Further Regulation of Tax Services**

When Congress adopted its limits on non-audit services as a part of the Sarbanes-Oxley Act, considerable discussion focused on the area of tax services. Certain tax services, such as the preparation of tax returns, were almost universally viewed as acceptable. Others, such as the sale of tax shelters, were almost universally recognized as creating unacceptable conflicts. Opinion on other services, such as other forms of tax planning, was more divided. Rather than try to draw the line between permissible and non-permissible tax services in legislation, Congress delegated that responsibility to audit committees, who were given a clearer mandate to protect the independence of the audit by, among other things, pre-approving all non-audit services. Congress also reserved for the PCAOB the right and responsibility to enact additional independence and ethics rules as needed.

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<sup>1</sup> The Consumer Federation of America (CFA) is a nonprofit association of 300 consumer groups, representing more than 50 million Americans. It was established in 1968 to advance the consumer interest through research, education, and advocacy.

Unfortunately, in drawing up the rules to implement the legislation, the Securities and Exchange Commission sent mixed signals that helped to muddy the waters on these important issues. For example, despite Congress's steadfast refusal to amend the legislation to permit pre-approval of non-audit services through policies and procedures, the Commission granted audit firms that concession during the rulemaking process. In addition, the Commission removed from the final auditor independence rule release language from the proposing release that drew attention to potential conflicts of interest associated with certain types of tax services and encouraged audit committees to evaluate such services carefully in light of the previously enumerated principles for determining auditor independence.

We are aware of subsequent efforts by at least one major audit firm to use these concessions to undermine the rigor of the audit committee pre-approval process. In guidance provided to audit committees on their responsibilities under the new law, this firm implied: that the SEC had determined that the basic principles of auditor independence were too vague to be useful to audit committees in evaluating non-audit services; that tax services, with the exception of the sale of tax shelters, were generally viewed as non-controversial; and that most audit-related and tax services could be approved annually based on a minimal review.<sup>2</sup> While the Commission has since issued guidance that should help to counteract these misleading messages, it is not clear that all audit committees have carefully reviewed and are following that guidance.

Other developments since the SEC's auditor independence rules were released have drawn attention to the need for stricter limits in the area of tax services. These include:

- ! revelations that Sprint fired its two top executives, rather than dismiss its auditor, because of conflicts resulting from the auditor's highly lucrative sale of controversial tax shelters to those executives;
- ! release of the official report of the Joint Committee on Taxation on its investigation into the collapse of Enron, which laid out the substantial role that promoters of and advisers on tax strategies played in the downfall of that company (along with subsequent evidence of similar problems at Worldcom and Qwest);
- ! continuing problems with abusive sales of tax shelters by major audit firms; and
- ! continued efforts by some audit firms to evade SEC rules prohibiting the use of contingent fee arrangements.

Taken together, these developments make a compelling case for further regulation and clarification in this area.

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<sup>2</sup> These concerns are described in greater detail in a June 4, 2003 letter from Barbara Roper, Consumer Federation of America, Edmund Mierzewski, U.S. Public Interest Research Group, Sally Greenberg, Consumers Union, Kenneth McEldowney, Consumer Action, and Chellie Pingree, Common Cause, to SEC Chairman William Donaldson.

## PCAOB's Rule Proposal

The PCAOB lays the groundwork for its independence rules by first establishing, in proposed Rule 3520, that registered accounting firms have an obligation to maintain their independence from the audit client throughout the audit and professional engagement period. We believe this is an important and useful standard for the Board to establish. While we support proposed Rule 3520, as far as it goes, CFA urges the Board to strengthen the rule, first, by including the four basic principles for auditor independence in the rule and, second, by clarifying that audit firms have an obligation to maintain the appearance, as well as the reality, of independence. Codifying these standards would serve a useful purpose, by unambiguously establishing the basis on which decisions about the permissibility of non-audit services are to be made both by auditors and by audit committees.

The PCAOB further lays the groundwork for its independence rules by establishing, in proposed Rule 3502, that associated persons may not cause the firm to violate the Sarbanes-Oxley Act, the rules of the Board, or the provisions of the securities laws relating to the preparation and issuance of audit reports. Because CFA believes it is imperative that the Board have clear authority to act not just against firms, but also against the individuals associated with firms, we strongly support proposed Rule 3502.

### Independence Violations

The PCAOB then establishes three types of conduct related to tax services that would compromise an auditor's independence: entering into a contingent fee relationship with an audit client; providing assistance in planning, or providing tax advice on, certain types of potentially abusive tax transactions; and providing any tax services to certain senior officers of an audit client.

Contingent Fees: Accepting payment in the form of contingent fees – for example, a percentage of any tax savings generated by the auditor – creates a mutual interest between the auditor and audit client. As such, it is a clear violation of the basic principles of auditor independence. Frankly, we view it as evidence of the cavalier attitude audit firms have all too often shown toward their independence obligations that they would even contemplate entering into such an arrangement, let alone actively seek to evade SEC rules. We therefore strongly support proposed Rule 3521 prohibiting auditors from accepting contingency fees or commissions from audit clients either directly or indirectly. It offers a welcome supplement to recent steps taken by the SEC to enforce and clarify its own rules in this area. Furthermore, we believe the proposed definition of contingent fee is an improvement over the SEC definition, since it deletes the language that has been, at best, confusing and, at worst, a means of evading the SEC rules.

Aggressive Tax Positions: Proposed Rule 3522 would, in effect, prohibit auditors from marketing or advising on abusive tax avoidance transactions. Abusive sale of tax shelters calls into question the ethics of audit firms, in addition to the independence concerns associated with their sale to audit clients. When the tax shelters are sold to audit clients, or when the audit firm advises the client on the tax implications of the strategy, it is all but inevitable that the auditor

will be forced to audit issues directly related to that transaction. Clearly, in such circumstances, the auditor's independence is compromised.

We therefore generally support the restrictions outlined in this proposed rule. In particular, we support the inclusion of aggressive tax positions and confidential transactions, along with listed transaction, in the prohibition. However, we do not believe the prohibition related to aggressive tax positions should be limited to those initiated by the audit firm or another tax advisor. Regardless of who originates the transaction, the auditor is likely to have to examine it as part of the audit, thus creating independence concerns. Furthermore, structuring the rule in this way seems likely to invite efforts to circumvent it. Finally, simply requiring the audit firm to obtain a third party opinion would not resolve this problem, since such opinions have apparently been offered "for sale" by various parties to support the marketing of such strategies.

Tax Services for Senior Officers in a Financial Reporting Oversight Role: As the relatively recent case involving Sprint makes clear, auditors' independence is called into question when they offer tax advice to executives audit clients. This may occur because it creates a mutual interest between the auditor and the executives, and one that may conflict with the interests of shareholders, or because the fees associated with sale of tax shelters to these executives are so large they undermine or appear to undermine the willingness of the audit firm to stand up to those executives when reviewing the financial statements. As a result, we strongly support proposed Rule 3523. However, we believe its provisions should be extended to cover a broader population. At the very least, it should cover those directors who serve on the audit committee, given their responsibility under Sarbanes-Oxley to hire, compensate, and oversee the auditors.

#### Audit Committee Pre-Approval of Tax Services

Finally, the PCAOB has proposed Rule 3524 to strengthen the obligations of auditors in seeking audit committee pre-approval of tax services. We believe this is an area greatly in need of attention, and we strongly support the proposed rule. By requiring the auditor to provide the audit committee with detailed documentation of the nature and scope of the proposed tax service, to discuss the potential effects of performance of these services on the firm's independence, and to document its discussion, this rule should help to ensure that audit committees have the information they need to fulfill their pre-approval obligations. Ideally, this should involve providing the audit committee with the engagement letter that includes a description of the services to be provided and the fees to be paid for those services. In fact, it seems impossible to us that audit committees could fulfill their obligations without receiving this information. Finally, requiring documentation of the discussion should ensure that audit firms treat these issues appropriately and do not simply gloss over or downplay any independence concerns.

#### **Conclusion**

CFA was among those who urged Congress to go further than it ultimately did in restricting the non-audit services auditors are permitted to provide to audit clients. Specifically, we argued that auditors should be limited to providing those non-audit services that can be shown to offer clear benefits to shareholders. This continues to be the standard we believe

should be applied to all non-audit services, including tax services. Using such a standard, we believe auditors should also be prohibited from providing any tax planning services that might require the auditor to audit its firm's own work. We also believe auditors should be prohibited from providing expatriate tax return work, which can involve substantial fees and which has been associated with certain recent violations of SEC independence rules. Finally, we believe audit committees should be encouraged to adopt this standard of approving only those services that benefit shareholders and should be required to disclose to shareholders the basis for their view that the service is beneficial.

The PCAOB rule proposal stops well short of adopting this approach in evaluating tax services. Despite these short-comings, it nonetheless offers important progress toward enhancing auditor independence, by restricting the ability of auditors to provide those tax services that have been identified as being of greatest concern and by improving the ability of audit committees to fulfill their pre-approval responsibilities. We commend the PCAOB for giving this issue early and thorough consideration. We urge prompt adoption of these rules with the above suggested strengthening amendments.

Respectfully submitted,

Barbara Roper  
Director of Investor Protection



James E. Copeland, Jr.  
Chief Executive Officer (Retired)

Deloitte & Touche USA LLP  
1633 Broadway  
New York, NY 10019-6754  
USA

Tel: +1 212 492 3657  
Fax: +1 212 492 4100  
jcopeland@deloitte.com  
www.deloitte.com

February 10, 2005

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

Rulemaking Docket Matter No. 017

Dear Board Members:

I appreciate the opportunity to provide comments on PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees". I believe the proposed rules are the result of a balanced and well reasoned analysis of tax services historically provided by a company's audit firm. The prohibition of specific types of tax services that can impair auditor independence while still preserving the fundamental premise that pre-approved tax services are not independence impairing is the appropriate conclusion of such an analysis. I am supportive of the efforts of the Board to provide clear and concise guidance that can be effectively used by registered firms and the audit committees of issuers to enhance governance and preserve auditor independence.

I currently serve as a Senior Fellow for Corporate Governance on the U.S. Chamber of Commerce and a Global Scholar at the Robinson School of Business at Georgia State University. In addition, I serve as a member of the Board of Directors and member of the Audit Committees of ConocoPhillips, Coca-Cola Enterprises and Equifax, Inc. I was previously CEO of Deloitte & Touche and its global parent, Deloitte Touche Tohmatsu. As a result, I have a perspective on non-audit services, including tax services from "both sides of the aisle". I should point out, however, that the views expressed herein are my own and should not be viewed as representative of the aforementioned companies or organizations.

I would first like to express my view that I believe that audit committee pre-approval requirements enacted by the Securities and Exchange Commission (SEC) under Title II of the Sarbanes-Oxley Act of 2002 are appropriately robust and are functioning effectively at the Boards of Directors of public companies. The review and approval of non-audit services, including tax services is conducted with diligence and deliberation.

Audit committee members undertake and execute their responsibilities with all due seriousness and judgment.

Tax services provided by the audit firm have historically not been viewed as independence impairing and have been specifically preserved as permissible in previous rules issued by the SEC pursuant to the Sarbanes-Oxley Act. My personal belief is that tax services provided by the auditor can serve to enhance audit quality and that retaining the audit firm to provide tax services represents sound business judgment. Virtually all independent research supports the conclusion that tax services provided by the auditor do not cause independence problems and enhance audit quality. This is due to the unique and deep knowledge that the auditor has with respect to its client's business and industry combined with the appropriate historical perspective on the client's tax posture. In addition, as the nature of auditing involves the evaluation and understanding of risk and the impact of risk to the company's financial statements, the auditor is in a unique position to provide tax services that fall within the company's risk tolerance framework. As such, the audit committee should have the freedom to exercise its chartered responsibilities and pre-approve tax services that it deems appropriate and desirable to have performed by the audit firm.

It is in this context that I offer the following comments about specific provisions of the following proposed rules:

Rule 3524 Audit Committee Pre-approval of Certain Tax Services.

This rule mandates that a registered firm seeking pre-approval to perform any permissible tax service to an audit client provide to the audit committee:

“the engagement letter relating to the service, which shall include descriptions of the scope of the service and the fee structure, any amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service;”

I find this proposed provision particularly troubling from an administrative standpoint. Given my belief that pre-approval processes adopted by audit committees are already working effectively, I believe that the volume of information required to be submitted by the auditor as a result of this proposed rule will impose an unbearable workload on audit committees that will not result in improved determination of independence.

To the contrary, the review of voluminous engagement letters containing standardized business and legal terminology may in fact cause the audit committee to unduly focus on aspects of the proposed engagement that have no bearing on the evaluation of the impact on independence of the proposed service. Multiplying this impact by the significant number of tax engagements that an auditor might propose to a large multi-national company exacerbates the potential burden on the audit committee with no corresponding improvement in governance.

If the Board mandates that the auditor provide all engagement letters to the audit committee, the committee will feel compelled to review this information in detail. In today's corporate governance environment, it is unrealistic to assume otherwise. The Board has already appropriately recognized that tax compliance services are not independence impairing. Therefore, requiring the auditor to supply hundreds of pages of tax compliance engagement letters will not enhance the ability of the audit committee to exercise its judgment around independence.

The engagement letter serves a valuable purpose in documenting the understanding of the scope, deliverables and pricing of a proposed project with the client. All of this information is valuable to the audit committee in evaluating the impact of the proposed service on independence. However, it is beneficial to the exercise of professional judgment by the audit committee to have this information extracted from the engagement letter for the consideration of the audit committee. The auditor should be compelled to produce whatever information the audit committee in its judgment feels is necessary to evaluate the impact of the proposed service on independence. I urge the Board to craft the final rule to simply mandate that the auditor supply the audit committee with whatever information it deems necessary to determine the independence impact of any proposed service.

I am supportive of provisions (b) and (c) of Proposed rule 3524 which require the auditor to discuss with the audit committee the potential effects of the services on the independence of the firm and to document the substance of its discussion. I believe this will provide appropriate evidence that the auditor has provided sufficient information to enable the audit committee to exercise its professional judgment.

#### Rule 3501 Definitions of Terms Employed in Section 3, Part 5 of the Rules

There is an inconsistency between the definition of an executive in a Financial Reporting Oversight Role as defined in proposed rule 3501(f)(i) and the Board's discussion of proposed Rule 3523 contained on page 36 of PCAOB Release 2004-015. Specifically, the Board's discussion states that "directors whose only role at an issuer audit client is to serve on the board would not be covered by the rule". However, the proposed definition in Rule 3501(f)(i) is verbatim to the SEC definition which includes a member of the board of directors. This would imply that Rule 3523 would be applied to members of the board of directors of an issuer audit client. I recommend that the Board specifically exclude members of the board of directors either in the definitional language of Rule 3501 or include an exception for members of the board of directors within the body of Rule 3523. To do otherwise would impose an undue hardship on board members seeking to obtain high quality comprehensive tax services from large registered firms. This is due to the fact that board members often serve on multiple boards that are audited by different registered firms.

I agree with the proposal to eliminate contingent fees for tax services, recognizing that the American Institute of Certified Public Accountants (AICPA) had prohibited contingent fees until the Federal Trade Commission (FTC) took action to require the AICPA to allow such fees. The final FTC order was signed July 26, 1990.

In closing I reiterate my appreciation for the opportunity to comment on the proposed rules and commend the Board's efforts in adopting meaningful rules which will strengthen independence while preserving the ability of registered firms to serve their issuer clients in the important area of taxation.

Should the Board have any questions or wish to speak with me regarding my comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Cleveland". The signature is written in black ink and is positioned below the text "Very truly yours,".

---

**From:** Steven Copeland [chizshc@excite.com]  
**Sent:** Tuesday, January 18, 2005 8:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Steven Copeland  
633 Southwood Dr  
Brentwood, CA 94513-1547

---

**From:** Francis Corbett [exacta422@comcast.net]  
**Sent:** Tuesday, January 18, 2005 6:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Francis Corbett  
1148 Indus Rd  
Venice, FL 34293-5416

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**From:** peter cork [labust@msn.com]  
**Sent:** Sunday, January 23, 2005 4:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

peter cork  
PO Box 320574  
Fairfield, CT 06825-0574

---

**From:** JAMES CORRIGAN [enterprisemgtsvcs@worldnet.att.net]  
**Sent:** Tuesday, January 18, 2005 8:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. JAMES CORRIGAN  
19370 Magnolia Grove Sq  
Lansdowne, VA 20176-6886

# COUNCIL OF INSTITUTIONAL INVESTORS

Suite 512 • 1730 Rhode Island Avenue, N.W. • Washington, D.C. 20036 • (202) 822-0800 • Fax (202) 822-0801

January 28, 2005

Office of the Secretary  
PCAOB  
1666 K Street NW  
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 17

Dear Secretary:

The Council of Institutional Investors, an association of more than 140 corporate, public and union pension funds collectively holding more than \$3 trillion in pension assets, is writing in support of the PCAOB's proposed "ethics and independence rules concerning independence, tax services, and contingent fees." Although the proposed rules fall somewhat short of Council policy, the Council commends the PCAOB for taking a significant step forward to address investor concerns over auditors' independence.

Council policy holds that a company's external auditor should not perform *any* non-audit services for the company, except those required by statute or regulation to be performed by a company's external auditor, such as attest services. That standard was adopted because it reassures investors that the auditor of a company's financial statements has no other financial interest at stake with the company, and, therefore, it can be objective. The rules proposed in the board's release aim towards the same goal by deeming certain tax-related activities as impairing an auditor's independence—making it clear that those activities cannot be performed for an audit client.

The board has also proposed two steps, which taken together, could have a positive effect on auditor independence. First, it has reaffirmed the audit committee's responsibility to determine that an auditor's non-audit work for the company would not jeopardize the auditor's independence and to pre-approve such work. Second, it has reinforced the auditor's responsibilities in relation to seeking audit committee approval of tax services, by requiring the audit firm to provide its client with information it needs to make an informed judgment about independence. Although, from our perspective, such an arrangement is a "second-best" solution, these policies should cut down the number of inappropriate uses of audit firms for non-audit purposes.

Please contact me with any questions.

Sincerely,

  
Ann Yergler  
Executive Director

---

**From:** Joan Cowger [jcowger56@msn.com]  
**Sent:** Tuesday, January 18, 2005 4:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Joan Cowger  
12824 Jade Rd  
Victorville, CA 92392-6258

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**From:** Ian Cox [ibc123@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 5:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ian Cox  
761 Boylston Ave E  
Seattle, WA 98102-2801

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**From:** Mary Coyne [mccoyn@comcast.net]  
**Sent:** Tuesday, January 18, 2005 1:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Mary Coyne  
607 Furlong Ave  
Havertown, PA 19083-3322

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**From:** Danny Cramer [danny@bright.net]  
**Sent:** Tuesday, January 18, 2005 5:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Danny Cramer  
1570 N Perry St  
Ottawa, OH 45875-1169

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**From:** Christopher Craven [chris@chriscraven.com]  
**Sent:** Wednesday, January 19, 2005 6:03 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Christopher Craven  
1200 West Ave Apt 703  
Miami Beach, FL 33139-4316

---

**From:** Andrew Cravitz [avramjubilee@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Andrew Cravitz  
11578 Windcrest Ln Apt 1811  
San Diego, CA 92128-6421

---

**From:** Donald Crawford [dcrawfo1@kvmo.net]  
**Sent:** Wednesday, January 19, 2005 3:39 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Donald Crawford  
721 E Hamilton St  
Kirksville, MO 63501-4550

---

**From:** Peter Crawford [peterc@urbanstudio.com]  
**Sent:** Wednesday, January 19, 2005 11:01 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter Crawford  
2944 Lichen Ln Apt D  
Clearwater, FL 33760-4548

---

**From:** Will Crenshaw [wbc6@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Will Crenshaw  
7 College St  
Due West, SC 29639-9554

---

**From:** William Crosby [wcrosby@velocity.net]  
**Sent:** Wednesday, January 19, 2005 8:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Crosby  
154 Joliette Ave  
Erie, PA 16511-1232

---

**From:** William Cross [williamdavidcross@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Cross  
1505 NE 16th Ave  
Fort Lauderdale, FL 33304-4850



February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006

Subject: PCAOB Rulemaking Docket Matter No. 017

We are pleased to comment on proposed ethics and independence rules concerning independence, tax services, and contingent fees, as contained in PCAOB Release No. 2004-015.

We support the PCAOB's proposal to continue to allow auditors to provide most tax services to public company audit clients. In performing an audit of financial statements, the auditor must understand and test the company's tax calculations, tax-related account balances, and tax-related disclosures that apply to transactions the company has engaged in. unless the scope of a financial statement audit were to exclude auditing all matters related to taxes.

Most reasoned observers understand that it is widely accepted for an auditor to "know taxes", and many people expect auditors and other CPAs to be knowledgeable in tax and understand that their profession involves preparing tax returns and providing tax advice. We submit that the public expects CPAs to provide tax services. If a CPA meets someone at an event and they find out they are meeting a CPA, the first comment is likely to be "I have a tax question for you." The public is not wary of CPAs providing tax services. They don't like CPAs selling abusive tax shelters, but as for performing tax return preparation services, that is what the public expects CPAs to do.

We provide specific comments on the proposed rules as follows.

Proposed Rule 3501 Definitions (a)(iii)

Proposed Rule 3501 (a)(iii) defines when the professional engagement begins and ends. The engagement is defined to begin when the registered firm signs an engagement letter or begins audit/review procedures, whichever is earlier. Since the audit committee must pre-approve the audit, we suggest that the engagement does not start until the audit committee approves it, rather than when the firm signs the engagement letter prior to presenting it to the audit committee.

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The engagement is defined to end when the Commission is notified by the audit client or the audit firm. Some entities, such as registered employee benefit plans, do not notify the Securities and Exchange Commission that there is a change in auditor as they are not required to file a Form 8-K. Hence we suggest a different definition as to when the professional engagement period ends is needed to cover these registrants.

#### Rule 3502 Responsibility Not to Cause Violations

It appears that this proposed rule may be a very broad extension of liability to “associated persons” that was not contained in the Sarbanes-Oxley Act of 2002. This extension of liability would, in our view, best be provided by legislation rather than by rulemaking.

The proposed rule states that a person shall not cause a violation due to an act or omission the person knew or should have known would contribute to the violation. Professional auditing standards include over 2,000 uses of the terms “must”, “should/shall” and “is required”, and this thus represents multiple instances where a violation might occur in an audit. We are uncertain as to the position that the PCAOB will take on future alleged violations of professional standards, and thus are uncertain as to how the proposed rule will be wielded in practice.

We are also unclear how “would contribute to” would be viewed by the PCAOB, or as to how “omission” would be viewed. For example, an audit firm normally provides training for its staff. At what point would a lack of coverage of some auditing topic, that the PCAOB internally decided to focus on, be viewed as “an omission” that the person in the firm doing the staff training, or planning the staff training, “should have known would contribute to” a later violation by one of the persons in the training class?

#### Proposed Rule 3520. Auditor Independence

The proposed rule states that an audit firm must be independent of its audit client throughout the audit engagement period, which is defined in Rule 3501(a)(iii) to include “the period covered by any financial statements being audited...”. This definition may cause some problems.

Here is a common fact pattern that illustrates one problem with this definition. Assume a partner in an audit firm owns a share of stock in a public company that is not an audit client. The firm becomes engaged in the current year to perform the audit of that company for the current year and the partner then promptly sells the stock. However, the partner held the stock for a portion of the year to be audited and thus, under the proposed rule that includes the “period covered by the financial statements”, the firm would not be independent of the company for the entire year “covered by the financial statements being audited” and thus could not do the audit. If this rule is to be interpreted in the way it reads, it then might be very difficult for a company that is widely-held to find a new audit firm during a given year because of the likelihood that someone in the new audit firm would own stock in the company, disqualifying the firm for that year even if that stock is sold immediately upon the company becoming an audit client.

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We understand that some independence impairments, such as performing bookkeeping in the period covered by the financial statements under audit, might not be capable of being cured within that period because the auditor might be auditing its own work. However, we believe some independence impairments during the period covered by the financial statements should be allowed to be curable. Owning stock during a portion of the period covered by the financial statements being audited, that is prior to being engaged as the auditor, should be allowed to be cured. Thus, we believe the proposed rule should provide that some specified independence impairments “during the period covered by the financial statements” may be cured.

#### Proposed Rule 3522 Tax Transactions

We do not think providing planning advice or an opinion regarding a transaction that is not a “listed” transaction at the time such services are provided should adversely affect auditor independence if the transaction subsequently becomes “listed.” It quite simply is not fair for either the auditor or the company to require an auditor change should a transaction, for which planning advice or an opinion were provided in good faith, later become a listed transaction. As a further consideration, a transaction that becomes listed will presumably have been one that, when the services were provided, was assessed as to whether it was an “aggressive” tax position under section (c) of the proposed rule and was in good faith determined not to be an “aggressive” transaction.

The proposed rule, as it reads now, is unclear whether it applies to a service provided for a transaction that becomes listed after the service is provided. We suggest the rule be clarified by stating in (a) that it applies to “a listed transaction within..... at the time such services are provided”, as well as making a similar clarification regarding the timing as to when services are provided in the other portions of the rule.

We also suggest that some planning advice be allowed even if the auditor believes that a proposed transaction would be a listed, confidential, or aggressive transaction. Specifically, the auditor should be allowed to say “I don’t think you should do it” without that affecting auditor independence.

We note that the proposed rule refers to a “listed” transaction whereas the commentary in the release also discusses transactions that are “substantially similar” to a listed transaction. If the latter interpretation is intended, we suggest the rule be revised to indicate its broader applicability, and if the former interpretation is intended, we suggest the commentary in the release be revised to conform to the wording of the rule.

The release discusses the need to ascertain whether an aggressive tax transaction was “initially recommended” by the audit firm or another tax advisor, and states that management representation as to who initiated the transaction would not be sufficient to rely on. It might be difficult to determine how a transaction originates, as the “initial recommendation” could have come to a company officer by that officer reading an article, talking with a colleague, or some other way, prior to “another tax adviser” becoming involved. We suggest that the restriction be applied only to aggressive tax positions recommended by the audit firm itself. We suggest that a management representation be considered sufficient evidence as to who initiated a

February 14, 2005

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transaction, as it may be impossible otherwise to determine exactly how a transaction started if one is not present at all meetings, phone calls, and so on that occur.

#### Proposed Rule 3523 Tax Services for Senior Officers of Audit Client

We agree that selling abusive tax shelters to a public company audit client, or to its officers, is something that should not be done. Most reasoned criticisms of auditors providing tax services to officers appears to focus on the selling of such tax shelters to those individuals and, as the PCAOB notes in the release, this criticism is not focused on the preparation of the income tax return as such. We note, in reading the recent articles in the press regarding abusive tax shelters sold by audit firms to companies and to corporate officers, that the concerns expressed deal with the tax shelter and not with the preparation of the tax return. It is difficult in reading any of these articles to determine who actually prepared the tax return involved, as the concern is over selling the tax shelter and the identity of the tax return preparer is not relevant to the concern set forth in the articles or considered particularly newsworthy.

We believe that most people believe that preparing tax returns and giving tax advice are a normal part of a CPAs role and that it is "natural" for CPAs to prepare tax returns for people without affecting independence. Therefore, we do not agree with this proposed rule as we do not believe that providing a tax compliance service to an officer of a public company audit client creates a mutuality of interest with that company. The auditor does not become an advocate for the individual when preparing a personal tax return, but instead is helping the individual comply with tax law and rules. Tax preparation services are governed by voluminous rules and regulations established by governmental agencies.

We also suggest that preparing a tax return for an officer of a company during a "period covered by the financial statements" should not affect independence if the services were provided before the company became a public company audit client. A nonpublic company faces a variety of situations under which it could become a public company, including an increase in the number of its shareholders, a desire or need to raise capital in a public offering, or an acquisition by a public company. In these cases, the proposed PCAOB rule would prevent the existing auditor from being independent, with no cure possible, and the financial statements would need to be reaudited. An unfortunate consequence of the proposed rule is that a nonpublic company may often find that it needs an expensive reaudit of its financial statements because an officer of the nonpublic company used the company's audit firm for a tax service. This factor might deter officers of private companies from using their audit firm for tax services, and any cost-benefit analysis by the PCAOB of the effect of its proposal should consider the total cost involved, including the cost for non-public companies.

To limit the ripple effect of this rule on non-public companies over which PCAOB does not have oversight, we suggest the PCAOB simply provide that its rule prohibiting tax services for the specified officers state that it is effective for dates following the date at which a non-public company initially becomes subject to SEC registration, or is involved in a Form 8-K filing for an acquisition, and is not effective for financial statements for the periods preceding this date. Said another way, the PCAOB rule should allow an audit firm to prepare the tax return of a CEO for a non-public company and still be considered independent for that period, even if those financial statements are later included in an initial filing.

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One of the effects of the proposed rule will be to limit that ability of a registrant to change auditors. As an illustration of how this would happen, assume a company has 8 officers as listed in the proposed rule, and that the existing audit firm is prohibited from providing tax return preparation work for any of these officers. These officers may not be personally able to, or may not want as an officer of a public company to risk preparing, their own return, and thus they may seek out the services of an accounting firm other than their current audit firm to prepare their income tax return. Assume each of 8 officers engages a different audit firm for this tax service. Then, if the company desires to change audit firms, a firm that prepared an officer's 2005 tax return would be precluded from being able to provide audit services for the company for 2005 (if any work was done on 2005 estimated payment calculations) or for 2006 (when the 2005 return would be prepared.) Thus, 8 firms may not be available as alternatives to the current auditor.

An officer in a financial reporting oversight role at an audit client may be a partner or owner in various entities and may be an investor in other entities. An audit firm may prepare the tax returns for these entities and the officer may receive a Form K-1 as a partner or other tax information depending on the form of the ownership involved. We suggest the PCAOB clarify how far the prohibition against providing tax services "to an officer" applies, specifically whether it is only to the individual's personal taxes or whether it may also apply to entities in which the individual is an active or passive participant (a partnership, a REIT, a public investment vehicle, a multi-party trust, etc.)

#### Proposed Rule 3524 Audit Committee Pre-Approval of Certain Tax Services

To receive audit committee pre-approval of tax services, we believe it is not needed to have the audit firm provide a listing of each tax return and each jurisdiction involved. Companies continually open additional locations, or otherwise become subject to taxation, in a variety of locations, both domestic and internationally. Governments may also establish new taxes or new forms. We do appreciate the need to communicate clearly with audit committees about the scope and nature of services to be provided. However, for a larger entity with many locations, and with changing and evolving operations at a company (as well as changing state and local tax rules), it may not be possible early in the year, when arrangements would normally be made as to services, to specify each state and locality for which an income tax, franchise tax, property tax, sales tax, estimated tax, or other return may be needed. It also may not be especially meaningful to the audit committee to be given such a detailed listing, although an audit committee that wanted it could always make its interest known.

We believe most audit committees will find it sufficient for their approval responsibility to be provided a general description of the tax services, rather than a detailed listing of each state and locality and form number involved. This will allow flexibility if another state tax return needs to be added or if it is determined estimated returns are now needed in a jurisdiction. As one example of the complexity that is involved if "each return" needs to be described, payment of 4 estimated payments during the year is done by filing 4 separate forms, followed up by the final return for the year: do all 5 forms have to be individually listed?

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The Commission staff letter that is referred to in the proposal is not easy to locate on the Commission web site, and we do not know how many have seen it or could locate it. Even if available, some might question whether this letter approaches the level of an "SEC rule" as is referred to in the proposal as support.

It often is the case that an auditor brings to the attention of a company the need or requirement to file a tax return in a specific locale, whether because the company begins doing business (as that locale may define it) in that locale during the year or because the locale has newly adopted (or revised) its taxation regulations. It would also be helpful if the PCAOB would note that it is not a violation of its rules for an auditor to advise a public company audit client that, based on something the auditor notes, the company should consider whether it has a tax filing or reporting obligation to a specific jurisdiction, even if the audit committee has not approved this form of advice as a specific tax service.

We do not agree with the comment made in the proposed release that appears to require "a competent internal tax department" to be present to avoid the risk that tax compliance services performed by an auditor would place the firm at risk of making management decisions. Many smaller public companies do not have "an internal tax department" because they are small, but these companies will have someone who has responsibility for ensuring that tax matters are handled and who can exercise sound judgment in the best interests of the company.

If you have any questions, please contact Jim Brown.

Very truly yours,

Crowe Chizek and Company LLC

---

**From:** KC Curry [texas-redhead@care2.com]  
**Sent:** Tuesday, January 18, 2005 9:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. KC Curry  
7202 Sun Ln  
San Angelo, TX 76901-6560

---

**From:** Eric Dahlgren [ejdahlgren@qwest.net]  
**Sent:** Wednesday, January 19, 2005 4:20 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Eric Dahlgren  
347 9th Ave S Apt 1  
Fargo, ND 58103-2829

---

**From:** Kathryn Dalenberg [kdalenberg@farmerstel.com]  
**Sent:** Tuesday, January 18, 2005 4:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Kathryn Dalenberg  
10604 County Road 121  
Valley Head, AL 35989-3332

---

**From:** Charles Dalieri [dalieri@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles Dalieri  
266 Redmar Ln  
Radcliff, KY 40160-1462

---

**From:** Gerald Dalton [gjdalton@worldnet.att.net]  
**Sent:** Tuesday, January 18, 2005 5:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gerald Dalton  
874 Benedetti Dr Apt 202  
Naperville, IL 60563-8922

---

**From:** Andrew D'Ambruoso [dambruos@optonline.net]  
**Sent:** Tuesday, January 18, 2005 6:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Andrew D'Ambruoso  
56 West 1st Street  
Deer Park, NY 11729

---

**From:** Ken Dammad [krdammand@yahoo.com]  
**Sent:** Saturday, January 22, 2005 3:24 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ken Dammad  
410 Priest Point Dr NW  
Tulalip, WA 98271-6823

---

**From:** William Davidson [wrd108@msn.com]  
**Sent:** Tuesday, January 18, 2005 4:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Davidson  
8478 Bobolink Ave  
Cincinnati, OH 45231-5506

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**From:** Burton Davis [davisb-r@mindspring.com]  
**Sent:** Tuesday, January 18, 2005 4:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Burton Davis  
4096 Columns Dr SE  
Marietta, GA 30067-5199

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**From:** Joanie Davis [joanie2635@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Thanks for soliciting our comments. I clearly recall several years ago, while sitting on the board of an electric utility being quite horrified to hear the then CEO say that we should "stick with our current auditor, because they knew him and had developed a 'relationship'" with him. I spoke up and suggested that that was precisely why I was recommending that we change auditors. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Joanie Davis  
4895 Safari Pass  
Eagan, MN 55122-2690

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**From:** Lorita Davis [lordavis@cableone.net]  
**Sent:** Tuesday, January 18, 2005 7:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Lorita Davis  
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Ponca City, OK 74604-5675

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**From:** richard degenhardt [ddgnhrdt@cox.net]  
**Sent:** Tuesday, January 18, 2005 6:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

richard degenhardt  
5546 Scotwood Dr  
Rancho Palos Verdes, CA 90275-4913

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**From:** Glenn DeGroot [gdegro01@sprintspectrum.com]  
**Sent:** Thursday, January 20, 2005 11:09 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Glenn DeGroot  
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Syracuse, UT 84075-9160



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February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

Members and Staff of the Public Company Accounting Oversight Board:

Deloitte & Touche LLP is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (“PCAOB” or “the Board”) on its *Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, PCAOB Release No. 2004-015, PCAOB Rulemaking Docket Matter No. 017 (December 14, 2004) (the “Release”).

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## I. Introduction

We appreciate the opportunity to submit these comments to the PCAOB. Deloitte & Touche LLP strongly supports the goals of the Sarbanes-Oxley Act (“Act”) and the efforts of the PCAOB to achieve those goals through rulemaking. We are committed to working with the PCAOB to achieve effective implementation of the Act and strongly agree with the measured and balanced approach set forth in the Release. Furthermore, we recognize that the Board faces difficult and sensitive judgments in crafting this proposal. We hope that these comments will be helpful to the Board in drafting and implementing final rules.

In that spirit, set forth below are our comments with respect to the Release. We first offer some general comments regarding the unique status of tax services provided by audit firms, and then provide specific comments to the proposed rules in sequential order. Throughout this document, we have sought to respond to the specific questions posed in the Release. We support the proposed rules’ core provisions, including prohibiting contingent fee arrangements and limiting certain “aggressive” tax services, and believe that these rules strike the right regulatory balance. In order to avoid unintended consequences and the need for further clarification, we have in some instances suggested alternative approaches that we believe will serve the PCAOB’s goals, and further the effective and efficient implementation of, compliance with, and enforcement of these rules for registrants, audit committees and practitioners.

## **II. General Comments**

### **A. Regulation of Tax Services**

As set forth below, and as the Release acknowledges, Congress and the Securities and Exchange Commission (the “Commission”) have both scrutinized tax services provided by accounting firms to their audit clients and have concluded that they are generally beneficial to issuers and investors and pose little risk to independence.<sup>1</sup> Moreover, Congress created an audit committee pre-approval process for non-audit services, including tax services, to further protect independence. To the extent subsequent developments require additional guidance within the context of regulating tax services, the PCAOB has the authority to adopt appropriate regulations.<sup>2</sup> Given this background, we provide the following general comments to the proposed rules. These general comments focus on the beneficial effects of tax services provided by an audit firm on the overall quality of an audit, and a continued focus on the effective use of audit committees to oversee and pre-approve such services.

#### **1. Regulation In Light of the Unique Status of Tax Services**

Tax services are afforded a unique status under the Act and the related securities laws. The provision of tax services by accounting firms to their audit clients, and their affiliates and officers, has been carefully considered by Congress and the Commission and determined not to create an independence issue requiring regulatory prohibition. As the Commission has

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<sup>1</sup> Release at 6-7.

<sup>2</sup> *Id.* at 8-9.

explained, “[t]ax services are unique . . . for a variety of reasons.”<sup>3</sup> Among those reasons, “[d]etailed tax laws must be consistently applied, and the [IRS] has discretion to audit any tax return. Additionally, accounting firms have historically provided a broad range of tax services to audit clients.”<sup>4</sup>

“The provision of tax services by accountants to their audit clients existed and continued without change when Congress formulated the securities laws in the 1930’s.”<sup>5</sup> Since then, neither Congress nor the Commission has prohibited traditional tax services. Under the Commission’s 2000 rules, “Strengthening the Commission’s Requirements Regarding Auditor Independence,” accounting firms are permitted to provide tax services to their audit clients, without any deemed impairment of auditor independence. Recognizing “that not all non-audit services pose the same risk to independence,” the Commission concluded that “tax services generally do not create the same independence risks as other non-audit services.”<sup>6</sup> This judgment was the product of a deliberative process, in which “over 100 persons testified, a Congressional hearing was held, and over 3,000 comment letters were received.”<sup>7</sup>

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<sup>3</sup> Strengthening the Commission’s Requirements Regarding Auditor Independence; Final Rule; 68 Fed. Reg. 6006, 6017 (Feb. 5, 2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6017 n.103.

<sup>6</sup> Revision of the Commission’s Auditor Independence Requirements; Final Rule; 65 Fed. Reg. 76008, 76010, 76052 (Dec. 5, 2000).

<sup>7</sup> Strengthening the Commission’s Requirements Regarding Auditor Independence; Proposed Rule; 67 Fed. Reg. 76780, 76784 (Dec. 13, 2002).

The Act itself explicitly permits accounting firms to provide tax services to their audit clients. Tax services are not among the list of prohibited non-audit services contained in Section 201 of the Act.<sup>8</sup> Further, Section 201 explicitly states that accounting firms “may engage in any non-audit service, *including tax services*, that is not described” in the list of prohibited non-audit services, and that is pre-approved by the audit committee.<sup>9</sup> Notably, tax services are the only non-audit service singled out for explicit legislative approval.<sup>10</sup>

The Act’s legislative history confirms that Congress intended that accounting firms could continue to perform tax services for audit clients. A provision in the Sarbanes bill that would have required the Commission to adopt rules that went beyond the Commission’s 2000 scope of services rule was deleted.<sup>11</sup> As one member of the Senate Banking Committee observed, that deletion meant “we will live under the current rules.”<sup>12</sup> Chairman Oxley later underscored that Congress did not intend for the Act to be interpreted as restricting accounting firms from providing tax services to audit clients. He noted that tax services are not prohibited under the

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<sup>8</sup> Act, § 201.

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See Sen. Amend. No. 4216, 107th Cong. (2002).

<sup>12</sup> *Markup on the Public Company Accounting Reform and Investor Protection Act of 2002 Before the S. Comm. on Banking, Housing and Urban Affairs*, 107th Cong. 34 (2002) (unofficial transcript dated June 18, 2002) (statement of Sen. Bunning).

Act because “[t]here was no evidence in [Congress’s] hearings that indicated that the tax function was untoward or somehow led to fraud.”<sup>13</sup>

In its 2003 rulemaking intended to further strengthen auditor independence and implement Title II of the Act, the Commission “reiterate[d] its long-standing position that an accounting firm can provide tax services to its audit clients without impairing the firm’s independence.”<sup>14</sup> The Commission stated that the Congressional intent behind allowing tax services “would appear to be that auditor independence is not impaired by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client.”<sup>15</sup> “Nothing in the proposed rules,” the Commission continued, “is intended to prohibit an accounting firm from providing tax services to its audit clients when those services have been pre-approved by the client’s audit committee.”<sup>16</sup> Accordingly, the Commission determined that, subject to audit committee pre-approval required under the Act, “accountants may continue to provide tax services such as tax compliance, tax planning, and tax advice to audit clients.”<sup>17</sup>

In light of the unique nature of tax services, the historical reliance of audit clients on their audit firms to provide tax services, and actions by Congress and the Commission that serve to

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<sup>13</sup> Bloomberg News Service, *Oxley Says Governance Law Does Not Seek to Ban Tax Services* (Dec. 9, 2002). See also Richard Y. Roberts, *The Sarbanes-Oxley Act of 2002 Does Not Prohibit Auditors From Offering Tax Services To Audit Clients*, THE TAX EXECUTIVE, Sept./Oct. 2002 (discussing the Act’s legislative history with respect to tax services).

<sup>14</sup> 68 Fed. Reg. at 6017.

<sup>15</sup> 67 Fed. Reg. at 76790.

<sup>16</sup> *Id.*

<sup>17</sup> 68 Fed. Reg. at 6017.

preserve the provision of tax services in this context, we believe that careful consideration should be given before adopting rules that serve to limit the provision of tax services by accounting firms to their audit clients, thereby preserving the existing beneficial, complementary relationship between audit and tax services.

## **2. Focus on Audit Committee Pre-Approval Processes To Regulate Tax Services**

We believe that, outside of specific tax services that the proposed PCAOB rule would prohibit, the primary mechanism for regulating an audit firm's provision of tax services should remain with the audit committee, exercising its authority through the existing pre-approval regime. Ensuring that audit committees receive adequate disclosure as to the facts and circumstances surrounding all tax services provides the necessary checks and balances to preserve auditor independence. Audit committee oversight and pre-approval are also effective methods to prevent potentially aggressive tax services.

Congress has expressed its support for the pre-approval regime for non-audit services in general, and for tax services specifically. As noted above, Section 201 of the Sarbanes-Oxley Act states that registered public accounting firms may engage in any non-audit service, specifically including and uniquely identifying "tax services," that is not listed by the Act as a prohibited service and that is pre-approved by the audit committee.<sup>18</sup> Congress therefore recognized that audit committees are well equipped to consider the propriety of the engagement of an audit firm to provide tax services.

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<sup>18</sup> Act, § 201(a).

Following passage of the Act, the Commission affirmed Congress's expectation that the audit committee would have significant responsibility for governing the provision of non-audit services by a company's audit firm. In explaining its proposed rules to strengthen its auditor independence requirements, the Commission made clear that its rules would not upset the regulatory balance struck by Congress: "Nothing in these proposed rules is intended to prohibit an accounting firm from providing tax services to its audit clients *when those services have been pre-approved by the client's audit committee.*"<sup>19</sup>

Continued reliance on audit committees not only implements the Congressional mandate—it also makes practical sense. Audit committees are uniquely situated to make case- and fact-specific determinations regarding the appropriateness of tax services. Indeed, audit committee pre-approval is working, even though it has been in existence for only a brief period.<sup>20</sup> We support the ongoing commitment to audit committee oversight of auditor independence, and we are encouraged by the effectiveness, competence and good faith being demonstrated by audit committees based on our experience in the marketplace.

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<sup>19</sup> 67 Fed. Reg. at 76790 (emphasis added).

<sup>20</sup> See, e.g., Release at 40-41 (deferring to the "judgment" of audit committees and forswearing any "rigid, mechanical application" of any pre-approval "framework"); Unofficial Transcript of PCAOB's Auditor Independence Tax Services Roundtable (July 14, 2004) at 75, *available at* [http://www.pcaobus.org/rules\\_of\\_the\\_board/documents/2004-07-14\\_roundtable\\_transcript.pdf](http://www.pcaobus.org/rules_of_the_board/documents/2004-07-14_roundtable_transcript.pdf) (last visited Jan. 31, 2005) ("Roundtable") (Colleen Sayther, Financial Executives International) ("the current process of having the audit committee vet those tax services and make a determination as to what's appropriate and what's not appropriate is the way to keep it.").

### 3. The Benefits of Tax Services Provided By an Issuer's Audit Firm

We support rules that provide issuers the ability to procure tax services that are both permissible and beneficial to issuers and investors. The tangible benefits arising from tax services provided by audit firms are numerous and well-recognized. Tax services are a natural extension of the audit process and aid the quality of the audit itself.<sup>21</sup> A broad understanding of a company's tax posture reinforces audit quality. Where an audit firm is not permitted to perform tax services, that firm's ability to understand a company's tax transactions for purposes of the audit is much more difficult. Conversely, appropriate tax positions should be firmly rooted in the business activities of a company. As such, an audit firm's intimate knowledge of an issuer's business aids in providing high quality tax advice.

We also believe that audit committee consideration of tax services represents sound corporate governance. Because of their role in pre-approving tax services provided by their audit firm, audit committees are better equipped to understand and oversee all of the issuer's tax related activities and any associated risk. Tax services provided by an audit firm—as opposed to another tax advisor—are also more transparent to the public, in that the fees from tax services provided by the issuer's audit firm are disclosed to investors in Commission filings.<sup>22</sup> By

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<sup>21</sup> See William R. Kinney, Jr. – University of Texas at Austin, Zoe-Vonna Palmrose – University of Southern California, and Susan Scholz – University of Kansas, *Auditor Independence and Non-audit services: What do Restatements Suggest*, April 17, 2003 (study results consistent with a view that tax services provided by the issuer's audit firm improve audit quality).

<sup>22</sup> See Act, § 202 (adding subsection (i)(2) to 15 U.S.C. § 78j-1).

contrast, tax services provided by other advisors may not be subject to the same level of transparency.<sup>23</sup>

## **B. Transition Rules**

The Release proposes an effective date that is the later of October 20, 2005, or 10 days after the Commission approves its rules.<sup>24</sup> However, given the nature of tax services, we believe that a detailed set of transition rules is required. For example, transition rules are necessary to accommodate certain corporate transactions, including, but not limited to, initial public offerings and mergers and acquisitions, whereby a company's status as an "audit client" may change in ways that do not coincide with tax years. Similarly, transition rules should be tailored to the definition of "audit and professional engagement period" (e.g., to facilitate the provision of tax services when a registered firm provided tax services to an issuer before becoming the issuer's auditor; or when a registered firm has ceased being an issuer's auditor but still has on-going obligations resulting from its prior status as auditor). Throughout the next section of specific comments, we have identified additional examples that demonstrate the need for robust transition rules, and we are hopeful that the PCAOB will consider these examples when drafting final rules.

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<sup>23</sup> See, e.g., Unofficial Roundtable Transcript at 45-49 (discussing the transparency of auditor-performed tax services).

<sup>24</sup> Release at 43.

### III. Specific Comments

#### A. Proposed Rule 3502: Responsibility Not To Cause Violations

We agree with the PCAOB that associated persons should not violate the Act or related rules, but have concerns about the breadth of Proposed Rule 3502. Proposed Rule 3502 would expose an associated person to discipline for “negligently” “contributing” to a firm’s violation of any one of a number of complex securities laws, rules and regulations, and professional standards.<sup>25</sup> For a variety of reasons, we strongly believe that negligence is not the appropriate standard for imposing liability on an associated person for the conduct of his or her firm. We do not believe that the PCAOB should adopt the rule in its current form, but instead should adopt a “knowing,” intentional standard and clarify all remaining ambiguities.

Negligence Standard. Application of a negligence standard to the conduct of individuals covered by the proposed rule would cause tension with the larger Congressional scheme, and would be unfair, unworkable, and legally suspect.

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<sup>25</sup> Proposed Rule 3502 provides:

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the [PCAOB], the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person *knew or should have known would contribute* to such violation.

*Id.* at A-4-Rule (emphasis added). As the PCAOB states, the “knew or should have known” standard “is intended to articulate a negligence standard.” *Id.* at 18 n.40; *see also* PCAOB, Open Meeting Tr. at 36 (Dec. 14, 2004) (“The standard is simple negligence, and it does not require . . . the proving of a number of specific elements in order to establish the offense or the violation.”).

As an initial matter, we believe that the adoption of a mere negligence standard presents several legal questions. Courts have cautioned against imposing greater liability on persons who participate unintentionally in questionable conduct, than on those who are the witting principal actors.<sup>26</sup> Proposed Rule 3502, however, would create a “negligence” standard for individual accountants or firm employees at the same time the firm itself—the entity the behavior of which would actually trigger Proposed Rule 3502 by violating the securities laws, related rules and regulations, or professional standards—is subject to a higher standard of intent for various violations within the PCAOB’s regulatory authority. For example, when a firm, during the preparation of an audit report, “detects or otherwise becomes aware of information indicating that an illegal act . . . has or may have occurred,” the securities law requires that the firm consider the need to undertake a series of specific measures that ultimately may result in furnishing a copy of the report to the Commission (“Section 10A(b”).<sup>27</sup> Firms that “willfully violate[]” Section 10A(b) may be subject to a civil penalty.<sup>28</sup> It would be incongruous for the PCAOB to impose liability on an individual who somehow “negligently” “contributed” to a

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<sup>26</sup> See, e.g., *Investors Research Corp. v. SEC*, 628 F.2d 168, 177 (D.C. Cir. 1980) (stating, in the context of “aiding and abetting” liability, that a non-principal should not be subject to a lower standard of culpability than a principal because “innocent, incidental participants in transactions later found to be illegal are not subjected to harsh, civil, criminal, or administrative penalties”).

<sup>27</sup> Securities Exchange Act of 1934, § 10A(b).

<sup>28</sup> *Id.* at § 10A(d).

substantive violation that, like this one, that can only be committed through willfulness.<sup>29</sup> The Release implicitly acknowledges the potential incongruity of this disparity.<sup>30</sup>

Congress, in any event, may not have authorized the use of a negligence standard as broad as the one set forth in the proposed rule. Section 105(c)(5), which is entitled “Intentional or other Knowing Conduct,” states:

The [PCAOB’s] sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) [of Section 105(c)] shall *only* apply to—

- (A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory or professional standard; or
- (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(Emphasis added). On the other hand, Section 105(c)(5) does not specify standards of intent for certain other sanctions authorized under Section 105(c)(4).<sup>31</sup> This comparative statutory silence could be read to permit a “negligence” standard for those other sanctions. But Proposed Rule

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<sup>29</sup> There are virtually unlimited ways in which an individual’s actions could be deemed to “negligently” “contribute” to such a violation. In the Section 10A(b) example, an engagement team member could misread or misinterpret information that is shared with others on the engagement team; that mistake could later be deemed to have “contributed” to another team member’s separate, willful decision not to provide a copy of the report to the Commission.

<sup>30</sup> See Release at 19 (questioning whether it would be “appropriate” to find a Rule 3502 violation by an associated person who *negligently* contributed to the violation, in a circumstance in which finding a violation by the firm “requires that the firm knowingly or recklessly engaged in the misconduct”).

<sup>31</sup> See Act, § 105(c)(4)(D)(i) (certain monetary sanctions), (E) (censure), (F) (professional education or training) & (G) (any other sanction provided for by the PCAOB’s rules).

3502, on its face, seems to apply to all sanctions authorized under Section 105(c)(4) and all violations of the applicable securities laws, related rules and regulations, or standards.<sup>32</sup>

Even assuming the PCAOB may have the power to adopt an appropriately circumscribed negligence standard, as a matter of policy it should not exercise that power. The proposed rule would have the consequence of making lawbreakers out of individuals caught by the “negligence” standard, because any violation of Rule 3502 would constitute a violation of the securities laws.<sup>33</sup> Individuals acting in good faith—indeed, with an intent to uphold all of the securities laws—who nonetheless might be deemed to have “negligently” “contributed” to a

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<sup>32</sup> See also Open Meeting Tr. at 34 (“this rule is not limited to anything about tax services . . . it’s not limited to anything about independence . . . [i]t would be a general prohibition against causing an accounting firm to violate some provision of the law that the accounting firm was subject to, so it would sweep across our entire spectrum of rules”).

It was suggested at the Open Meeting that the PCAOB could require a negligence standard to impose the lighter penalties under Section 105(c) of the Act. See Open Meeting Tr. at 37-38. However, Congress’s silence with respect to the standard of intent required for these sanctions should not be read as an explicit grant of authority for the PCAOB to adopt a negligence standard. Moreover, the penalties at issue are not fairly viewed as “light” sanctions, especially since they must be reported to the Commission, State regulatory authorities, foreign accountancy licensing boards and the public, and include personal fines up to \$100,000. Act, § 105(d).

Nor does the “failure to supervise” provision permit sanctions for mere negligence. To be sanctioned for “failure to supervise,” an “associated person” must have had “reasonable cause to believe” that he had failed to comply with firm procedures and systems. *Id.* § 105(c)(6)(B). The “failure to supervise” provision also provides objective safe harbors to avoid liability.

<sup>33</sup> See *id.* § 3(b) (“A violation by any person of . . . any rule of the PCAOB shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.”).

violation, whatever that might mean, would be subject to PCAOB enforcement. A negligence standard in these circumstances would be too harsh.<sup>34</sup>

The circumstances in which the application of the rule would be unduly harsh are virtually unlimited in light of the number of individuals who would be subject to the new rule and the complexity of the laws, rules, and standards that ultimately would give rise to potential violations. The proposed rule would apply to all “person[s] associated with a registered public accounting firm,” which for a single registered firm could be thousands of individuals.<sup>35</sup> The rule could be implicated by any one of these individuals engaging in behavior that they neither intended, nor reasonably believed, would “contribute” to the firm violating any of the following complex set of laws and regulations: (1) the Act; (2) the Rules of the Board; (3) “the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act”; or (4) professional standards. Such a complex and intricate rule regime is ill-suited to enforcement under a “negligence” standard.<sup>36</sup>

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<sup>34</sup> *Cf. Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004) (explaining that one who is unaware of any wrongdoing, even if such awareness is due to negligence, can not be held liable for aiding and abetting a securities violation); *In re IKON Office Solutions*, 131 F. Supp. 2d 680, 692 (E.D. Pa. 2001) (noting that “negligence, whether gross, grave or inexcusable, cannot serve as a substitute for scienter” in a securities fraud action) (internal quotes and citations omitted).

<sup>35</sup> Release at A-4-Rule.

<sup>36</sup> The difficulty of interpreting professional standards, for example, is reflected within the Release itself, where the PCAOB strongly suggests that the AICPA—a long-established,

[Footnote continued on next page]

We are concerned that the severe consequences of a negligence standard could be amplified by the proposed rule’s additional provision, discussed in more detail below, that an individual’s liability is premised on conduct contributing to his or her firm’s violation of laws, rules, or standards. Thus, individuals would have to anticipate any “contribution” that their negligent behavior might make to conduct of their firm. Such a broad standard plainly is unworkable. Indeed, the Supreme Court has cautioned against the use of lower standards of intent in circumstances such as this, where sanctions can be imposed as the result of a violation of a complex set of laws.<sup>37</sup>

For all of these reasons, we recommend that the PCAOB not attempt to include the low threshold of a negligence standard in any final rule that it adopts. This can be accomplished by deleting the phrase “or should have known” from the final rule.<sup>38</sup> The standard of intent that would remain—“due to an act or omission the person *knew*”—is more appropriate and more workable, and is consistent with the Act’s other provisions.

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[Footnote continued from previous page]

well-staffed professional association—“may have been misinterpreting the SEC’s contingent fee rule.” Release at 9.

Moreover, given the complexity of compliance with the sometimes contradictory nature of professional standards around the globe and the registration of numerous foreign firms, there is a greater risk that individuals will inadvertently contribute to a firm violation.

<sup>37</sup> See, e.g., *United States v. United States Gypsum Co.*, 438 U.S. 422, 444 (1978) (“[i]n dealing with the kinds of business decisions upon which the antitrust laws focus, the concepts of recklessness and negligence have no place”). Both tax law and professional standards are similarly complex, and we recommend that the PCAOB craft its rule accordingly. See *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) (noting complexity of tax laws); Release at 9, 34 (“tax laws may often be complex and subject to differing good faith interpretations”).

<sup>38</sup> Release at A-4-Rule.

“Contribute” Standard. As discussed above, we also are concerned that individuals can be held liable for behavior that they “knew or should have known *would contribute*” to a registered firm’s violation of the securities laws, related rules and regulations, or professional standards.<sup>39</sup> It would be troubling enough for individuals to be subject to discipline for negligently *causing* a direct violation of the securities laws and regulations. Proposed Rule 3502 creates an even broader standard, however. An individual would merely need to negligently “contribute” to a firm’s violation of the securities laws, rules and regulations, or professional standards to be sanctioned by the PCAOB.

The “contribute” standard has no clear meaning. Courts have assigned no general meaning to the term, and its dictionary definition—“[t]o give or supply in common with others”—similarly provides no guidance as to how it would function as a standard of liability.<sup>40</sup> There is thus a genuine risk that Proposed Rule 3502 would be applied overbroadly to sanction individuals inappropriately. One additional consequence is that firms would undertake excessive and unnecessary procedures in the face of uncertainty over the application of the rule.

Indeed, the “contribute” standard is subject to no express limiting principle. To the contrary, all other components of Proposed Rule 3502 suggest a broad application. As the proposed rule is currently drafted, an individual could “contribute” to a firm’s violation of the law through mere negligence. Furthermore, an individual may not even need to engage in any

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<sup>39</sup> *Id.*

<sup>40</sup> WEBSTER’S II NEW COLLEGE DICTIONARY 245 (Houghton Mifflin 2001); *see also, e.g., id.* (“[t]o act as a determining factor”).

conduct to “contribute” to a firm’s violation—an instance of non-action could be sufficient. The broad application of Proposed Rule 3502 suggested by the Release is further compounded by the breadth and complexity of the laws and rules at issue, the numerous individuals who would be covered by Proposed Rule 3502, and the obligation of individuals to predict how their current conduct, or for that matter inaction, may later “contribute” to a violation of those complex laws and rules by their firm.<sup>41</sup>

We encourage the PCAOB to address these concerns in any final rule. Considering the potential ramifications of this standard for individuals, we recommend that the PCAOB delete “contribute” from its final rule and substitute “cause.”

#### **B. Proposed Rule 3520: Auditor Independence**

We support the PCAOB’s goal of promoting auditor ethics and independence—principles of vital importance to issuers and investors, as well as to the accounting profession itself—in Proposed Rule 3520.<sup>42</sup> Moreover, we recognize that Title II of the Act authorizes the PCAOB to adopt ethics regulations.<sup>43</sup> In proposing Rule 3520, however, the Release asserts that the

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<sup>41</sup> See note 29 above. At a minimum, the PCAOB should require that, before a violation could be shown, the affiliated person must provide knowing aid to the firm violating the law or rule, with the intent to facilitate the violation.

<sup>42</sup> Proposed Rule 3520 provides: “A registered public accounting firm must be independent of its audit client throughout the audit and professional engagement period.” Release at A-4-Rule.

<sup>43</sup> *Id.* at 12; Act, §§ 103(a), 201(a).

PCAOB is “not promulgating any new independence requirement.”<sup>44</sup> As described below, we ask the PCAOB to clarify this point.

The Release seeks comments as to “ways in which the proposed scope of the rule would cause or require auditors to follow any different practices and procedures than they currently follow to comply with existing legal requirements.”<sup>45</sup> Although Proposed Rule 3520 may not affect auditors’ practices and procedures directly, the PCAOB’s adoption of a new regulatory regime could potentially change practices and procedures. The Note to Proposed Rule 3520 acknowledges that any regulatory regime adopted by the PCAOB will co-exist with the Commission’s existing regime.<sup>46</sup> Almost by definition, dual regulatory regimes cause confusion, thereby affecting issuer and auditor behavior.<sup>47</sup>

Because issuers and registered firms are already familiar with the Commission’s regulations, we suggest that the rules endorse continued compliance with the Commission’s existing regime whenever possible. Specifically, we encourage the PCAOB to refer to existing Commission regulations, definitions, and guidance. Reliance on the Commission’s existing regime will lead to less confusion for auditors and audit committees, thereby reducing the

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<sup>44</sup> Release at 20.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 20, A-4-Rule.

<sup>47</sup> Similarly, the PCAOB asks: “Would the scope of the ethical obligation described above impose any practical difficulties?” *Id.* at 20. The existence of two distinct independence requirements—one in the Commission’s regulations, and one in the PCAOB’s rules—will pose significant “practical difficulties” if the two requirements are interpreted differently.

inevitable burdens and costs that accompany the adoption of new rules.<sup>48</sup> Although we realize that the PCAOB, in performing its duties, may choose to adopt more stringent regulations, we believe that the PCAOB would minimize the risk of confusion by stating clearly that, where its rules and guidance are silent with respect to a particular ethics or independence issue, or where the PCAOB imports Commission definitions or terms into its rules without modification, Commission standards continue to govern, particularly in situations where activities currently permitted by the Commission are not expressly addressed by the final rules. In addition, we recommend that the new rules explicitly identify any departures from the Commission's regulatory regime. We believe that this will facilitate Commission review and promote effective and efficient compliance with PCAOB rules.

**C. Proposed Rule 3521: Contingent Fees**

We accept the positions of the Commission's staff regarding the prohibition of contingent fee arrangements—as clarified in the Commission Chief Accountant's letter of May 21, 2004 (“Nicolaisen Letter”). We believe that these positions are now clear and should be given effect.<sup>49</sup> In adopting any final rule, we recommend that the PCAOB clarify how its

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<sup>48</sup> Cf. Paperwork Reduction Act of 1995 (Pub. L. No. 104-13, 109 Stat. 163), 44 U.S.C. §§ 3506(c)(1)(A)(iv), 3506(c)(2)(A)(ii) (requiring federal agencies engaging in rulemaking to provide estimates of burdens and costs that would result from proposed rules).

<sup>49</sup> Letter from Donald T. Nicolaisen, Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission, to Bruce P. Webb, Chair, Professional Ethics Executive Committee, American Institute of Certified Public Accountants (May 21, 2004), available at <http://www.sec.gov/info/accountants/staffletters/webb052104.htm> (last visited Jan. 31, 2005).

independence rules with respect to contingent fees differ from those of the Commission and clarify what it means for a firm to “indirectly” receive a contingent fee from an audit client.

The Release states that the PCAOB intended to model Proposed Rule 3521 and the related definition of “contingent fee” on existing Commission independence rules.<sup>50</sup> However, the Release states that the PCAOB’s standard “differ[s] from [the Commission’s] rules in important respects.”<sup>51</sup> The substantive effects of the two rules—*i.e.*, what is and is not a “contingent fee”—are similar, although, as noted in the Release, the PCAOB proposal would eliminate certain words that exist in the Commission’s rule.<sup>52</sup> We encourage the PCAOB to confirm any deviation from the Commission’s existing rule in the final Release to avoid any potential confusion in this matter.<sup>53</sup>

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<sup>50</sup> Release at 23.

<sup>51</sup> *Id.*

<sup>52</sup> The PCAOB’s rule would “eliminate the exception in the text of the [Commission’s] rule for fees ‘in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.’” *Id.* The Release identifies this as the “principal difference” between the two rules, and describes the PCAOB’s motivation in removing this language from its rule as risk of misinterpretation, as described in the Nicolaisen Letter. *See id.*; Nicolaisen Letter at 2-3.

<sup>53</sup> In addition, the PCAOB has invited commenters to identify other courts or public authorities that “fix fees that are not dependent on a finding or result.” Release at 23. However, we believe that the PCAOB’s articulation of a general standard—“courts or other public authorities”—is superior to one that would attempt to identify in advance an exhaustive list of such possible decisional authorities. The creation of such a list could lead to confusion and ambiguity in the future, if courts or decisional authorities other than those enumerated in a final rule in fact were to “fix fees that are not dependent on a finding or result.”

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In addition, we recommend clarification regarding what it means for a firm to receive a contingent fee or commission from an audit client “indirectly.”<sup>54</sup> We agree with the PCAOB’s intent to “discourage efforts . . . to seek to avoid application of the rule through use of intermediaries.” However, we suggest that the Board consider clarification on this point to avoid precluding a broader group of clearly permissible transactions by utilizing the term “indirectly.”<sup>55</sup> We encourage the PCAOB to state that the ban on “directly or indirectly” receiving a contingent fee is directed solely at subterfuges or deliberate attempts to craft a disguised contingent fee.

#### **D. Proposed Rule 3522: Tax Transactions**

We concur with the PCAOB’s goal of prohibiting tax services associated with certain “aggressive” tax motivated transactions and generally believe that the provisions of Proposed Rule 3522 advance that goal, as well as the goal of Congress to “draw a clear line around a limited list of non-audit services that accounting firms may not provide to public company audit

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We certainly believe, however, that arbitral panels and tribunals should be captured in any final rule. For example, such arbitral tribunals have many of the hallmarks of the judicial system, including a system of rules, an adversarial process, and independent decisionmakers. Given the Congressional endorsement of arbitration embodied in the Federal Arbitration Act, 9 U.S.C. §§ 1-16, there appears to be no reason why the PCAOB should refuse to recognize fees awarded by such independent bodies. If the PCAOB were concerned that arbitral bodies would not be included as “other public authorities” under the rule as drafted, it could amend the rule to reach “other public or private independent decisional authorities.”

<sup>54</sup> Release at 24, A-5-Rule.

<sup>55</sup> *Id.* at 24.

clients.”<sup>56</sup> With that in mind, our comments regarding Proposed Rule 3522 are largely focused on clarifying the scope of the proposed rule. Without such clarification, we are concerned that issuers, audit committees and audit firms could face unintended difficulty in complying with the final rule.

Before commenting specifically on the individual provisions of Proposed Rule 3522, we would like to comment on the importance of clarifying the overall scope of the rule. Proposed Rule 3522 provides, in general, that a registered 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 non-audit service to the audit client related to planning, or opining on the tax treatment of, a transaction – (a) that is a listed transaction; (b) that is a confidential transaction; or (c) that was initially recommended by the registered public accounting firm or another tax advisor and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowed under applicable tax laws.

By its terms, we believe that this provision will be effective in addressing a type of tax service cited by the Release as having “raised serious concerns”; that is, marketing of tax shelter products by audit firms to their audit clients.<sup>57</sup> We recommend, however, that the PCAOB clarify the types of traditional tax services that are still permitted—tax services that clearly do not involve the marketing of tax shelter products. The Release makes it clear that the PCAOB does not intend for its proposed rules to prohibit audit firms from providing traditional tax

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<sup>56</sup> S. Rep. No. 107-205, at 18 (2002); *see also* 67 Fed. Reg. at 76783.

<sup>57</sup> Release at 8.

services.<sup>58</sup> It then identifies “tax services that the Board has considered and determined not to prohibit” because the services have not raised independence concerns.<sup>59</sup> Those services include “routine tax return preparation and tax compliance,” “general tax planning and advice,” “international assignment tax services,” and “employee personal tax services.”<sup>60</sup> We encourage the PCAOB to confirm that permissible services are not limited to the specific tax activities mentioned in the Release, but include all traditional tax services not expressly prohibited in the Release. To that end, we recommend that, in addition to the current descriptions of permissible services included in the Release, the PCAOB adopt the description of traditional tax services contained in the Commission’s discussion of tax services under the rubric of “tax fees”:

[I]t would include fees for tax compliance, tax planning, and tax advice. Tax compliance generally involves preparation of original and amended returns, claims for refund and tax payment-planning services. Tax planning and advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.<sup>61</sup>

We also believe it is important to provide in any final rule that an auditor retains the ability to perform functions as auditor, even if that entails commenting on prohibited

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<sup>58</sup> *Id.* at 14-16.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 14-17.

<sup>61</sup> 68 Fed. Reg. at 6031.

transactions.<sup>62</sup> The interests of investors are best protected when transactions are transparent to the auditor; accordingly, an auditor must always be in a position to observe, review, and evaluate such transactions.

Finally, the PCAOB should consider a transition rule that explicitly permits audit firms to provide continuing tax services with respect to transactions initiated before the effective date of the final rule, or before a specific service is deemed to be prohibited.

### **1. 3522(a): Listed Transactions**

We are generally encouraged by the proposed rules' reliance on standards fashioned by the Internal Revenue Service ("IRS").<sup>63</sup> Final rules that are tied to existing regulations will provide a much greater degree of clarity than rules that are newly developed and will help promote independence by facilitating compliance with the applicable standard.

For purposes of Proposed Rule 3522(a), a listed transaction is defined through reference to Treasury Regulation § 1.6011-4(b)(2); i.e., a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. The PCAOB should consider clarifying this definition such that it only applies to transactions undertaken by U.S. issuers attempting to achieve U.S. tax benefits. Without this

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<sup>62</sup> That appears to be the PCAOB's intent. *See, e.g.*, Release at 26 ("Proposed Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence if the auditor participates in the transaction in any capacity *other than as auditor.*") (emphasis added).

<sup>63</sup> Release at 27-31.

clarification, transactions governed by the laws of a foreign jurisdiction could be considered “substantially similar” to a listed transaction under U.S. Treasury Regulations, thereby impairing independence, notwithstanding that the transaction and its tax consequences may be appropriate and acceptable—or even required—under the laws of the foreign jurisdiction. We believe that requiring issuers and auditors to apply U.S. Treasury Regulations to evaluate transactions undertaken in foreign countries and governed by foreign law is unnecessary. Rather, we believe that the three prong test set forth in Proposed Rule 3522(c) relating to aggressive tax transactions is sufficient to address transactions that may arise outside of the U.S.

The PCAOB asked in its Release whether Proposed Rule 3522 should be extended to address the possible impairment of an auditor’s independence when the audit firm has performed services relating to non-listed transactions that subsequently become listed.<sup>64</sup> We do not believe that Proposed Rule 3522 should be revised to affect an auditor’s independence retroactively. Rather, we believe that the PCAOB should expressly state that the subsequent listing of a transaction is not independence impairing based on past services.

Significantly, any final rule that permitted past conduct to be judged against future rules could be found to be unlawful. As the U.S. Supreme Court has recognized, “the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic.”<sup>65</sup> Because “[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their

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<sup>64</sup> *Id.* at 29.

<sup>65</sup> *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994).

conduct accordingly,” the “principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.”<sup>66</sup>

Here, where Congress has not given the PCAOB express statutory authority to promulgate a retroactive rule, we would encourage the PCAOB to refrain from using its general rulemaking authority in such a manner.<sup>67</sup> Indeed, courts already have held that certain provisions of the Act cannot be applied retroactively.<sup>68</sup>

We also note that a retroactive “listed transaction” rule is not necessary to ensure auditor independence, given the applicability of the three prong test for aggressive tax transactions articulated in Proposed Rule 3522(c). We therefore urge the PCAOB not to extend the rule and to acknowledge explicitly that a tax transaction that is not listed when it is reviewed or presented by an audit firm will not later be deemed to have impaired the auditor’s independence should the transaction become listed.<sup>69</sup> To the extent that the PCAOB has reservations with such a bright-line rule, it could adopt alternative measures that would not suffer from the fairness concerns or

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<sup>66</sup> *Id.* (quotation omitted).

<sup>67</sup> *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988) (holding that an agency could not rely on its general rulemaking power to support a retroactive rule because the “statutory provisions establishing the [agency’s] general rulemaking power contain no express authorization of retroactive rulemaking”).

<sup>68</sup> *See, e.g., Aetna Life Ins. Co. v. Enterprise Mortgage Acceptance Co.*, 391 F.3d 401, 411 (2d Cir. 2004) (provision of the Act extending statute of limitations for private securities fraud cases to longer of two years from date of occurrence or five years from date of discovery, did not revive investors’ expired securities fraud claims).

<sup>69</sup> Finding independence impairments for services in connection with subsequently listed transactions also would sacrifice the benefits of clarity and certainty provided in the proposed rule.

retroactivity. For example, when a transaction becomes “listed” after the fact, the PCAOB could require that an auditor report the listing to the audit committee—as, indeed, the Release contemplates.<sup>70</sup>

Just as an auditor’s independence should not be adjudged by future listing changes, neither should an auditor’s independence be affected by past listings that are no longer in force. Thus, if a particular transaction is “delisted” by the IRS, a firm should be permitted prospectively to advise its audit clients regarding that transaction without jeopardizing its independence. Because the proposed rule does not specifically address this scenario, we encourage the PCAOB to clarify in the final rule that providing advice with respect to delisted transactions is permissible.<sup>71</sup>

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<sup>70</sup> See Release at 28-29. This is one area in which a transition rule will need to be in effect prospectively: for example, if an auditor provides a permitted service in 2007 that is thereafter prohibited, the auditor should not be deemed to have violated independence. Moreover, the auditor should be free to explain advice in any IRS administrative review. See 68 Fed. Reg. at 6016 (“independence will not be deemed to be impaired if an accountant explains the positions taken or conclusions reached during the performance of any service provided by the accountant for the audit client”).

<sup>71</sup> The text of the proposed rule—“that is a listed transaction within the meaning of 26 C.F.R. § 1.6011-4(b)(2)” —could be read as permitting services in connection with any transaction that, at the time the service is offered, “is not a listed transaction.” However, issuers and audit committees will benefit from clarity about how to approach “delisted” transactions.

## 2. 3522(b): Confidential Transactions

We also support the PCAOB's proposal to adopt the IRS's existing definitions with respect to "confidential transactions."<sup>72</sup> As in the case of the "listed transactions" provision, adopting the IRS's standards will facilitate compliance with the final rule.

Also as in the case of the "listed transactions" provision, we encourage the PCAOB to clarify that this rule only applies when the *audit firm* seeks confidentiality with respect to the U.S. tax treatment of a transaction. Without this clarification, significant uncertainty could arise when attempting to overlay U.S. Treasury Regulation concepts of confidentiality with the laws of a foreign jurisdiction.

The Board also asks whether any other provisions of the Treasury regulations regarding reportable transactions—that is, other than the provisions on listed and confidential transactions—should be incorporated by reference in the Board's rules on tax-oriented transactions that impair independence.<sup>73</sup> Our response to that question is no. The remaining categories of reportable transactions (e.g., transactions with contractual protection, certain loss transactions exceeding a threshold, certain book-tax differences exceeding a threshold, and transactions involving a brief asset holding period) merely represent triggers for disclosure. It is well recognized that these triggers can and do apply to numerous transactions where the tax treatment is not in question. Accordingly, we believe that applying such triggers to gauge

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<sup>72</sup> Proposed Rule 3522(b) defines "confidential transactions" with reference to Treas. Reg. § 1.6011-4(b)(3).

<sup>73</sup> Release at 31.

auditor independence would be ineffective and unnecessary, particularly given audit committee oversight of the performance of services involving confidential transactions.

### **3. 3522(c): Aggressive Tax Positions**

Proposed Rule 3522(c) would treat a firm as not independent if the firm, or any affiliate of the firm, provides planning services for, or opines on the tax treatment of, a transaction that: (1) was initially recommended by the registered public accounting firm “or another tax advisor,” (2) had as a significant purpose the avoidance of taxes, and (3) “is not at least more likely than not to be allowable under applicable tax laws.”<sup>74</sup> While we agree with the PCAOB’s use of such a three prong test for identifying those transactions that might raise questions regarding an auditor’s independence, we have several concerns regarding the scope of this provision and a number of clarifying suggestions regarding its application.

The title of Proposed Rule 3522 is “Tax Transactions” and throughout the rule, references are made to “transactions.” However, the heading under section (c) of the proposed rule refers to “Aggressive Tax *Positions*,” notwithstanding that the text of that section is to be read in the context of a “transaction.” We find the reference to “position” rather than “transaction” to be confusing, and fear that this lack of clarity could lead to uncertainty regarding the scope of the rule. Changing “positions” to “transactions” in provision (c)’s heading would result in consistency with the IRS regulations, the title and text of Section 3522 and the headings of provisions 3522(a) and (b). This would eliminate confusion as to whether the term “tax position” somehow alters or expands the scope of Rule 3522(c) beyond “transactions” that are

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<sup>74</sup> Release at 31, A-5-Rule.

the focus of Rule 3522, and facilitate the application of this rule by audit committees.

Accordingly, we recommend that the PCAOB clarify Proposed Rule 3522(c) to use the heading “Aggressive Tax *Transactions*.”

We also believe that it is important for the PCAOB to clarify the scope of the phrase transaction that was “initially recommended by the registered public accounting firm” as referenced in Proposed Rule 3522(c). For example, given the focus of the rule on prohibiting the marketing of tax shelters by audit firms, we believe that the phrase transaction that was “initially recommended by the registered public accounting firm” should be interpreted to refer to forward looking advice regarding the undertaking or implementation of a transaction by the client. In other words, where a client has already acted and the audit firm is merely giving advice (or preparing a tax return) as to the tax consequences of the client’s actions, the transaction is not “initially recommended” by the audit firm and the rule should not be applicable. A typical example would be an audit firm giving advice as to whether certain client expenditures constitute qualified research expenses. Such advice would not involve a transaction that was “initially recommended by the registered public accounting firm” and should not be subject to the rule since the client’s transaction (i.e., the expenditure) has already occurred and is not undertaken as a result of the audit firm’s recommendation or advice.<sup>75</sup>

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<sup>75</sup> General tax planning of this nature is arguably excluded from the scope of Proposed Rule 3522 by reason of the “significant purpose of tax avoidance” test set forth in Proposed Rule 3522(c) (provided that the advice does not relate to a listed transaction and is not provided under conditions of confidentiality). However, without further clarification, the determination of whether tax planning rises to the level of a “significant purpose of tax avoidance” will be a continuing source of debate and confusion.

We also note that the proposed rule could prevent an audit firm from providing services in connection with an “aggressive” tax transaction to an audit client, even when the transaction giving rise to the tax service was initially recommended by a third-party tax advisor. We believe that the final rules prohibiting certain tax services should *not* apply when a tax advisor unrelated to the audit firm has brought the transaction in question to the issuer. When an audit firm is merely advising on transactions that the issuer chose to consider or undertake before the audit firm’s involvement, the “mutuality of interest” that comes from the active promotion or “marketing” of tax-motivated transactions is decidedly lacking.<sup>76</sup> It cannot be said that such a situation presents “an unacceptable risk of impairing an auditor’s independence” that justifies taking the matter out of the normal pre-approval regime.<sup>77</sup> Accordingly, we believe that the audit committee should retain authority and discretion in such matters.

However, there does appear to be one scenario where a transaction recommended by another tax advisor presumptively might give rise to independence concerns, and that is where the other tax advisor is acting at the behest of the audit firm and the two share an economic relationship. If the PCAOB is concerned about these types of arrangements, we suggest that it adopt an effective, yet much narrower provision, by changing the first sentence to: “that was initially recommended by the registered public accounting firm, either directly *or by another tax advisor acting at its suggestion* and a significant purpose of which . . . .” We also note that pursuant to Proposed Rule 3524(a)(ii), any compensation arrangement or other agreement, such

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<sup>76</sup> Release at 26-28.

<sup>77</sup> *Id.* at 26.

as a referral agreement, referral fee or fee-sharing agreement, between the audit firm and another tax advisor would be fully disclosed to the issuer's audit committee as part of the pre-approval process.

We fear that the broad scope of the first criterion will unnecessarily prohibit many services that do not bear on the auditor's independence, especially in light of the evidentiary standard that the Release requires in order to show that the transaction was initiated by "another tax advisor." The Release cautions that auditors may not simply rely on representations by the audit client that the transaction was client-initiated "if reasonable, good faith diligence by the auditor" would have revealed otherwise.<sup>78</sup> Because we believe that the PCAOB should altogether eliminate from the scope of the rule those transactions initiated by other tax advisors, here we simply highlight that the "good faith diligence" standard is ambiguous.

In addition to addressing concerns about the first criteria of Proposed Rule 3522(c), we recommend that the PCAOB also consider clarification of other aspects of the provision. For example, the final rule should make clear that an audit firm would not violate the rule by "opining" on an aggressive tax transaction (one with a significant purpose of tax avoidance and more likely than not to be not allowable), if the audit firm advises the client that a transaction recommended by another tax advisor would *not* meet the "more likely than not" standard. Issuers often look to their audit firm to provide sound advice as to the tax treatment of transactions initiated by the issuer or a third party advisor. In those circumstances, it is clearly in the issuer's and the investing public's best interest that the audit firm be free to provide candid

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<sup>78</sup> *Id.* at 32.

and timely advice regarding the transaction without jeopardizing independence, notwithstanding that such advice may be that the contemplated tax treatment of the transactions does *not* meet the “more likely than not” standard. Indeed, the PCAOB’s chief auditor has specifically expressed this view, stating that “[t]he rule is not intended to prevent an auditor from advising a client not to do a transaction. What’s contemplated in the term planning or planning on a transaction is planning that transaction to fruition or providing a positive opinion on that transaction.”<sup>79</sup> Similarly, situations arise in which, in the normal course of advising an issuer, an audit firm brings a possible transaction to the attention of an issuer, but ultimately does not recommend the transaction based on an analysis of the particular facts and circumstances or other due diligence. The PCAOB should clarify the proposed rules to provide that when an audit firm investigates a transaction on behalf of a client, but ultimately *does not recommend* execution of the transaction, or as described above, provides an opinion that specifically states that the transactions does *not* meet the “more likely than not” standard, the auditors’ independence is not impaired. We see no benefit in deterring the audit firm from evaluating and advising a client that a transaction does not work. Rather, we believe that it is the investing public’s best interest not to limit the audit firm’s ability to provide candid and timely advice regarding a transaction.

Clarification is also necessary in the context of mergers and acquisitions (“M&A”). We believe, and the PCAOB apparently agrees, that an audit firm should not be precluded from “assisting [issuer] management in determining how to properly and accurately structure [an

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<sup>79</sup> See PCAOB, Open Meeting Tr. at 31 (Dec. 14, 2004) (statement of PCAOB Chief Auditor, Douglas R. Carmichael).

M&A] transaction under all applicable tax laws.”<sup>80</sup> Most M&A transactions are entirely motivated by business considerations, but the choice of acquisition structure might be motivated, in significant part, by tax considerations. To that end, we recommend that the PCAOB clarify that the criterion of “significant purpose of tax avoidance” is evaluated in the context of the entire business transaction, rather than by simple comparison to other, less tax efficient structures. Moreover, we believe that clarification is needed in this context as to what constitutes a “client initiated” (and thereby permissible) transaction under the rule. For example, we believe that when a client requests tax advice relating to a proposed M&A transaction, that transaction is clearly client initiated and any tax advice provided in response to that request should not be subject to the aggressive tax transaction rule.

It would also be helpful if the proposal was clarified such that it does not prevent registered public accounting firms from providing tax advice with respect to expenditures and events undertaken, or to be undertaken, by the audit client in the ordinary course of its business without regard to the tax consequences thereof (e.g., advising an issuer as to the potential application of the recently enacted IRC Section 199 Manufacturing Deduction).

Finally, the PCAOB asks whether registered firms should be required to “obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have material effect on the audit client’s financial statements.”<sup>81</sup> We believe that the PCAOB

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<sup>80</sup> See *id.* at 25, 26 (statement of PCAOB Assistant Chief Auditor, Bella Rivshin).

<sup>81</sup> Release at 35.

should not mandate that registered firms obtain a third-party tax opinion. Rather, that decision should be left to the discretion of the audit committee.

**E. Proposed Rule 3523: Tax Services For Senior Officers of Audit Client**

We agree with the PCAOB’s decision to narrowly tailor Proposed Rule 3523 to include only those tax services that a registered public accounting firm provides to individuals in a position to play a significant role in an audit client’s financial reporting, specifically, officers in a “financial reporting oversight role.” However, as described below, we request that the Board clarify the scope of this provision in an effort to eliminate confusion and unintended compliance issues.

Proposed Rule 3523 is to be read in conjunction with Proposed Rule 3501(f)(i), which defines the term “financial reporting oversight role” as:

a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.<sup>82</sup>

Although the Board quotes the Commission’s definition of financial reporting oversight role verbatim as that term applies for purposes of the Act’s “cooling off” period, the Release suggests that the rule will not be interpreted identically, particularly as it applies to members of

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<sup>82</sup> *Id.* at A-3-Rule.

the issuer’s board of directors.<sup>83</sup> Indeed, the Release creates some confusion concerning Proposed Rule 3523’s application to directors. On the one hand, the Release states that the “directors whose only role at an issuer audit client is to serve on the board would not be covered by the rule.”<sup>84</sup> On the other hand, the rule text definition of “financial reporting oversight role” includes “member[s] of the board of directors,” without further limitation.<sup>85</sup>

Therefore, we recommend that the PCAOB clarify that the individuals covered by Proposed Rule 3523 are the same as those covered by the Commission’s “cooling off” provision, with two modifications—excluding members of the issuer’s board of directors and covering individuals only at the issuer level. Referring to existing rules would provide consistency and clarity, particularly since issuers and their audit firms have been subject to the “cooling off” provision since it was enacted in 2002 and thus, already understand the definition.

With regard to the exclusion of directors from the proposed rule, the PCAOB inquires whether “independence [would] be perceived to be impaired if [the auditor] offered tax services to members of an audit client’s audit committee, or to other members of the audit client’s board of directors.”<sup>86</sup> We believe that the answer to that question is no. As an initial matter, members of the board of directors do not have the same type of “financial reporting oversight role” that

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<sup>83</sup> *Id.* at 36 & n.73 (citing Rule 2-01 of the Commission’s Regulation S-X, 17 C.F.R. § 210.2-01(f)(3)(ii)).

<sup>84</sup> *Id.* at 36.

<sup>85</sup> *Id.* at A-3-Rule.

<sup>86</sup> *Id.* at 37.

officers have. Moreover, because directors often serve on boards for multiple companies, they may find it unnecessarily burdensome to secure personal tax services from a registered public accounting firm, or might be required to frequently change personal tax relationships as they take on new board responsibilities, which would provide a significant disincentive to board service without any corresponding benefit to audit quality. Finally, we believe that members of the public would not reasonably attribute the same independence concerns to tax services performed for members of the issuer’s board of directors as they would to services performed for key members of an issuer’s management acting in financial reporting oversight roles. Accordingly, we recommend that the text of the definitional provision in Proposed Rule 3501(f)(i) be revised to delete “a member of the board of directors or similar management or governing body.”<sup>87</sup>

We also recommend that the rule be clarified to cover individuals only at the issuer level. As currently drafted, the proposed rule could extend not only to key management of the issuer, but also to local management of any of its “affiliates.” This would include any entity controlled or significantly influenced by the issuer—including its subsidiaries—unless the entity is not material to the issuer.<sup>88</sup> For large multi-national companies and their auditors, the issue of determining the importance of a subsidiary—and the role that an employee serves there—before the accounting firm could provide personal income tax services to that subsidiary’s employee appears to render the rule more broadly prohibitive than the PCAOB may have intended.

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<sup>87</sup> Alternatively, if the PCAOB wants to retain the definition in Proposed Rule 3501(f)(i) for other purposes, it could amend Proposed Rule 3523 to specifically exclude “members of the issuer’s board of directors not otherwise in a financial reporting oversight role.”

<sup>88</sup> Proposed Rule 3501(a)(iv); (a)(ii); Release at A-2-Rule.

Moreover, as the Release notes, accounting firms often provide income tax services to employees of multi-national companies who are stationed all over the world.<sup>89</sup> Although it is clear under the proposed rule that the firm may not provide personal income tax services for the issuer's CFO, it is unclear whether the prohibition would extend to the president or controller of a foreign operating division. An audit firm providing income tax services under an expatriate engagement to an employee on an international assignment may not be immediately aware of changes within that foreign office—such as promotions—that may alter the employee's eligibility. Therefore, we recommend that the PCAOB restrict the scope of the proposed rule to apply only to key management at the issuer level.<sup>90</sup>

We also request clarification as to the type of tax services that are prohibited for those in a financial reporting oversight role. Specifically, we request that the Proposed Rule 3523 be limited to tax services directly related to an officer's "individual federal and state income tax matters." Applying the rule more broadly could result in unintended auditor independence issues (e.g., where an audit firm provides tax services to a publicly traded partnership, real estate investment trust, or mutual fund in which the CEO of a client issuer holds an ownership interest).

Finally, we would encourage the Board to create specific transition rules for this proposal. For example, the rules should be clear as to their application to individuals who become subject to the restrictions during an engagement period (including, but not limited to,

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<sup>89</sup> Release at 16.

<sup>90</sup> Assuming the PCAOB wishes to reach those situations in which the issuer is a holding company and the significant financial reporting work occurs in top-tier subsidiaries, it could amend the proposed rule to so provide, without reaching all the way into every subsidiary.

through initial public offerings and mergers and acquisitions), or conversely, those who fall outside the scope of the rules during such period. If an employee who does not fall within the PCAOB's proposed definition is later promoted to a position where he or she has a financial reporting oversight role, how and when must personal tax services be curtailed? Similarly, the PCAOB should clarify certain nuances of the rule's effective date. For example, could an audit firm continue to plan quarterly individual income tax estimates in conjunction with a prior-year tax compliance engagement for a senior officer who, after the effective date, will be considered to have a financial reporting oversight role at the audit client? We also request that the rule provide an accountant the ability to respond to any questions concerning tax services provided to an individual prior to a status change that precludes that individual from receiving tax services, whether in the context of a personal tax audit (federal or state), or otherwise.

**F. Proposed Rule 3524: Audit Committee Pre-approval of Tax Services**

According to the Release, the purpose of Proposed Rule 3524 "is to provide audit committees a robust foundation of information upon which to determine whether to pre-approve proposed tax services."<sup>91</sup> To that end, we firmly agree with the PCAOB that it is critical that audit committees have the information necessary to make informed decisions concerning auditor independence. In fact, we believe that an active and engaging audit committee pre-approval process provides the single greatest level of protection for identifying and mitigating potential independence impairing activities. We also believe that the existing pre-approval regime under the Act, and the Commission's rules implementing the Act, are working well. Although the

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<sup>91</sup> Release at 40.

existing regime has been in place for only two years, experience demonstrates that the current requirement is accomplishing its goals. Accordingly, we request that the PCAOB consider whether significant modifications to the existing rules are necessary and incrementally beneficial to issuers and the investing public at this time.

Our primary comments relate to Proposed Rule 3524(a)(i), which requires audit firms to provide audit committees every engagement letter, amended engagement letter, or any other agreement, whether oral, written, or otherwise, between the firm and the audit client related to proposed services. We are concerned that this provision may produce the unintended result of inundating audit committees with documents that are not necessary to make informed decisions concerning auditor independence. In contrast, we believe that with minor clarification, provisions (b) and (c) of Proposed Rule 3524, which require documented discussions with the audit committee regarding the potential effects of the proposed services on the independence of the firm, will help promote and ensure auditor independence.

The Act does not specify the type or quantity of documentation to be produced by an audit firm seeking an audit committee's pre-approval.<sup>92</sup> That does not mean, of course, that an audit firm can obtain pre-approval without providing documentation. Rather, the firm must provide as much documentation as the audit committee deems necessary to its decision-making. Congress has instructed that "[t]he members of the audit committee shall vote consistent with the standards they determine to be appropriate in light of their fiduciary responsibilities and such

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<sup>92</sup> Act, § 202.

other considerations they deem to be relevant.”<sup>93</sup> The Commission’s rules implementing the Act recognized the vast discretion assigned by Congress to audit committees. The Commission’s rules require that pre-approval “policies and procedures are detailed as to the particular service, the audit committee is informed of each service, and such policies and procedures do not include delegation of the audit committee’s responsibilities to management.”<sup>94</sup>

The Commission has stated that “[t]he determination of the appropriate level of detail for the pre-approval policies will differ depending upon the facts and the circumstances of the issuer.”<sup>95</sup> Accordingly, the amount of documentation that an audit committee requires will vary from case-to-case depending on the complexity of the service, the degree to which the service might jeopardize the auditor’s independence, the preexisting knowledge base or experience of the audit committee, and other factors.<sup>96</sup> Moreover, audit committees have a strong incentive to seek the proper amount of information, because they face the risk of liability for breach of their duties.

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<sup>93</sup> S. Rep. No. 107-205, at 19-20.

<sup>94</sup> 68 Fed. Reg. at 6022.

<sup>95</sup> Office of the Chief Accountant, United States Securities and Exchange Commission, *Application of the January 2003 Rules on Auditor Independence: Frequently Asked Questions* No. 24, available at <http://www.sec.gov/info/accountants/ocafaqaudind080703.htm> (last visited Jan. 31, 2005).

<sup>96</sup> The Release effectively acknowledges the case- and fact-specific nature of pre-approval. Release at 38 n.78 (“The proposed rule should not be understood to limit the information or materials that an audit committee may request, or that a registered firm may decide to provide, in connection with the pre-approval of tax services.”).

In contrast to the existing regime—under which audit committees may procure the documentation they deem necessary to perform their function—we believe that Proposed Rule 3524(a)(i) is overly broad, in that it compels auditors to provide audit committees every engagement letter, amended engagement letter, and “any other agreement,” whether “oral, written, or otherwise.”<sup>97</sup> The engagement letter requirement alone could mean that auditors in many cases would need to produce—and audit committees would need to review—hundreds or even thousands of pages of documents each year in connection with the pre-approval of even routine tax services.

We are concerned that requiring audit firms to submit volumes of additional, often unnecessary information may actually hinder an audit committee’s consideration of the most substantive aspects of an engagement. The potentially vast quantity of information could cause audit committees to give insufficient consideration to an audit firm’s proposed tax service during the pre-approval process or simply encourage the rejection of all tax services proposed by the audit firm. Neither is required by the Act or by Commission standards, nor is either result in the best interest of maintaining audit quality.<sup>98</sup>

Further, as a matter of accepted practice, engagement letters may not be drafted or issued until after pre-approval has been sought and granted. Thus, provision (a)(i) would require audit firms to submit engagement letters describing tax services that, in many instances, already have

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<sup>97</sup> *Id.* at A-6-Rule.

<sup>98</sup> Permissible tax services provided by the auditor benefits both the audit and the transparency of tax reporting, and those benefits should not be sacrificed.

been detailed in one form or another to the audit committee during the pre-approval process.

This could burden the audit firm and the audit committee while adding little, if any, value to the pre-approval process.

We also suggest clarifying the requirement that an audit firm document and produce “any other” written or oral agreement. This provision could be interpreted as requiring an audit firm to submit documentation to the audit committee concerning essentially every communication with the audit client. If this is indeed how the provision is interpreted, then it may be virtually impossible for an audit firm to comply fully with the rule. Similarly, provision (b) could conceivably require the audit firm to meet with the audit committee to discuss every minute agreement “relating to the service.”<sup>99</sup> Such a system may be unduly burdensome and unworkable in practice.

Even if the PCAOB does not intend for the proposed rule to have the breadth described above, the proposed rule could be used against audit committees, issuers, and audit firms in litigation over whether the rule has been satisfied. As described, audit committees and audit firms could have difficulty proving that they discussed every communication, or “other agreement,” and litigants might therefore have a ready-made claim for a “breach” of the rule.

Apart from the compliance issues of the proposed rule, we are also concerned that the proposed rule may have unintended consequences for the functioning of audit committees. Individual service on audit committees has already become significantly more demanding, given

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<sup>99</sup> Release at A-6-Rule.

the increased time and risk associated with such service.<sup>100</sup> To the extent that the final rules unnecessarily increase those burdens and risks, many otherwise qualified individuals may choose not to serve on these committees.

We recommend that the PCAOB consider these potentially unintended consequences, and the uncertainty of incremental benefits to be achieved by further regulating the pre-approval process. Rather than burden audit committees with voluminous quantities of material that may do little to aid the substantive evaluation process, we believe that the needs of audit committees would be best served by a final rule that recognizes audit committees' discretion to determine for themselves the appropriate level of documentation necessary to make informed pre-approval decisions. To accomplish this, we recommend that the PCAOB consider eliminating provision (a)(i) from any final rule, and instead expressly state that its rule does not affect the Commission's pre-approval regime.

In contrast to provision (a)(i), we believe that provisions (b) and (c) of Proposed Rule 3524 will help to promote continued auditor independence, and to further this goal, we suggest the following clarifications as to the breadth of each. We recommend the PCAOB clarify the scope of discussions required by provision (b). We believe that audit committees should retain the discretion to tailor discussions to suit their particular governance needs. The Release expressly contemplates that audit committees may grant pre-approval "on an ad hoc basis or on

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<sup>100</sup> See Martin Lipton, William T. Allen, and Laura A. McIntosh, *Advising the Audit Committee Today*, CORPORATE GOVERNANCE ADVISOR, May/June 2003 (discussing the "daunting" task of serving on an audit committee).

the basis of policies and procedures.”<sup>101</sup> Similarly, the Commission’s final rules regarding auditor independence state that “the audit committee may pre-approve audit and non-audit services based on policies and procedures and that explicit approval and approval based on policies and procedures are equally acceptable.”<sup>102</sup> To eliminate unnecessary confusion regarding the scope of discussions called for in Proposed Rule 3524(b), we suggest that the final rule explicitly acknowledge that audit firms should discuss with the audit committee the potential effects of the tax services on the independence of the firm “in such manner and at such times as the audit committee deems appropriate.”<sup>103</sup>

Likewise, we agree with the PCAOB that provision (c), requiring that the audit firm “document the substance of its discussions with the audit committee,” will also promote continuing auditor independence.<sup>104</sup> However, consistent with our comments above, we would ask the PCAOB to consider whether it is beneficial to impose specific forms or occasions for auditor documentation of audit committee discussions.

#### **IV. Conclusion**

We strongly support the PCAOB’s efforts to further the goals of the Sarbanes-Oxley Act through rulemaking. Moreover, we share the Board’s goals of ensuring auditor ethics and

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<sup>101</sup> Release at 38.

<sup>102</sup> 68 Fed. Reg. at 6022.

<sup>103</sup> We also note that any differences in the pre-approval standards applicable to tax vs. non-tax services may generate unnecessary confusion.

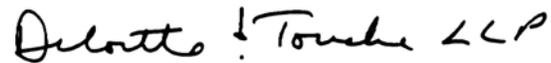
<sup>104</sup> Release at A-6-Rule.

independence and applaud the considered judgments embodied in the proposed rules. Although we ask the Board to consider clarification or revision of certain provisions of the proposed rules, we support the rules' core provisions prohibiting contingent fees and certain defined "aggressive" tax services, as well as the balanced approach to ensuring auditor independence.

We appreciate the Board's consideration of our suggestions and views set forth herein and look forward to working with the PCAOB to achieve greater clarity in any final rules.

If you have any questions, please contact Robert Kueppers at (203) 761-3579 or Roger Page at (202) 879-5360.

Very truly yours,

A handwritten signature in black ink that reads "Deloitte & Touche LLP". The signature is written in a cursive, slightly slanted style.

Deloitte & Touche LLP

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**From:** Pauline O'Brien-DeLury [paulineobrien@comcast.net]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Pauline O'Brien-DeLury  
31 Locksly Ln  
San Rafael, CA 94901-2426

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**From:** Frank Denbowski [fbden@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Frank Denbowski  
926 Church St  
Reading, PA 19601-1807

---

**From:** Erick denizard [erickdenizard@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 9:41 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Erick denizard  
267 Ash St  
Waltham, MA 02453-5802

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**From:** walt & susan denley [wsd@iname.com]  
**Sent:** Tuesday, January 18, 2005 4:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. walt & susan denley  
2546 Oakwood Trce SE  
Smyrna, GA 30080-8291

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**From:** Barbara Dersch [b\_dersch26@hotmail.com]  
**Sent:** Thursday, January 20, 2005 8:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Barbara Dersch  
21079 Woodhaven Ave  
Bend, OR 97702-2461

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**From:** JOHN DIAKS [jdiaks@aol.com]  
**Sent:** Wednesday, January 19, 2005 1:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

JOHN DIAKS  
10801 176th Ave E  
Bonney Lake, WA 98390-5127

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**From:** Kristi Dickey [krissid@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 10:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kristi Dickey  
625 Chase Hammock Rd  
Merritt Island, FL 32953-7913

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**From:** Michael Diamond [blindmansmike@aol.com]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Diamond  
1695 Whitewood Dr  
Sparks, NV 89434-2668

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**From:** Michael Diamond [mbdwriter@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 9:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Diamond  
PO BOX 6766  
New York, NY 10128

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**From:** Fernando DOLDAN [doldan@cox.net]  
**Sent:** Wednesday, January 19, 2005 1:03 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Fernando DOLDAN  
9018 E Pershing Ave  
Scottsdale, AZ 85260-7640

---

**From:** charles donelan [charlesannmarie1@juno.com]  
**Sent:** Wednesday, January 19, 2005 4:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. charles donelan  
635 Bayview Dr  
Toms River, NJ 08753-2005

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**From:** Kathleen Doyle [rubylee@planet-save.com]  
**Sent:** Wednesday, January 19, 2005 10:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kathleen Doyle  
6450 York Ave S Apt 503  
Edina, MN 55435-2341

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**From:** Paul Douglas [pauldouglas@lucent.com]  
**Sent:** Tuesday, January 18, 2005 3:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Paul Douglas  
1370 Tullo Rd  
Martinsville, NJ 08836-2127

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**From:** Ted Doyle [tdoyle1@austin.rr.com]  
**Sent:** Tuesday, January 18, 2005 6:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ted Doyle  
501 Rolling Green Dr  
Lakeway, TX 78734-5222

---

**From:** Kelly Dragoo [kdragoo@alexa.com]  
**Sent:** Tuesday, January 18, 2005 2:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kelly Dragoo  
1701 Oak St  
San Francisco, CA 94117-2014

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**From:** Jane Drake [drakeej@auburn.edu]  
**Sent:** Tuesday, January 18, 2005 5:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jane Drake  
92 Lakeside Ct  
Dadeville, AL 36853-4644

---

**From:** jerri draskiewicz [stanleydraskiewicz@msn.com]  
**Sent:** Wednesday, January 19, 2005 8:48 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. jerri draskiewicz  
36 Neptune Ave  
Norwalk, CT 06854-4718

---

**From:** Nancy Dukewich [nancy.dukewich@mckesson.com]  
**Sent:** Tuesday, January 18, 2005 9:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nancy Dukewich  
1397 W Split Oak Cir  
Round Lake Beach, IL 60073-4675

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**From:** dc dworatzek [dworatz@netzero.net]  
**Sent:** Sunday, January 30, 2005 2:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 30, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. dc dworatzek  
5991 S Emporia Cir  
Englewood, CO 80111-5414

---

**From:** Sue Eberhardt [suey@foxvalley.net]  
**Sent:** Tuesday, January 18, 2005 2:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Sue Eberhardt  
12540 Boxwood Ct  
Huntley, IL 60142-7488

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**From:** Susan Edelstein [edelste2@niehs.nih.gov]  
**Sent:** Tuesday, January 18, 2005 4:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Susan Edelstein  
308 Heidinger Dr  
Cary, NC 27511-5668

---

**From:** dave edwards [bongodave@cox.net]  
**Sent:** Tuesday, January 18, 2005 10:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. dave edwards  
6990 Stearns Rd  
Olmsted Falls, OH 44138-1131

---

**From:** Michael Edwards [poss16@msn.com]  
**Sent:** Tuesday, January 18, 2005 4:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Michael Edwards  
58 Yorktown Rd  
Troutville, VA 24175-6935

---

**From:** Karen Ehrhardt [karenehrhardt@netscape.net]  
**Sent:** Tuesday, January 18, 2005 5:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Karen Ehrhardt  
3300 Monroe County Line Rd  
Macedon, NY 14502-9131

---

**From:** Richard Einig [einigr@aol.com]  
**Sent:** Wednesday, January 19, 2005 11:33 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Richard Einig  
335 Frenchtown Rd  
East Greenwich, RI 02818-1817

---

**From:** Barbara Eisenstadt [beisenstadt@murrayhill.com]  
**Sent:** Monday, January 24, 2005 11:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 24, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Barbara Eisenstadt  
1 Lincoln Plz  
New York, NY 10023-7129

---

**From:** Deborah Eldridge [deborah.eldridge@bellsouth.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Deborah Eldridge  
810 Inverness Lndg  
Birmingham, AL 35242-3807

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**From:** Wayne Elkins [eieiowe@charter.net]  
**Sent:** Wednesday, January 19, 2005 8:19 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Wayne Elkins  
PO Box 57  
163 Elkins Ln  
Ashford, WV 25009-0057

---

**From:** Karl Ellerbeck [karl@tennis.com]  
**Sent:** Tuesday, January 18, 2005 11:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Karl Ellerbeck  
1707 Valley Ave  
Winchester, VA 22601-3139

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**From:** Wm Scot Ellis [wmscotellis@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 9:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Wm Scot Ellis  
4611 N Frace Ave  
Tacoma, WA 98407-1213

---

**From:** Willard Engelskirchen [todsails@aol.com]  
**Sent:** Wednesday, January 19, 2005 8:09 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I am not in favor of any watering down of the Sarbanes Oxley law. If anything this should be made stronger. We are way too early in the enforcement of this law to make changes. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Willard Engelskirchen  
PO Box 804  
Saint Michaels, MD 21663-0804



10260 SW Greenburg Road, Suite 850  
Portland, OR 97223  
Tel (503) 293-8444  
Fax (503) 293-8430

[www.enpria.com](http://www.enpria.com)

February 11, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006-2803

Email: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Release No. 2004-015 December 14, 2004  
PCAOB Rulemaking Docket Matter No. 17

Dear Board Members:

Thank you for the opportunity to offer comment to the Public Company Accounting Oversight Board on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. We appreciate this vehicle as a forum to assist in clarifying both the standards base and their enforcement mechanisms.

While we feel PCAOB release 2004-015 establishes standards that are for the most part simple and easy to understand, we have seen widespread, predictable evidence that many firms remain reluctant to sever Audit from Non-Audit Services among their Vendor Partners. Therefore, we as a community have not gained the full measure of security and comfort which the standards were built to impart to investors.

While we understand that the Sarbanes-Oxley Act allows for certain non-audit services, we are left with a single question: why would any Audit Committee risk the independent status of their Auditor/Sarbanes-Oxley Certifying Authority by allowing them to perform non-audit services within the same account? Much less why would an Audit Firm take such a risk? It should be obvious that non-audit services inherently create great undue concern for Regulators, Investigators, Audit Firms, Audit Committees, Providers of Directors Insurance, Investors, and other interested parties.

One of the primary lessons we learned from Sarbanes-Oxley compliance work is that Risk Management is the key to understanding and successfully implementing a culture of compliance. It should begin with an evaluation of the risks associated with non-audit services being provided by the Independent Auditor/Sarbanes-Oxley Certifying Authority. Therefore, let us review a few of the risks/costs associated with loss of independence:

- What are the costs of replacing your Independent Auditor/Sarbanes-Oxley Certifying Authority and repeating audits that are impacted by the loss of independence?
- What are the costs to the reputation of a public company, stock value, and to individual officers or directors?
- How will stockholders react to this type of loss considering the increasing level of investor sophistication?

- Who will be responsible for these costs, how will that be determined, and what will it cost to make that determination?
- What are the risks to the Independent Auditor/Sarbanes-Oxley Certifying Authority and can this situation create another Arthur Andersen with subsequent degradation of the entire community's reputation?

Similarly, it is useful to review successful mitigate strategies:

- Use a firm not associated with the Independent Auditor/Sarbanes-Oxley Certifying Authority (provides additional tax practices review benefit).
- Write contracts that provide a clear understanding of the services that will be allowed, the liability when independence is breeched, and other mitigating requirements.
- Audit Committees should create policies that set strict requirements for approval of non-audit services.

It should be expected that, at some point, the providers of insurance to directors and officers of public companies will react to these issues by requiring additional premiums on approval of non-audit services due to the significant additional risk.

Sarbanes-Oxley was enacted to protect investors by improving the accuracy and reliability of corporate disclosures. These disclosures rely upon the independence of the Auditor/Sarbanes-Oxley Certifying Authority. One of the primary components of Sarbanes-Oxley compliance is the "Tone from the Top". How the Audit Committee deals with compliance is important to the whole process. If the Audit Committee is willing to allow a high level of risk, then it follows they should expect a similar risk tolerance by the employees of the company when dealing with more mundane issues of compliance.

These are primarily issues of leadership and will determine how public companies operate in the future; including setting the level of trust that investors have in the very institution of common stock corporations. As the compliance process is evolutionary, one natural benefit that immediately follows from strict segregation is a reduction in the need for additional or intrusive regulation by the PCAOB, which will minimize lifecycle costs and boost corporate performance. Simply put, by being responsible and acting in the best interest of the investing public we can minimize the amount and cost of future regulation and litigation. It's that "do it right the first time" lessons we preach to our kids but sometimes fail to practice ourselves.

We find great merit in what the PCAOB is proposing with release 2004-015. We also see a need for leadership from Audit Committee members, Independent Auditor/Sarbanes-Oxley Certifying Authority, Officers of Public Companies, and the Advisors for these groups to work toward improving how the investing public views the accuracy and reliability of the corporate disclosures. By restoring the confidence in disclosures we will restore confidence in the business leaders that approve, review, and assemble the information in these disclosures.

Once again, we appreciate the opportunity extended to participate in this process. If additional information is desired, please feel free to contact me at [Victoria.Whitlock@Enpria.com](mailto:Victoria.Whitlock@Enpria.com) or at: 425-576-4004.

Sincerely,



Victoria Whitlock, Compliance Practice Manager  
With support from J Michael Hayes, Compliance Analyst

---

**From:** Elaine Ercolano [eercolan@optonline.net]  
**Sent:** Tuesday, January 18, 2005 8:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elaine Ercolano  
78 W Hill Rd  
Woodcliff Lake, NJ 07677-8349

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**From:** Winn Erdman [w-k\_erdman@juno.com]  
**Sent:** Saturday, January 22, 2005 1:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Winn Erdman  
3 Tres Hermanos Rd  
Placitas, NM 87043-8331

---

**From:** Barry Ergang [bergang@op.net]  
**Sent:** Tuesday, January 18, 2005 3:20 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Barry Ergang  
108 Morlyn Ave  
Bryn Mawr, PA 19010-3738



■ Ernst & Young LLP  
5 Times Square  
New York, New York 10036

■ Phone: (212) 773-3000  
www.ey.com

February 14, 2005

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

**PCAOB Proposed Ethics and Independence Rules Concerning  
Independence, Tax Services, and Contingent Fees,  
Release No. 2004-015, Rulemaking Docket Matter No. 017**

Dear Mr./Madam Secretary:

Ernst & Young LLP (“E&Y”) is pleased to provide these comments on the Public Company Accounting Oversight Board’s (“PCAOB” or “Board”) proposed ethics and independence rules concerning independence, tax services, and contingent fees.

Ernst & Young supports the rule proposal. In our view, the Board has taken a balanced approach, seeking to distinguish between tax services that may impair independence and those that do not.

Implicit in the proposal is the recognition that audit quality is often enhanced when auditors have knowledge of a client’s tax accounting gained through the provision of certain tax services. Board Member Gillan addressed this issue directly at the Board’s December 14, 2004 meeting approving the issuance of these Proposed Rules. She said it had become apparent during the Board’s roundtable discussion of this issue last year that an “auditor’s involvement in a company’s decisions about the appropriate tax treatment of some transactions can actually play a significant role in assuring the accuracy not only of annual financial statements, but quarterly disclosures as well.” Transcript of the PCAOB Open Meeting, December 14, 2004 (“Transcript”) at 20.

This is a point of view with which we strongly agree. We believe that the provision of tax services by an audit firm to its audit client can improve audit quality because knowledge of a client’s tax profile – and the tax and accounting implications of that profile – is shared with the audit engagement team by the firm’s tax professionals. This occurs best when the auditor has access to tax professionals who have acquired an understanding of the activities affecting the client’s tax liability and related accounting.

The ability of the auditor to benefit from the broad expertise of his or her tax colleagues has been long held and is widely acknowledged as essential to the performance of a high quality audit. The auditor must make important judgments concerning a client’s tax matters which, in many

February 14, 2005

cases, are among the largest expenses the client incurs and which can have significant financial statement impact. A firm's tax professionals, by working with their audit colleagues, can understand the differences between financial accounting and tax accounting principles. By assisting in the audit process, these professionals can help in determining that these differences are properly reflected in the financial statements by company management.

In examining the tax accounts of large multinational organizations, the audit teams place a great deal of reliance on the specialized skills and knowledge of tax personnel in countries throughout the world in determining the nature, timing, and extent of the audit procedures that should be applied to these tax accounts. The greater the client's business complexity, the more critical it is for the audit firm to have the resources and expertise necessary to complete the audit in a high quality manner. Being allowed to provide tax services to audit clients is essential for the maintenance of a highly skilled tax practice.

In this regard, we suggest that the Board's final rulemaking release provide more explanation – along the lines offered by Board Member Gillan at the December 14 open meeting – of the reasons underlying its decision to take a balanced approach to this issue. This is an important issue, and if Board Members share this view as to the important relationship between tax work and audit quality, it would be helpful if the Board were to make that position clear in its final rule release.

Our more specific comments, largely addressing technical aspects of the rule proposal, are listed below.

**1. The Board should modify Proposed Rule 3522 so that it focuses on prohibiting an audit firm from “advising in favor of, or otherwise promoting,” listed, confidential, or aggressive transactions as defined in the rule.**

Under Proposed Rule 3522, a registered public accounting firm would not be independent of an audit client if the firm or any of its affiliates provides during the audit and professional engagement period “any non-audit service to the audit client related to planning, or opining on the tax treatment of” a listed transaction, confidential transaction, or aggressive tax position. PCAOB Release No. 2004-015 (December 14, 2004) (“Release”) at A-5. The Board should modify Proposed Rule 3522 so that it focuses the prohibition of services in those circumstances where an audit firm is advising in favor of, or otherwise promoting, “listed,” “confidential,” or “aggressive” transactions.

Neither the Proposed Rule nor the accompanying proposing Release explains what it means to “provide any non-audit service...related to planning, or opining on the tax treatment” of the identified transactions, and we are concerned that it may sweep too broadly. This portion of the Proposed Rule could be read to preclude firms from advising clients *against* engaging in a proscribed transaction or from assisting a client in determining whether the transaction is a listed transaction (or “substantially similar” to a listed transaction).

Similarly, because the proposal would prohibit “opining on the tax treatment” of specific transactions, it could prohibit a firm from evaluating a transaction brought by a third party for

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purposes of providing the client with a “more likely than not” opinion on which it could rely solely to avoid understatement penalties.<sup>1</sup> The proposal could also be read to preclude the firm from assisting its audit client in explaining the transaction to the Internal Revenue Service (“IRS” or “Service”) or another tax authority, even though the client hired the firm to provide that service long after the client executed the transaction. For example, a client might engage in a transaction at a level of confidence below “more likely than not” and in a subsequent year engage its audit firm to assist it in its IRS examination. Under the Proposed Rule, the firm might be viewed as providing a service “related to” or “opining” on the client’s tax treatment in the presentation before the tax authority.

We do not believe that such applications of the rule reflect the Board’s intent. At the Board’s December 14, 2004 meeting approving the rule proposal, Chief Auditor Carmichael stated, “The rule is not intended to prevent an auditor from advising a client not to do a transaction. What’s contemplated in the term planning or planning on a transaction is planning that transaction to fruition or providing a positive opinion on that transaction.” Transcript at 31. In response to Mr. Carmichael’s statement, Board Member Goelzer said, “I think that’s an important point, because it seems to me in that kind of scenario, it’s actually desirable that the client might consult its accountant about the transaction, and I would hope that if that’s not clear from this little exchange we’ve had, then perhaps that the adopting release stage or to some interpretive stage we might make that clear.” *Id.*

We urge the Board to make this intent clear in the final rules by prohibiting an auditor’s evaluation of an audit client’s transactions – including “listed,” “confidential,” or “aggressive” transactions – only when the firm advises in favor of or otherwise promotes the transaction. Modifying the Proposed Rule’s scope in this manner would permit audit firms to advise audit clients on the possible ramifications of the transaction, such as applicable penalties or disclosure requirements, while still barring them from assisting with the transaction’s planning or implementation. Similarly, a modified rule would permit an audit firm to assist the client, after the transaction’s execution and reporting in the tax return and financial statements, with respect to presentation to the IRS or other tax authority.

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<sup>1</sup> Congress recently amended IRC Section 6664 to provide that a taxpayer cannot rely on an opinion of a “disqualified tax advisor” to establish a defense to the assertion of a penalty under IRC Section 6662. A disqualified tax advisor includes material advisors who participate in the organization, management, promotion, or sale of the transaction. IRC Section 6664(d)(3)(B)(ii)(I). In Notice 2005-12, 2005-7 I.R.B. 494, 496 (February 14, 2005), the IRS provided interim guidance concerning its interpretation of these provisions, stating in relevant part, “Consistent with the legislative history, a tax advisor, including a material advisor, will not be treated as participating in the organization, management, promotion or sale of a transaction if the tax advisor’s only involvement is rendering an opinion regarding the tax consequences of the transaction. In the course of preparing a tax opinion, a tax advisor is permitted to suggest modifications to the transaction, but the tax advisor may not suggest material modifications to the transaction that assist the taxpayer in obtaining the anticipated tax benefits.” Thus, the IRS distinguishes between advisors who merely evaluate the tax consequences of a transaction that has been developed by an unrelated third party and advisors who actually develop and promote the transaction. Our recommendation above would be consistent with the approach followed by the IRS in these situations.

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**2. The Board should clarify issues raised by the prohibitions on “listed” and “aggressive” transactions set forth in Proposed Rule 3522.**

Proposed Rule 3522 would prohibit planning and opining on “listed transactions,” “confidential transactions,” and “aggressive tax positions.” We urge the Board to clarify certain aspects of the prohibitions on “listed” and “aggressive” transactions.

- 2.1. *Listed transactions: The Board should make clear that an independence impairment does not arise when a transaction that was not listed at the time an audit firm advised the audit client later becomes listed.*

As an initial matter, the Board asks if Proposed Rule 3522(a) adequately describes a class of transactions that have an unacceptable risk of impairing an auditor’s independence. We believe that the Proposed Rule does so. Given the attention that the IRS has given to abusive tax avoidance transactions and the Service’s increasing use of listing as an indication of that class of transactions, it is appropriate to prohibit audit firms from assisting their audit clients in entering into such transactions.

We are concerned, however, about the statement in the Release that there might be a “potential impairment” of independence with regard to a transaction that is not listed at the time the accounting firm provides the advice but that later becomes listed. Release at 28-29. In our view, no independence impairment should arise when such a later listing occurs. The listing of a transaction is the notification by the IRS to taxpayers that the transaction may be potentially abusive. In fact the IRS has removed transactions from “listed” status on several occasions, thereby indicating the complexity of the factors considered in the application of the listing process. Assuming that the audit firm evaluated the tax engagement prior to pre-approval, discussed the nature of the transaction with the audit committee and received pre-approval, and was able to opine at a “more likely than not” level of confidence upon implementation of the transaction, the subsequent listing of the transaction should not be considered an impairment of the firm’s independence.

The Board stated in the Release its concern that the later listing of the transaction may affect the auditor’s independence for several reasons – the audit firm or the audit client (or both) might be required to pay penalties, the firm might have civil liability, or the firm might have an incentive to allow the transaction to be reflected inaccurately for financial accounting purposes so that the transaction’s tax treatment appears correct. Release at 28-29. But these same or similar situations have long arisen in other contexts, without impairing independence. For example, an accounting firm’s audit opinion might be called into question when the client is required to restate its financial statements, thereby giving rise to potential civil liability or penalties. That development does not, by itself, impair the auditor’s independence. Existing auditor independence rules already address these situations. For example, ET Section 101.08 and the codification in FRR 606.02(f)(ii) provide that independence may be impaired by actual or threatened litigation between the client and its auditor and set forth factors for assessing independence in this situation. We believe that transactions that are listed by the IRS subsequent to implementation, and any controversies or disputes arising from such listing, could be addressed with these same

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general independence rules. Further, the “more likely than not” standard in Proposed Rule 3522(c) is a high standard, and the PCAOB can use its inspection process to examine the basis for a firm’s conclusion when a particular transaction later becomes listed. These are significant safeguards against the promotion by accounting firms of inappropriate tax transactions.

## 2.2. *Aggressive tax positions*

Under Proposed Rule 3522(c), a “transaction” that (1) is “initially recommended” to an audit client by a registered public accounting firm “or another tax advisor” and (2) has a significant tax avoidance purpose, would qualify as an “aggressive tax position” unless the proposed tax treatment is at least “more likely than not” to be allowed under applicable tax laws. *See* Release at A-5. There are several areas that need clarification.

- A. The final rule should clarify the definition of the term “transaction” for purposes of assessing when a transaction has been initially recommended by the audit firm.

The definition of “transaction” is critical in applying the “initially recommended” provision of the rule. For example, suppose a client decides to acquire another company for business reasons and consults with its auditor for tax advice on how to efficiently execute the acquisition for tax purposes. If the “transaction” is the acquisition itself, then the audit firm would presumably be permitted to provide overall tax planning for the acquisition. If, however, the “transaction” is deemed to be the tax advice related to the acquisition, then the tax planning alternatives might each be viewed as “initially recommended” by the audit firm and therefore could be a prohibited service.

As another example, suppose a client proposes to sell a building and asks its audit firm for planning and advice. The sale might result in a taxable gain, and, as a result, the firm might suggest alternative means of disposing of the building. If the “transaction” is deemed to be the sale of the building, then the firm could provide a range of alternatives for disposition (*e.g.* selling it outright, entering into a like-kind exchange transaction or a joint venture) without each of these alternatives being treated as initially recommended transactions.

- B. The final rule should clarify that the “more likely than not” standard applies to overall tax advice, rather than each separate element covered by the advice.

The Board should clarify how to assess transactions with multiple steps. For example, the standard could apply to each element of tax advice the client follows when acquiring another company (*e.g.* the formation of an acquisition entity, the consolidation of acquired subsidiaries, or other internal elements), or it could apply to the advice as a whole.

To eliminate this uncertainty, the final rule should clarify that the “more likely than not” standard applies to the overall tax advice, rather than each step or element of tax planning or advice. Such a clarification would be consistent with the recent IRS guidance on opinion standards for tax practitioners who provide advice on federal tax issues. *See Treasury Department Circular No. 230 (Rev. 7-2002), Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the*

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*IRS or Practice Before the Internal Revenue Service*, 31 C.F.R. Sections 10.0-10.97 (2004). Under those standards, federal tax practitioners who issue opinions on the confidence level of a transaction must consider all significant federal tax issues and reach an overall conclusion on the transaction. 31 C.F.R. Section 10.35. It would also be consistent with the Board's efforts to "incorporate an existing framework that auditors who serve as tax advisors already follow in their tax practices." Release at 28.

- C. The final rule should accommodate non-U.S. jurisdictions by providing an alternative to the "more likely than not" standard.

Because the "more likely than not" standard is a U.S. tax term, it carries with it associations and meanings that have developed through U.S. case law and IRS guidance. These meanings and context may not be readily apparent outside the U.S. tax system. Rather than seek to apply a U.S. standard globally, we would recommend a different term that is easy to understand and apply in other taxing jurisdictions, such as "more than 50% chance of the position being upheld upon review by the relevant tax authorities."

- D. The final rule should reconsider the inclusion of "another tax advisor" in Proposed Rule 3522.

Proposed Rule 3522 would prohibit the audit firm's involvement in aggressive tax positions initially recommended by another tax advisor. If the Board were to adopt our suggestion above that Proposed Rule 3522 only extend to advising in favor of or otherwise promoting listed, confidential or aggressive transactions, we would not be so concerned about the extension of the restriction to "another tax advisor." But without that limitation, the Board should consider deleting the phrase "another tax advisor" from the proposal, so that the proposal would only apply to transactions brought to the client by the audit firm itself. Otherwise, for the reasons discussed above, the rule would prevent a company's audit firm from advising its audit client against entering into a transaction proposed by another tax advisor. If the Board's concern is that firms might use third parties as their agents to promote improper tax strategies, the Board might address that concern by prohibiting firms from "directly or indirectly" recommending an aggressive tax strategy. Eliminating the reference to "another tax advisor" would also avoid the need to make difficult factual determinations as to whether a third party "initially recommended" the transaction (in which case the rule's prohibition would apply), or whether it was instead initiated by the client itself (where the prohibition would not apply).

- E. The final rule should not require audit firms to obtain a third-party tax opinion to support a transaction's tax treatment if the potential effect of the treatment could materially affect the audit client's financial statements.

The Board seeks comments on whether it should require an audit firm to obtain a third-party tax opinion in support of the tax treatment if the potential effect of the treatment could have a material effect on the audit client's financial statement. Release at 35. We do not believe such a requirement would be necessary. The PCAOB's Proposed Rules would significantly raise the threshold regarding audit firm involvement in certain tax planning activities, and those rules should be allowed to take effect before determining whether additional requirements are

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necessary. Moreover, obtaining the opinion of a third party would seem redundant and unnecessary, as the firm is already required to perform an analysis of the tax transaction. The Board itself notes that registered firms that provide tax services are in a position to perform this analysis and cannot rely on the opinion of a third party to satisfy the rule's standard. Release at 34 n.71. Also, requiring a firm to obtain the opinion of a third party would result in increased costs to both the firm and the audit client.

**3. The Board should reiterate the SEC Staff's view that the independence principles do not generally prohibit the provision of permissible tax services to audit clients.**

The PCAOB's Release notes that the Securities and Exchange Commission ("SEC"), in a Preliminary Note to its 2000 independence rules, set forth four principles of auditor independence.<sup>2</sup> Release at 13-14. Against the backdrop of those principles, the Release states that the Board "has determined at this time to propose restrictions only in two particular areas." Release at 14. It would appear, therefore, that other tax services are permissible, subject of course to audit committee pre-approval.

There has, however, been some confusion as to how the principles apply to permissible tax services, and we therefore urge the PCAOB to provide clarification in this area. The "auditing your own work" restriction has been a particular source of confusion. There are many instances in which a tax service that the Board considers permissible – such as "general tax planning and advice" (Release at 15) – might arguably result in the auditor "auditing its own work."

For example, a company may engage its audit firm to conduct a research and development tax credit study. Such a study typically involves (1) reviewing the company's activities to determine the potential for claiming an R&D credit on its tax return; and (2) identifying the expenditures that would "qualify" for the credit under Sections 174 and 41 of the Internal Revenue Code. After receiving the study from the audit firm, the company's management would take responsibility for it, including reflecting the credit amount on the tax return filed with the IRS. Management would also need to account properly for the amount of the R&D credit in the company's financial statements, including the assessment of any potential tax contingencies required under FAS 5.

Management's determinations with respect to the impact of the R&D analysis will be reflected in the company's financial statements. In making its determinations, management would likely consider any report, opinion, or analysis provided by the auditor through the tax services engagement. As such, one might possibly conclude that an audit firm was "auditing its own work" and should be precluded from providing this service, even though the company's

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<sup>2</sup> Under the four principles, a firm may not perform for audit clients any service that (1) creates a mutual or conflicting interest between the firm and the audit client; (2) places the firm in the position of auditing its own work; (3) results in the firm acting as management or an employee of the audit client; or (4) places the firm in a position of being an advocate for the audit client. 17 C.F.R. Section 210.2-01, Preliminary Note (2001).

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management is solely responsible for determining the proper financial statement accounting treatment as part of its income tax provision process.

Similar concerns would also be present in other tax advisory engagements. For example, a company may inquire about the tax treatment of a gain from the sale of an asset. The audit firm's tax advice will be evaluated by management, which will determine the effects of the transaction on the company's financial statements. Based on the Proposed Rule and the Release, it would appear that this is a type of service that a company should be able to obtain from its audit firm in the capacity of a tax services provider. Applying the principle that a firm should not be auditing its own work, however, could lead audit committees to conclude that this service poses an independence concern. Similar questions can arise for other tax work, such as cost segregation studies, tax accounting method support, tax basis computations, general tax advisory engagements, and tax return preparation engagements.

Because the company is responsible for the accounting determination, recording, and disclosure of the effects of general tax planning and advice, we do not believe that the services described above violate the "audit your own work" principle. This has also been the SEC Staff's view: the principles "have not been strictly applied to traditional tax services, such as tax compliance and preparation, tax planning, and the provision of tax advice. For example, when an auditor prepares a company's tax return, the fact that the amount of tax owed may impact the accrued tax liability reflected in the company's financial statements has not been deemed to impair the auditor's independence." Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission 5-6 (June 24, 2003).

Accordingly, the final rules should clarify that the principles generally do not preclude an audit firm from providing otherwise permissible tax services to audit clients. In clarifying this point, the Board should note that the audit client's consideration of information obtained from the audit firm's provision of permissible tax services does not violate the "auditing your own work" principle, provided those services do not represent the creation of journal entries or similar source documentation.

As a final note in this regard, the Release lists several tax services (*e.g.*, "routine tax return preparation and tax compliance" and "general tax planning and advice") that are permitted under the proposal and asks whether "there are other types of tax services that could appropriately be included in this discussion." Release at 15-17. We do not believe that such a list would be necessary. Indeed, any such list might infer that tax services omitted from the list are not permitted, which we do not believe would be an appropriate result. A recommended approach is one described above, namely, to reiterate the SEC Staff's position regarding application of the principles to tax services. Further, if the PCAOB were to set forth such a list, the Board should consider incorporating by reference those services described by the SEC as permissible tax services in its rulemaking release. *See* Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, 68 Fed. Reg. 6006, 6012, 6031 (Feb. 5, 2003) ("SEC Release") ["Our rules do not prohibit an accounting firm from providing such services for non-financial reporting (*e.g.*, transfer pricing studies, cost segregation studies, and other tax-only valuations) purposes."]; [noting that "[t]ax planning and tax advice encompass a diverse range of

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services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans, and requests for rulings or technical advice from tax authorities”].

**4. The Board should clarify additional aspects of the rule proscribing the provision of tax services to officers in a financial reporting oversight role.**

4.1. *The Board should consider specifying the persons to whom the restrictions apply as opposed to using the term “financial reporting oversight role.”*

While we support the Board’s decision to limit the services an audit firm can provide to an officer in a financial reporting oversight role, we are concerned that some confusion will result from the use of the term “financial reporting oversight role” in Proposed Rule 3523. That definition includes a person who “is a member of the board of directors or similar management or governing body.” Release at A-5. However, it seems clear that the Board did not intend to include board members in the restriction. This is because the Proposed Rule itself only extends “to an officer in a financial reporting oversight role.” *Id.* (emphasis added). Likewise, the Proposing Release states that the rule “would apply only to tax services provided to officers in a financial reporting oversight role at an audit client.” Release at 36. To avoid confusion, we think it would be helpful to include this statement in the text of the rule itself.

Alternatively, the Board should consider specifying the persons to whom the restrictions apply as opposed to using the term “financial reporting oversight role.” This approach might also avoid the difficulties that arise from use of the defined term “audit client” in Proposed Rule 3523. Proposed Rule 3501 would adopt certain definitions that are used in the SEC’s independence rules, including a definition of “audit client” that includes “affiliates” of the audit client and a definition of “affiliates” that includes (among other things) “[a]n entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client’s parents and subsidiaries.” Release at A-1. Accordingly, the Proposed Rule’s prohibitory reach would be very broad.

Effective compliance with such a broad rule would be difficult. Many of our foreign affiliates have tax practices with several thousand individual clients. The fees these clients pay for routine tax return preparation and advice is minimal on a per return basis, and the non-U.S. affiliates have very limited contact with these tax clients during the year.

With such a broad application, uncertainty regarding who is considered an officer in a financial reporting oversight role will cause organizations to spend a great deal of time identifying and monitoring the individuals moving into and out of these roles. Audit committees, in an attempt to avoid the risk of an inadvertently violating the rule, may conclude that many individuals will fall into the restricted class and will be faced with the decision to have multiple tax service providers or to change to a tax service provider that is not the auditor. Some “investment company complex” organizations that engage a number of audit firms may not be able to identify any firm that would be permitted to provide service to all the individuals in their expatriate program. This

result would be inconsistent with the intent of the rules, which allows expatriate tax services to be provided to attest clients. Release at 16.

Accordingly, we believe that this prohibition should be redefined. One possible description of persons who should be covered by the rule is included in the SEC's rules governing insider transactions under Section 16 of the Securities Exchange Act, which contains a definition of "officer," assuming the definition is limited to persons in a financial oversight reporting role.<sup>3</sup>

Limiting the rule to this well-defined set of officers provides clarity as to the individuals covered by the rule, making the rule easier both to administer and to comply with. This would also be consistent with the Board's statement in the Release that the proposal is "narrowly tailored to include only those tax services that a registered public accounting firm provides to individuals in a position to play a significant role in an audit client's financial reporting." Release at 36.

#### 4.2. *The Board should provide transitional relief under Proposed Rule 3523.*

The Board should address certain transitional issues arising under Proposed Rule 3523. The rule should provide that a firm's independence is not affected if tax services are provided before the executive becomes a covered officer. The Release describes the restriction on the provision of tax services for officers in a financial reporting oversight role as designed to preclude the appearance of a "mutual interest" between the auditor and individuals in a position to play a significant role in an audit client's financial reporting. Release at 35 n.72. If the executive did not have the ability to exert this influence before taking on the financial oversight role, then the prior provision of tax services should not affect the firm's independence going forward.

Transitional issues will also arise in the context of a merger or other business combination. If an audit client merges with or is acquired by another entity for which the firm is providing executive tax services, the executive could then become a person in a financial reporting oversight role of the combined entity being audited by the firm. So long as the firm ceases providing tax services to the executive, the final rule should clarify that the firm's independence will not be affected. The SEC provides a similar exception for mergers with regard to the "cooling off period" for employment at a former issuer. SEC Release at 6009.

We would suggest modifying the rule to provide a transition period that would allow a firm to complete the engagement related to the year the individual becomes a covered officer, perhaps

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<sup>3</sup> 17 C.F.R. Section 240.16a-1(f) states: "The term 'officer' shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other person who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust."

with a final deadline of 12 months. We would also ask that the transition rule include a statement that future tax services, such as assisting the individual with responses to inquiries by the IRS or other governmental agencies related to the year, for which the tax return relates, are permitted. Without such a transition rule, the individual, as well as a successor tax service provider, would be denied access to the firm with the knowledge needed to respond to such inquiries.

4.3. *The Board should clarify the effective date of Proposed Rule 3523.*

The Release states that a firm's independence is not impaired as long as the newly proscribed services "were provided by the registered public accounting firm in connection with original returns filed no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later." Release at 43. Read literally, this means that our firm (and we assume others as well) may already have independence impairments with respect to some audit clients. This is because we have in some instances assisted officers in financial oversight roles at audit clients in determining their estimated taxes for the first quarter of 2005, and the original return for 2005 will of course be filed after October 20, 2005. A similar issue is raised with respect to non-U.S. tax returns. In the United Kingdom, for example, the tax year runs to April 5 and returns are filed by January 31 of the following year. The rule as drafted would impair our independence with respect to work on those returns. We do not believe that the Board intended such a retroactive application of its rule. Accordingly, we suggest that firms be permitted to complete individual tax returns covering periods that fall wholly or partly prior to December 31, 2004, with perhaps a final deadline of 12 months after the final rule is issued.

**5. We do not believe that Proposed Rule 3524(a)(i) is necessary in order to accomplish the Board's objectives, and it would be highly burdensome to audit committees if adopted.**

Proposed Rule 3524(a)(i) would require that, as part of the audit committee pre-approval process for non-audit services, the audit firm must provide the audit committee with "the engagement letter relating to the service, which shall include descriptions of the scope of the service and the fee structure, any amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service." Release at A-6. We do not believe that this rule is necessary in order to accomplish the Board's objectives and in fact could undermine audit committee effectiveness.

As the Release notes, the SEC has addressed the pre-approval process, both in its 2003 independence rulemaking and in informal guidance from the Office of the Chief Accountant. See SEC Release at 6022; Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission (June 24, 2003); *Office of the Chief Accountant: Application of the January 2003 Rules on Auditor Independence Frequently Asked Questions, FAQ No. 22-24* (August 13, 2003), <http://www.sec.gov/info/accountants/ocafaqaudind080703.htm>.

We are not aware of any evidence that the SEC's requirements have been ineffective in ensuring that audit committees give adequate consideration to tax and other non-audit services. Nor does

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the PCAOB's Release indicate that experience under the SEC's requirements warrants the adoption of new or incremental pre-approval rules. Our experience has been that audit committees and audit firms take the existing procedures and the pre-approval process seriously and that they have been working well.

In addition, the Proposed Rule would add a layer of complexity to the pre-approval process. It would mean that audit committees would be required to follow one set of pre-approval rules – adopted by the SEC – for most non-audit services, and another set of rules – adopted by the PCAOB – for tax services. This could lead to confusion and frustration by audit committees, and could lead to inadvertent mistakes in the pre-approval process.

Moreover, the rule as proposed would be highly burdensome. Large multi-national corporations often have hundreds of tax projects that require audit committee pre-approval. Taking into account all the countries where the company has operations, there may be hundreds of relevant engagement letters (almost certainly at least one per country). Some letters may be in languages other than English and would be required to be translated. Much of the text of a typical engagement letter is irrelevant to independence concerns, relating to matters other than the scope or nature of the services or the fee arrangements. Audit committee members, in order to fulfill both the letter and the spirit of their responsibilities, would presumably feel obligated to read the entirety of such letters or engage outside counsel to the audit committee to do so. As a result, committee members or others working on their behalf would be required to read hundreds or even thousands of pages of documentation. This would be time-consuming and burdensome and would potentially reduce the level of oversight on other more significant issues. Given this level of detail, the Proposed Rule would effectively require audit committees to assume functions of management.

Some audit committees might decide that these requirements are so burdensome, and so likely to result in inadvertent violations, that it would be easier simply not to hire the audit firm to perform tax services. For the reasons noted above, such a result would be inconsistent with the Board's objectives.

It might be thought that audit firms could avoid some of these problems if they were to provide a global engagement letter or services arrangement, providing a detailed description of the allowable services. But tax regimes and tax authorities operate on a national and local basis and, hence, engagement terms are most often dealt with on a country-by-country basis. The client's local country management will be providing information, reviewing returns, and so on, all in direct contact with local country tax advisers. Thus, even where there is an overarching contractual arrangement, there will normally be a local service level agreement stating, for example, the obligations on management to provide necessary tax information or to sign and submit returns by specified local filing deadlines, and the obligations on the tax adviser to complete returns by specified deadlines. The agreement might also contain various explanations about the operation of the local tax system and the application of local professional and ethical obligations. Multiplying this information by, say, sixty times for a company that operates in sixty countries would create a huge burden for the audit committee.

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Given the numerous burdens Proposed Rule 3524(a)(i) would impose on audit committees, we believe that the PCAOB should not adopt it. The pre-approval requirements established by the SEC and its Staff provide ample rigor for audit committees to determine that the provision of permitted tax services will not impair the auditor's independence.

We should note that we have no concerns about the other portions of Proposed Rule 3524. In fact, we think it would be helpful if accounting firms were required to "discuss with the audit committee the potential effects of the services on the independence of the firm," as would be required by Proposed Rule 3524(b), and to "document the substance of its discussion with the audit committee," as would be required by Proposed Rule 3524(c). We think, however, that these requirements should apply to all non-audit services, not solely tax services, and accordingly believe they might be better addressed in other guidance that could be issued by the PCAOB or the SEC.

**6. The Board should modify Proposed Rule 3502, "Responsibility Not to Cause Violations."**

Proposed Rule 3502 provides:

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation.

Release at A-4. The Board stated that "[w]hile certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm, the firm's associated persons bear an ethical obligation not to be a cause of any violations by the firm." Release at 18. The Release makes clear that the rule would establish a negligence standard for "causing" violations: "When an associated person negligently causes the registered firm to not be independent, Rule 3502 would allow the Board to discipline that associated person for that action." Release at 19.

The Board specifically invited public comment on two issues. First, whether there are "categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason" and, second, where a firm is found to have committed a violation that requires proof of scienter, "would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation." Release at 19.

We have several comments on the proposal.

1. Although neither the text of the Proposed Rule nor the accompanying explanatory statement expressly refer to secondary liability, the effect of the rule is to create a new species of secondary liability for associated persons – to authorize the imposition of disciplinary sanctions upon an associated person even though the associated person himself or herself does not violate

the applicable legal standard. The Sarbanes-Oxley Act does not expressly authorize the Board to take disciplinary action on this basis; rather, the statute refers only to the imposition of sanctions for engaging in “any act or practice, or omission to act, *in violation of*” the Sarbanes-Oxley Act, the securities laws, the rules of the Board or Commission, or professional standards. Sarbanes-Oxley Act Section 105(c)(4), 15 U.S.C. 7215(c)(4) (2002) (emphasis added).

It is not at all clear that the Board’s rulemaking power extends to creating a form of liability not authorized by Congress. The Supreme Court in *Central Bank* drew a clear distinction between primary and secondary liability, holding that Congress knew how to impose secondary liability when it wanted to and that the absence of any express authorization for such liability barred courts from implying it. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S.164, 182-184 (1994). Similarly, Congress in similar circumstances has expressly authorized the imposition of administrative sanctions on a secondary liability theory. *See, e.g.*, Securities and Exchange Act of 1934, Section 21C, 15 U.S.C. § 78u-3.

During the PCAOB meeting at which the Proposed Rule was approved, the Board’s General Counsel stated that Rule 3502 “is essentially an ethical rule. It sets an ethical standard for accounting firms and for their associated persons, and we believe that...it’s an appropriate exercise of the Board’s ethics standard setting authority.” Transcript at 35-36. But the typical ethical standard delineates particular impermissible conduct. The Board’s rule, by contrast, makes any conduct potentially sanctionable, depending upon whether it somehow contributes to a violation by a firm.

We are not opposed to the Board’s goal of imposing disciplinary sanctions on associated persons who violate relevant laws and regulations. The Board has previously adopted rules for this purpose, and we have supported the adoption of those rules. *See, e.g.*, PCAOB Rule 3100 (providing that associated persons of a registered public accounting firm “shall comply with all applicable auditing and related professional practice standards”). We support the establishment of an effective enforcement regime by the PCAOB, with respect to both registered firms and their associated persons. But the extent to which the Board has authority to adopt a rule like this is not certain, for the reasons just discussed. That fact counsels in favor of adopting a traditional standard for secondary liability. The Board, however, has proposed an unusually broad standard that is inconsistent with long-settled principles of secondary liability.

2. Secondary liability by definition addresses situations in which an actor does not violate a legal norm, but instead is involved in some way in the violation of that norm by another individual or entity. The secondary actor’s conduct by itself is lawful; it provides the basis for imposing a sanction because of its relationship to the wrongful conduct of another. In these circumstances, courts and commentators have emphasized the need to configure secondary liability standards to provide reasonable notice to the secondary actor of the potential wrongfulness of his actions.

The Restatement (Second) of Torts addresses this issue by identifying three situations in which liability is appropriate:

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

(a) does a tortious act in concert with the other or pursuant to a common design with him, or

(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or

(c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

*See* § 876 (Persons Acting in Concert) (1979). Thus, liability is permissible only if the secondary actor has himself violated a legal norm (subsections (a) and (c)) or if the secondary actor *knows* that the actions of the other party constitute a violation (subsection (b)).

Neither of these protections is incorporated in the Proposed Rule. An associated person may be disciplined even if his or her conduct does not violate another legal norm and even if the person does not know that his actions are facilitating a violation by the entity. The Proposed Rule therefore creates the very situation that the Restatement standards are designed to prevent: imposition of liability in circumstances in which it would be difficult, if not impossible, for a diligent associated person to know in advance how to act in order to protect against the imposition of disciplinary sanctions.

The D.C. Circuit addressed this issue in the context of an SEC enforcement action under the provision of the Investment Company Act that prohibits payments creating conflicts of interest. *See Investors Research Corp. v. SEC*, 628 F.2d 168 (D.C. Cir.), *cert. denied*, 449 U.S. 919 (1980). The court upheld the Commission's determination that proof of knowledge of the wrongdoing was not required to impose sanctions upon those sanctioned for violating the provision. It reached a different conclusion with respect to the individual held liable on an aiding and abetting theory:

The awareness of wrong-doing requirement for aiding and abetting liability is designed to insure that innocent, incidental participation in transactions later found to be illegal are not subjected to harsh, civil, criminal, or administrative penalties. This policy is especially germane where the prescribed conduct of the principal may not always appear to be wrongful...

To the extent the Commission concedes a need for any state of mind requirement at all, it argues that a negligence standard meets the concerns mentioned above. The Commission contends that an accused aider and abettor can be censured whenever he "should have been able to conclude that his act was likely to be used in furtherance of illegal conduct." We do not agree. This standard has previously been used only in civil injunctive actions where the paramount concern is terminating the illegal conduct, not sanctioning the wrongdoers. It creates a duty to investigate potential violations of law which "in essence would amount to eliminating (any awareness of wrong-doing) as a necessary element in

imposing aiding and abetting liability.” Where sanctions can be imposed, the negligence standard provides insufficient protection for those persons whose involvement in securities law violations is in one respect substantial, yet wholly innocent.

*Investors Research Corp. v. SEC*, 628 F.2d at 177-178 (footnotes omitted); see generally David S. Ruder, *Multiple Defendants in Securities Fraud Cases: Aiding and Abetting, Conspiracy, In Pari Delicto, Indemnification and Contribution*, 120 U. PA. L. REV. 597, 638 (1972) (“[K]nowledge of the primary illegal course of conduct should be required for aiding and abetting or conspiracy liability.”).

The statutory provision governing disciplinary actions against broker-dealers and their associated persons embodies these fundamental principles. Section 15(b)(4)(E) of the Securities Exchange Act, 15 U.S.C. § 78o(b)(4)(E), states that the Commission may impose sanctions upon proof that a person “has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of” the securities laws. The requirement of proof of “willfull[ness]” is consistent with the fundamental rule that proof of knowledge of the wrongdoing is necessary to avoid the imposition of sanctions upon innocent persons.

Most importantly, Congress itself adopted a knowledge standard when it addressed this very issue. Section 20(f) of the Securities Exchange Act, 15 U.S.C. § 78t, authorizes the SEC to bring enforcement actions against a person who aids and abets violations of the securities laws only upon proof that the person “*knowingly* provides substantial assistance to another person in violation of” the securities laws or regulations issued thereunder (emphasis added).

It might be argued that analogizing to aiding and abetting standards is inappropriate because the focus of Rule 3502 is the situation in which an individual “causes” a firm to violate a PCAOB rule. To begin with, although it is true an entity can act only through individuals, it is not always – or even most of the time – true that a single individual causes the entity to act in a particular manner. Most often, the entity’s actions are the result of the confluence of decisions and actions by a number of different individuals. Therefore, determining who caused a firm to violate a rule could be a difficult enterprise.

Moreover, the Proposed Rule imposes liability upon anyone whose negligent act or omission “contribute[s]” to the firm’s violation. As we discuss in greater detail below, this standard moves well beyond actions or omissions that are the direct cause of the violation to encompass actions or omissions that aid in its occurrence. It is classic aiding and abetting language.

During the PCAOB session at which the Proposed Rule was approved, Mr. Carmichael acknowledged that the Board’s proposal “does not require the proof of all the elements of aiding and abetting.” Transcript at 37. He indicated that the proposal was based in part on Section 21C of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-3, which authorizes the issuance of civil cease-and-desist orders. For the very reasons identified by the D.C. Circuit in *Investors Research Corp.*, it is inappropriate to analogize the imposition of disciplinary sanctions to prospective injunctive relief.

Indeed, the negligence standard proposed by the Board would lead to the same unfair results described by the court in *Investors Research Corp.* For example, in the audit context, one member of an audit team could conform his or her conduct to all applicable professional standards – unaware that a particular action he or she had undertaken would make it harder to detect the failure to adhere to professional standards by an individual in an entirely different component of the audit team. Under the Proposed Rule, the first individual would be subject to sanctions if an after-the-fact analysis concluded that he or she was negligent in failing to anticipate the inadequate performance of his or her colleague.

In the independence context, a design decision with respect to a firm's independence monitoring system might, in retrospect, be found to have been inadequate in ensuring compliance with the rules, or might be found to have made the discovery of violations by associated persons more difficult than should have been the case. With negligence as the standard applied in hindsight to the extremely complex operations of audit firms, and without any objective limitations on the conduct that could give rise to liability, the Proposed Rule opens the door to extraordinarily expansive disciplinary liability.

And it is important to note that, even though the Board's sanction authority is limited to individual fines of \$100,000 – still a very significant amount of money – the Board's sanctions could have significant collateral consequences. Section 3(b) of the Act provides that “[a] violation by any person of...any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78q et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act...” Although Section 105's limitations with respect to direct sanctions presumably override this provision, there may be federal collateral consequences to securities law violations that would still attach.

More significantly, many state boards of accountancy have the authority to impose follow-on sanctions in the event the licensee has been the subject of any disciplinary sanction by the PCAOB or has been found to have violated the federal securities laws. *See, e.g., CAL. BUS. & PROF. CODE § 5100(1)* (2004). Action by the PCAOB therefore could produce a domino effect of additional, harsher sanctions by state boards.

We are very sympathetic to the goal underlying the Board's proposal; no one has a greater interest in promoting compliance with the Board's rules than a firm that is subject to disciplinary action if it is found to have violated them. For that reason, we have implemented very detailed control systems to promote compliance with the Board's independence rules and other standards to the greatest degree possible. We believe, however, that the Proposed Rule creates a trap for the unwary that threatens the imposition of sanctions on an unfair basis.

3. Apart from the flaw in the Board's general approach, it would be especially inappropriate and unfair to impose secondary liability based upon negligence when the primary violation requires proof of scienter. Such a result would be inconsistent with the intent of the Congress that enacted those primary violation standards by in effect overriding its decision with respect to the appropriate state-of-mind standard. A secondary violator should not be held to a lesser state-of-mind requirement than a primary violator.

February 14, 2005

4. If the Board revises the rule to adopt the well-established standards governing the state of mind required to impose secondary liability, there would be no need to revise the portions of the rule describing the necessary connection between the secondary violator's conduct and the primary violation. The current description – that the secondary violator's conduct must “contribute” to the primary violation – is entirely consistent with an aiding and abetting standard. On the other hand, if the Board retains the negligence standard, it should require a much closer connection between the secondary violator's conduct and the primary violation.

Presumably, the Board's justification for adhering to the negligence standard would be its observation that an entity acts only through individuals, and the individuals responsible for an entity's violation should also be subject to disciplinary sanctions. The current language of the rule, however, would sweep in individuals who innocently engaged in conduct that later was deemed to have contributed to the entity's violation.

To calibrate the rule's scope to the Board's intention, it would be necessary to replace the terms “cause” in the first clause and “contribute” in the last clause. These terms are too broad, permitting the imposition of sanctions on individuals who were not the moving force behind the entity's violation but rather merely contributed to it. “Cause” can encompass any factor that produces a particular result – that is why tort law distinguishes between but-for causes and proximate cases.

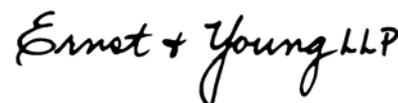
In other contexts, courts have recognized that “contribute” has an even broader meaning. *See, e.g., Old Ben Coal Co. v. Director, OWCP*, 62 F.3d 1003, 1008 (7th Cir. 1995) (stating that a “contributing cause” under coal dust exposure regulation “means coal dust exposure was a necessary, though not necessarily sufficient, cause of the miner's disability”); *Cox v. City of Dallas*, 256 F.3d 281, 295 (5th Cir. 2001) (interpreting “contribute” in the Resource Conservation and Recovery Act “to mean ‘have a part or share in producing an effect’”); *see generally* Black's Law Dictionary 234 (8th ed. 2004) (defining “contributing cause” as “[a] factor that – though not the primary cause – plays a part in producing a result”).

If the Board retains the negligence standard, it should replace these two terms with “proximately cause.” Although we believe that the resulting standard still would threaten to include innocent behavior for the reasons discussed in point 2 above, it at least would be focused on individuals who are the principal force behind the entity's violation.

\* \* \*

We would be pleased to discuss our comments with members of the PCAOB or its staff.

Very truly yours,

A handwritten signature in black ink that reads "Ernst & Young LLP". The signature is written in a cursive, flowing style. To the right of the signature is a vertical red line.

Ernst & Young LLP

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**From:** mike estok [mfestok@tre.state.pa.us]  
**Sent:** Tuesday, January 18, 2005 1:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

mike estok  
1117 Carrington Ct E  
Mechanicsburg, PA 17050-9141

**EXPERT PROCESS SOLUTIONS LLC**PO Box 2005  
DAVIDSON, NC 28036

Sent via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

February 14, 2005

Public Company Accounting Oversight Board (PCAOB)  
Attention: Office of the Secretary  
1666 K Street, N.W.  
Washington DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 017, Proposed Ethics and Independence Rules  
Concerning Independence, Tax Service, and Contingent Fees

Dear PCAOB Board Members:

In conjunction with the Board's stated desire to move aggressively to protect the investing public, I respectfully submit the following thesis which contains comments and supporting business cases offered for the Board's consideration. The purpose of the comments are to: (1) answer specific comment requests in the PCAOB document on proposed ethics and independence rules and suggest ways in which the proposed and current PCAOB professional standards and ethics rules should be modified to further the profession; (2) suggest the PCAOB consider a proven set of professional standards and ethics laws in statutes and rules as a model; and (3) provide information on current Section 404 compliance work by Big Four Firms that may need additional PCAOB rulemaking.

Concerns for the profession of Accounting have been expressed in various journals and periodicals. The PCAOB's own cursory investigation into Big Four Firms found concerns about accounting and auditing and in quality control. Ethical lapses in Big Four Firms are becoming more apparent as the wave of investigations and prosecutions continues in companies they audited. The principles and practices of accounting and auditing in conjunction with professional ethics should be clearly defined and effectively expounded in PCAOB rules to more effectively regulate the activities of the profession.

I am a former corporate information officer of a public company and retired Professional Engineer with an EMBA from the Weatherhead School of Management at Case Western Reserve University. My past work has involved working with CEOs, CFOs, Controllers, Accounting Professionals, Internal Audit, Legal, and others in process redesign and controls remediation, often involving whole organizations and business systems, saving significant sums and resulting in positive impacts. In companies, I have served as functional head or in interim leadership roles. I have over 30 years of progressive business experience in all functions of manufacturing, distribution, construction, and in a variety of industries. We specialize in business change management and knowledge transfer in company and functional reengineering, process improvement and design, with better controls, all focused on results.

It is encouraging to see the PCAOB address these important issues to restore the stature of the Auditing and Accounting profession. Please contact me by email at [deshleman@expertprocess.com](mailto:deshleman@expertprocess.com) or by phone at 704-892-6112 for any further discussion.

Sincerely,

[Signed]

David R. Eshleman  
President

## Proposed Ethics and Independence Rules

### PCAOB Rulemaking Docket Matter No. 017

By David R. Eshleman, President, Expert Process Solutions LLC

February 10, 2005

## BACKGROUND AND INTRODUCTION

In conjunction with the Board's stated desire to move aggressively to protect the investing public, the following comments and supporting business cases are offered for the Board's consideration. The purposes of the comments are to: (1) answer specific comment requests in the PCAOB document on proposed ethics and independence rules and suggest ways in which the proposed and current PCAOB professional standards and ethics rules should be modified to further the profession; (2) suggest the PCAOB consider a proven set of professional standards and ethics rules in statutes and rules as a model; and (3) provide information on current Section 404 compliance work by Big Four Firms that may need additional PCAOB rulemaking.

The consulting practices Big Four audit and accounting firms have subordinated the practice of Auditing. These practices have also taken a heavy toll on investors, both in fees and poor results. Thankfully, the PCAOB is acting quickly to restore confidence of accounting professionals in the ethical practice most already hold dear, the investing public, and the many workers who suffered the loss of their 401K and retirement security. In the recent PCAOB performance review of Big Four Firms and in the press, serious concerns are being raised about the efficacy of these firms. Past involvements in costly and unprofitable Y2K projects and in the recent confusion and excess cost accelerated filers have invested in the effort to become §404 compliant are significant issues. The Board should act quickly to define legitimate practice elements that constitute the standard practice of accounting along with the independence rules and restrict audit firms from doing any consulting.

A model exists in law for regulating professional standards and adherence to a code of ethics. The statutes regulating the practice of Professional Engineering and the rules of professional conduct are a body of model legislation found in varying degrees in every state. In North Carolina, for example, model legislation for the profession of engineering was enacted in 1951 with the original legislation governing the profession of engineering and establishing the Board of Registration dating from 1921. These laws and rules have been successful over many years in protecting the "life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering."<sup>1</sup> This is a worthy standard. Add "investing" in front of "public" and change "engineering" to "public accounting and auditing" and this becomes reality to the current situation.

The PCAOB should consider this proven model legislation as a basis in which to establish the foundation of professional standards and ethics for the individual and corporate practice of Public Accounting and Auditing. The references in the attached exhibit are from Statutes and Rules governing the practice of engineering in the State of North Carolina.

Concerns for the profession of Accounting have been expressed in various journals and periodicals. The article "Fuzzy Numbers," the October 4, 2004, Business Week Cover Story<sup>2</sup> caused Colleen Cunningham, President of Financial Executives International (FEI), a COSO organization, to wonder in her editorial reply, if the author couldn't have quoted at least one righteous Accounting Executive from among her organization's many members and companies. In her own Editorial Page in the current issue of FEI *Financial Executive*, entitled "The Value of Values,"<sup>3</sup> she relates an issue that caused her to resign her position at one of the "Firms." This came about because of her concern for ethics on an audit engagement and the lack of concern for the issue on the part of the senior partner, only later to have to testify on the matter before the SEC. Ethical lapses in Big Four Firms are becoming more apparent as the wave of investigations and prosecutions continues. Professional ethics should be clearly and effectively expounded in Board Rule definitions.

In our reviews of company performance in one area of our expertise, business processes, we found poor performance relative to effective and efficient operations, especially in Supply Chain. Management needs to check that controls are in place to make sure their objectives are communicated throughout the organization and that these controls regulate the execution of the strategies of the CEO and his or her team. This element of "the framework" analysis required by the SEC and in PCAOB Rules on §404, Auditing Standard #2, (AS-2) for Management's Assessment has not been effectively implemented in public companies that have Big Four Audit Firms. We have found a notable absence of understanding concerning Management's Assessment. How can performance results for management and investors be accurately achieved, when analysis of controls over effectiveness and efficiency of operations, required by COSO/AS-2<sup>4</sup> is ignored as a control objective?

## Section 1. COMMENTS ON PCAOB PROPOSED RULES

### RULE 3502. RESPONSIBILITY NOT TO CAUSE VIOLATIONS.

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation.<sup>5</sup>

**COMMENT:** Audit firms should not be allowed to perform any consulting services. A firm's judgment could be impaired if the dollar amount of the consulting work is sizable compared to audit services. An individual engagement may not appear to an outsider to be large in revenue compared to audit services, but within a firm may actually involve a number of smaller engagements that, over a short period of time, could amount to a sizeable sum. A partner in the same firm could pressure an auditor to forego certain judgments in audit because it may be perceived as creating a potential business loss for the entire firm's book of other business at that client. Even with non-audit clients, the outside work could be of such magnitude that the audit firm views auditing as less attractive to the partnership as a whole, diminishing the quality of the auditing function.

The Board should at the very least define every specific practice element to restrict non-attest consulting work so as not to diminish or subordinate audit. This rule should apply to both attest and non-attest clients.

Similar to a *conflict of interest*, the size of any potential non-audit service or services could be argued to alter a firm's judgment. In this case, a potential conflict of interest may be with a firm's own sizeable services offered to an audit client. This view is strikingly similar to the underlying wording in PCAOB Rule 3500T, **Interim Ethics Standards**; which includes "...AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder..."<sup>6</sup> The AICPA conflict of interest rules and interpretations included in the PCAOB's current ethics standards are:

.01 **Rule 102—Integrity and objectivity.** In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts *or subordinate his or her judgment to others*. [As adopted January 12, 1988.] (emphasis added)

**Interpretations under Rule 102 —Integrity and Objectivity .03 102-2—Conflicts of interest.** A *conflict of interest may occur if a member performs a professional service for a client or employer and the member or his or her firm has a relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the member's objectivity*. If the member believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, *the rule shall not operate to prohibit the performance of the professional service (emphasis added)*.<sup>7</sup>

If the interpretation of the rule is to prevent subordination of judgment, what does "*the rule shall not operate to prohibit the performance of the professional service*" mean? If a larger client project could subordinate the judgment of the auditor, is this excused by the interpretation? If, an unambiguous reading of the rule and interpretations leads one to question the ethics, shouldn't the PCAOB act to rectify this by clearly defining the practice of accounting in law?

An example could even arise if several sizable projects were being performed at a non-audit client in which an audit committee board member served on the board of another of the firm's audit clients. Could a situation arise in the Audit Firm's office discussions where an auditor would be asked to forego an adverse opinion because of offending the board member that served on the two companies?

**For this and other reasons, all consulting work should be totally disallowed for Registered Firms.** This rule should apply for any attest or non-attest client consulting work. The over arching principle is ...**auditors "should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence."**<sup>8</sup> To avoid the appearance of impropriety, the PCAOB should, at the very least, define the specific attest and non-attest services permitted for both attest and non-attest clients. Any practice should be disallowed that could be of a size that the overall independence and integrity of public Audit Firms might be called into question. It is not prudent for Audit Firms to consult.

**RULE 3520. AUDITOR INDEPENDENCE, ppA-4 Subpart 1 – Independence**

**A registered public accounting firm must be independent of its audit client throughout the audit and professional engagement period.**<sup>9</sup> Independence Rules of the PCAOB are found in **Rule 3600T, Interim Independence Standards**, which states that "...a registered public accounting firm, and its associated persons, shall comply with independence standards...as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder..."<sup>10</sup>

The AICPA's Code of Professional Conduct "Rule 101 – Independence" and "**Interpretations of Rule, 101-3 Performance of nonattest services**" states that "before a member or his or her firm ("member") performs nonattest services ...for an attest client, the member should determine that the requirements described in this interpretation have been met..."<sup>11</sup> The following section is from the table of interpretations in the AICPA code regulating non-attest services registered firms can offer:

**Specific Examples of Nonattest Services**

The examples in the following table identify the effect that performance of certain nonattest services for an attest client can have on a member's independence.... Below is a section of a table entitled, "**Impact on Independence of Performance of Nonattest Services**"<sup>12</sup>

<u>Type of Nonattest Service</u>	<u>Independence Would Not Be Impaired</u>	<u>Independence Would Be Impaired</u>
Information systems – design, installation or integration	<ul style="list-style-type: none"> <li>• Install or integrate a client's financial information system that was not designed or developed by the member (e.g., an off-the-shelf accounting package).</li> <li>• Assist in setting up the client's chart of accounts and financial statement format with respect to the client's financial information system.</li> <li>• Design, develop, install, or integrate a client's information system that is unrelated to the client's financial statements or accounting records.</li> <li>• Provide training and instruction to client employees on an information and control system.</li> </ul>	<ul style="list-style-type: none"> <li>• Design or develop a client's financial information system.</li> <li>• Make other than insignificant modifications to source code underlying a client's existing financial information system.</li> <li>• Supervise client personnel in the daily operation of a client's information system.</li> <li>• Operate a client's local area network (LAN) system</li> </ul>

**COMMENT: INDEPENDENCE ISSUES WITH INFORMATION SYSTEMS CONSULTING**

The previous comments on Rule 3502 illustrated the "subordination" of audit to other services of a greater magnitude in a registered Firm that would impair its judgment in audit. Whatever the PCAOB decides on independence rules, one such practice has nearly destroyed auditor independence due to other practices of a Firm. Accounting and audit firms should be prohibited from information systems consulting, which is a practice requiring the knowledge and principles of engineering. **The PCAOB should immediately act to prohibit both Auditing and Accounting Firms from offering to perform or performing information systems consulting.**

In the Table above from the AICPA Ethics and Standards Rules, the listing of any of the above Independence and Practice Areas specifically indicates "Information systems – design, installation or integration" as a service that may be offered by a member or Firm for both attest and non-attest clients and not impair independence. Most of "information systems design, installation or integration" services are outside the knowledge and principles associated with the practice of accounting. The only area of education and skill that is within the practice of accounting is "Assist in setting up the client's chart of accounts and financial statement format with respect to the client's financial information system."<sup>13</sup>

The practice of systems design, installation, and integration services is well defined in engineering science. These services require the knowledge of the principles and practices of engineering. The regulation of the engineering profession starts with a national testing program that defines the "final Exam" for engineers seeking Professional Engineering registration. The National Council of Examiners for Engineering and Land Surveying or NCEES (<http://www.ncees.org/>) provides Principles and Practice Exams<sup>14</sup> to test academic knowledge and understanding gained in engineering practice. The Professional Engineering exams created by NCEES for state

boards of engineering registration cover a comprehensive range of subjects in engineering. The NCEES website lists specifications for the Principles and Practice exams.

The practice areas of Electrical and Computer Engineering and Industrial Engineering below define in detail these areas of practice found in the AICPA non-attest services table segment “Information systems – design, installation or integration” category.

#### **Electrical and Computer Practice Areas for Professional Engineers**

**General Computer Systems:** Interpretation of Codes and Standards (IEEE and ISO Standards), Microprocessor Systems; **Hardware:** Systems and Architecture; **Software:** System Software, Development/Applications (Computer Control and Monitoring, Software Lifecycle, Fault Tolerance, Modeling and Simulation, Human Interface Requirements, Software Design Methods and Documentation (Structured Programming, Top Down or Bottom Up Programming, Successive Refinement, Programming Specifications, Program Testing, Structure Diagrams, Recursion, Object Oriented Design, Data Structures); **Networks:** Protocols, Computer Networks.<sup>15</sup>

#### **Industrial Engineering Practice Area for Professional Engineers**

**Systems Analysis and Design:** Analysis and Design Processes, i.e. System analysis and design tools (e.g., input/output analysis, affinity diagrams, Pareto charts) and Value analysis and engineering (e.g., projected cost flow, projected value stream analysis); Costing and Performance Measurement, i.e. Cost accounting (e.g., product and process costing, standard costs, activity-based costing) and Performance measures and applications (e.g., leading and lagging measures, metrics); **Logistics:** Production Planning and Control, i.e. Forecasting methods (e.g., exponential smoothing, seasonal methods), Aggregate planning, Traditional strategies (e.g., MRP, MRP II, JIT), Lean manufacturing, Scheduling, Inventory control; Distribution and Storage/Warehousing Methods, i.e. Direct shipment, warehousing, cross-docking, Transshipment, and Routing; **Work Design:** Methods to Measure Work, Motion study, Operations process charts, Predetermined time systems, Work sampling, Methods Design and Analysis; **Quality Engineering:** Quality Control, i.e. Control charts, Acceptance sampling, Process capability analysis, Design for quality, Total Quality Management, Kaizen, ISO, Reliability and Maintainability.<sup>16</sup>

The services of “information systems design, installation or integration” are clearly designated above as principles and practices of scientific analysis, computing and engineering, not accounting. There is longstanding evidence in the evolution of computing to support this. Early in 1970, IBM introduced the System/370 series of mainframes. IBM branch offices that sold and supported computers and applications had “Systems Engineers” to assist clients with installing and integrating accounting applications. This was a longstanding practice and job description within IBM, dating from the 1960s. IBM provided up to two years of training in the science of computing, business applications and software, including the practice areas described in the above paragraphs. About this time, colleges and universities also began establishing computer science departments to teach and develop these same practices and advance the scientific and engineering basis for computing.

During Y2K, there was a significant departure from proven information system and technology practices by the Big Eight and other large accounting and consulting firms. Before Y2K, these firms had inroads to the executive suite through their audit practices. With this access, these firms began convincing C-level executives that their boards wanted only firms of their size to perform the Y2K remediation, and SAP was the best way to do it. Much of the Y2K work was secured this way, forgoing a disciplined due diligence process and the scientific and engineering insight of the last 30 years. The accounting and audit firms sold huge projects without real knowledge of the principles, practices, and application of science in computing or capabilities to perform in accordance with the established practices of industrial, electrical and computer engineering. One national IT advisory group estimated that the business cost of Y2K was \$40 billion without measurable economic benefit.

In the course of securing millions of dollars of consulting services and enriching the partnership, the large accounting and consulting firms subordinated the practice of auditing, diminishing the quality and accuracy of this valuable service in larger public companies. As the Y2K process unfolded, the quality of Internal Controls suffered as well. Years of internal IT controls specific to a particular business to maintain the effectiveness and efficiency of operation, along with competitive capabilities, were done away with in the rush to secure billions in consulting revenues and implement “modern” Enterprise Resource Planning (ERP) systems. The impact of subordination of audit practices to IT consulting and ensuing implementations within client companies is now history; the PCAOB should act decisively to prevent this from occurring ever again.

**The PCAOB should act decisively in rules to prohibit Accounting and Audit Firms from the practice of any consulting in information systems – design, installation or integration, including restricting business application advice to accounting and finance. Operations application consulting should be disallowed.**

### COMMENT/BUSINESS CASE: FAILURE TO IDENTIFY INEFFECTIVE INTERNAL CONTROL

Further example of the violation of the independence rule has been the dilution of the value of accounting practices and controls in large public firms to adequately inform management of the results of their actions. Ineffective controls defeat the objectives of management in operational effectiveness and efficiency. Nowhere is this more obvious than in the outsourcing of millions of jobs that have value to American manufacturing and distribution businesses. In many cases, the return to shareholders has been minimal for these vogue programs. In outsourcing, a management team may have a goal to eliminate unions and reduce cost. Company accounting and not-so-independent auditors may justify management’s goal in internal allocations of costs that show manufacturing labor as overly costly to the business, when in fact a total and/or lifecycle costing approach may show otherwise.

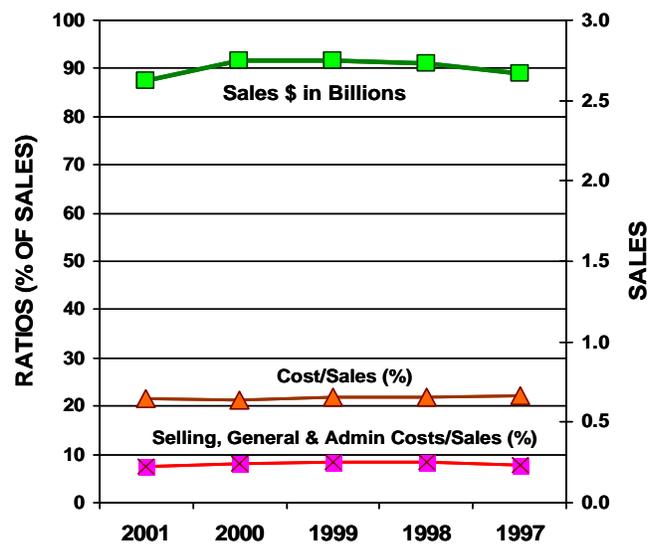
Consider the following public company’s performance data. In this manufacturing company example, the CEO rolled out an outsourcing strategy. The results of this program are shown below. The source of information is the company’s 10K filings from 1997 to 2001.

	<u>2001</u>	<u>1997</u>
Number of US Employees	7,000	12,000
Number of Foreign Employees	7,400	6,000
Total Employees	14,400	18,000
<hr/>		
Outsourcing Reduction in US Jobs 1997-2001	-42%	(5,000)
Foreign Employees – jobs gained	23%	
Total Jobs Lost/Gained	-3,600	

The job loss chart above indicates a 42% outsourcing job loss over a five year period. Over 5,000 jobs were permanently lost. In some cases foreign vendors replaced manufacturing jobs, which accounts for reduction in the “Total Employees” numbers. Did this produce financial benefit to the company? The following chart shows the financial results for this same period. Sales are flat, and cost and SG&A ratios are flat.

Why do the numbers show such poor results, even though American workers were replaced by cheaper Chinese labor? If a framework analysis like in COSO is correctly performed by this company, the real risks of this strategy are revealed:

- Overhead had been unfairly “allocated” to production workers on division P&Ls
- Labor cost for most products was less than 8% of the base product cost, while overhead was often well over 90% of the total cost.
- Company accountants calculated internal cost allocations monthly – these were not publicly reported, but were used for internal decision making by management.
- Outsourcing to China produced unwanted competition. Now knock-offs from China of key products are being showcased by key high-volume customers.
- The intelligence and skill base used to produce safe, useful and quality products is gone, decreasing the company’s (and investor’s) brand value.



Did the company’s auditors alert the CEO, board and shareholders that a potential inaccurate picture created by overhead allocations presented a risk to the company and its investors? No – the question is, did the audit firm fail the independence test? Many companies have outsourced their workers. Have millions of jobs have been lost, even though external reporting is attested as accurate by the company’s auditors, because end results have questionable value due the misapplication of internal accounting in allocations? If a Management’s Assessment of Internal Controls over Financial Reporting had been performed in the Objective of Efficiency and Effectiveness of Operations, this oversight might have been discovered.

Were internal controls designed and in place? Did they govern the effectiveness and efficiency of operations? The audit firm should have at least recognized the lack of control that could undermine long term investor value. While this example is about good controls over performance and investors losing value when a skilled workforce is lost, it also unfairly caused loss to the workers and their families. True auditor independence should be well-defined by the PCAOB to help reveal questionable practices that may work against management's strategy to reduce overall costs.

## Section 2. A MODEL LAW FOR PROFESSIONAL PRACTICE AND ETHICS

In statutory laws of the states, with NC as an example, both the engineer and the practice of engineering is defined corporately and individually on the qualifications of both education and experience. It governs what can and can't be done in work assignments with clients. It sets up a Board of Registration in the state to establish and maintain a code of professional practice and ethics. The Board of Registration has the authority to investigate and fine wrongdoers among individuals, professionals, and corporations for violations of both the Law and the Rules. Strong punishment and fines can be given by the board to unlicensed individuals that engage in the public practice of engineering and also for professionals that practice outside their area of expertise.

The NC statute is available as a download at: <http://www.ncbels.org/GS89C8-2000.pdf>.<sup>17</sup>

### Statutory Requirements of Professional Practice – Significant Features of NC Law.

1. **An Engineer is defined by knowledge, application, and experience:** An engineer is defined as “A person who, by reason of special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.”<sup>18</sup>
2. **The “practice” of engineering is defined:** A person practicing or offering to practice engineering in “...any branch of the profession of engineering; or who, ...in any other way represents ...to be a professional engineer, or through the use of some other title, ...licensed ...or able to perform, or who does perform any engineering service or work, ...or any other service ...recognized as engineering.”<sup>19</sup>
3. **Unlawful to Practice without a License:** Any individual who practices engineering as defined above by offering services to the public at large (including public corporations) without a license to do so is in violation of state law. “Any person who shall practice, or offer to practice, engineering... without first being licensed... or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words "engineer" or "engineering..." or have a “form of business or activity except as licensed...or **who shall practice or offer to practice when not qualified... shall be guilty of a Class 2 misdemeanor**. In no event shall there be representation of or holding out to the public of any engineering expertise by unlicensed persons...”<sup>20</sup> The board may prosecute any persons violating these provisions and the Attorney General of the State will be the legal advisor.
4. **Establish and Enforce Rules of Professional Conduct:** The board defines rules that govern professional conduct and discipline of all licensed practitioners, which includes civil penalty, for violation of the Rules of Professional Conduct, professional incompetence, and other things. “Rules of Professional Conduct applicable to the practice of engineering... are construed to be a reasonable exercise of the police power vested in the Board... Every person licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering... and shall cooperate fully with the Board in the course of any investigation.”<sup>21</sup>
5. **Conduct Investigations:** the Board can – “Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the Board.”<sup>22</sup>
6. **Licensure of Corporations and Business Firms; Responsible Charge...** A corporation or business firm may not engage in the practice of engineering... unless it is licensed by the Board... A corporation or business firm is subject to the same duties and responsibilities as an individual licensee. ...all engineering... work done by the corporation or business firm... [is required] to be performed by or under the responsible charge of individual registrants...”§ 89C-24. “...the Board may by regulation establish a reasonable limit on the number of unlicensed individuals which a licensee of the Board may directly or personally supervise at one time.”<sup>23</sup>

**COMMENT: The PCAOB should act to define Accounting and its principles and practices.** An engineer is defined in statutes along with individual and corporate practices of engineering. This definition includes the acceptable span of control for management – “Responsible Charge” The PCAOB should define the principles and practice of the Accounting profession and its registered firms in particular. The Board should eliminate or at least restrict the consulting activities of these firms by strict definition of what practices are allowed. Clear definitions would put a boundary on what are the acceptable professional standards and regulate the practice of accounting based on the education, knowledge, experience and ability of individual and firms in the profession. The PCAOB independence and ethics rules should be explicitly defined so violators can be severely punished.

## Rules of Professional Conduct – Significant features of NC Administrative Laws

The NC Administrative Rules are available as a download at: <http://www.ncbels.org/CHAPTER21.pdf>

1. **Binding Upon All Professional Engineers and Engineering Businesses:** “In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering...” (a) All licensed persons must have knowledge and understanding of the rules of professional conduct.<sup>24</sup>
  2. **Perform Services Only in Areas of Competence, Education, and Experience:** Licensed engineers can perform services only in areas of competence and undertake engineering projects only when qualified by education or experience in the specific technical field... (1) If multiple disciplines are required, associates, consultants, or employees must be licensed and competent in each discipline.<sup>25</sup>
  3. **Subject Matter Experience and Responsible Charge:** A licensed engineer can not sign or seal any engineering plan or document without having education or experience in the subject matter, or if plans or documents are not prepared under the engineer’s direct supervisory control. “Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review...”<sup>26</sup>
  4. **Other Ethical Standards:** “A licensed engineer shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer...”<sup>27</sup> “...solicit or accept work only on the basis of qualifications..., compete for employment on the basis of professional qualification and competence to perform the work... not falsify or permit misrepresentation of academic or professional qualifications... ..not misrepresent degree of responsibility in or for the subject matter of prior assignments.”<sup>28</sup>
  5. **Advertising:** “Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.”<sup>29</sup>
- “The Licensee shall perform services in an ethical and lawful manner...”<sup>30</sup>

**COMMENT: The PCAOB should clearly define the discipline and practice of the accounting profession.** The Engineer and the “practice” of engineering are defined in the statutes. This concept is further defined in the code of ethics in administrative rules to control the quality of the profession and further protect the public. An engineer can perform services only in areas of competence, education, and experience and undertake projects only when qualified by education or experience in the specific technical field involved. If multiple disciplines are required for an assignment or project, every individual must be licensed and competent in each discipline and the supervision must be licensed, qualified and involved. The purpose is to keep the quality of services high and to protect the public welfare.

**Part 5 – Ethics Rule 3501**<sup>31</sup>. Definitions of Terms Employed in Section 3, Part 5 of the Rules should be expanded to include all definitions relative to the practice of accounting. This should include disciplines as well as practices that Audit and Accounting Firms can be expected to perform. It would also permit the PCAOB to more closely regulate the profession to restore public confidence in the audit process.

**Licensure of Corporations and Business Firms; Responsible Charge of individual registrants.** Partner and management structure of Audit Firms, like Responsible Charge in the engineering laws, should also be regulated by

PCAOB. Disconnected partners that spend time with management and boards, leaving inexperienced associates to run an audit leads to quality and performance issues. Quality and performance issues have already been identified in the PCAOB's own preliminary investigation of the Big Four. Subject matter experience and Responsible Charge are linked in engineering rules: an engagement professional must have education or experience in the subject matter, and direct supervisory control of other professionals. "Direct supervisory control (Responsible Charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review..."<sup>32</sup>

**The PCAOB should define the concept of Responsible Charge for Auditors and their Firms to require all client contacts, including board member and senior management to be handled only by the audit professional in responsible charge of the audit. This individual would be defined as having the knowledge, competence and experience in accounting principles, audit rules and client operations.**

### **Section 3. CURRENT PROBLEMS OF INDEPENDENCE AND CONCLUSIONS**

**SARBANES-OXLEY ACT, SECTION 404 – PROCESS COMPLIANCE:** The practice of mapping and documenting processes is an industrial engineering practice. Accounting and Auditing Firms have been providing these services, often with inexperienced individuals. Indications in the financial press revealed that preparation of business process documentation required by public companies to meet PCAOB Auditing Standard #2 under Section 404 of the Sarbanes-Oxley Act has increased the cost of compliance dramatically for accelerated filers. Providing process mapping and documentation is yet another conflict of interest with independence and not within the practice of accounting. Accountants can also be licensed engineering professionals, and if so, their Firm must also be licensed in order to practice in this field. This individual must also have Responsible Charge in order to maintain the quality of the engagement. This is yet another practice element should be restricted by the PCAOB, both to audit or non-audit clients, to preserve the quality of the accounting and auditing profession and protect the investing public.

An equally troubling problem with "process consulting" is the potential loss of competitive advantage because the Audit and Accounting Firms are required by the PCAOB to audit and walkthrough business processes. These firms are required to learn a company's processes, which may be an important source of competitive advantage for that company. If this same firm is allowed to consult, audit firms could intentionally (to sell services) or unintentionally give away proprietary process information to a competitor of the firm they are auditing. In addition, potential control, significant, or material deficiencies might be flagged, with "suggestions for improvement" (allowed under AS-2) for which the Audit firm then gains significant fees to "remediate."

CEOs, Audit Committee members, and company internal audit employees have been heard to express the following concerns: "our auditor is telling us how to run our business and we must do what they tell us for compliance" and "we must spend extra time dealing with external audit personnel that don't understand our business or the compliance process" In the manufacturing and distribution businesses, overall process complexity is only understood by only a few. The accounting and finance function is only 6-8% of the total business processes of these companies. An Auditor must make a reasonable assumption about, or assessment of, over 90% of the business and system controls that are important for operations effectiveness and efficiency and financial reporting, but may be outside of their knowledge or experience.

Evidence of weaknesses in business processes over the last ten years can be found in assessing the quality of business processes in 7 Key or significant process areas found in most Fortune 1000 public companies. Three of these key processes are shown in the table below. The table below shows the relative efficiency and effectiveness of these processes and controls using current systems. These processes and their low operational effectiveness ratings are now a potential source of control, significant, or material deficiencies. Lack of knowledge and skills in Y2K in designing, implementing and integrating the ERP systems and controls that regulate these processes by the Big Eight accounting and consulting firms and their ERP recommendations has contributed to the inability of companies to significantly improve their performance. This table reflects the ineffective and inefficient business process and control activities in larger companies (mostly over \$200 million in revenues). Along with ineffectiveness in the other four significant processes (not shown), this situation causes higher overhead and working capital in these companies.

Table 1 – Key Business Processes, ratings and potential for control issues:

<u>Key Business Process</u>	<u>Operational Efficiency &amp; Effectiveness Rating</u>	<u>Control/ Significant/ Material Weakness?</u>
Orders to Cash (including DC/FG Shipments)	50%	?
Procure to Pay	58%	?
Accounting and Financial Reporting	81%	No or ?

Evidence is emerging of the lack of process knowledge on the part of Big Four Audit and Accounting Firms with regard to process compliance in AS-2. Consider this recent report in CFO Magazine: "...Some finance executives are organizing peer groups to share experiences, compare notes on their auditors, and vent frustrations. One such group, in Silicon Valley, includes finance executives from about 30 technology companies who meet in informal sessions every other month. ...One common complaint is that auditors have inconsistent and evolving standards on what is required for a clean audit. ...Ed Pitts, director of internal audit at Foundry Networks, explains, "There is no precedence for [the regulation], so there is a lot of confusion about what is required." ...Members of the group say requirements vary not just from firm to firm, but from audit partner to audit partner. "The same firm is telling different companies different things," explains Pitts."<sup>33</sup> **The PCAOB should define then regulate practice elements and Responsible Charge to insure the quality of process and internal control audits defined in Auditing Standard #2.**

Accelerated filers are still looking to their Big Four Audit and Accounting Firms for "advice," some of which may violate rules of the PCAOB, (1) by using their Audit Firm's methods for Management's Assessment and (2) by failing to document and assess the internal controls over the objective of effectiveness and efficiency of operations. The COSO framework required for Management's Assessment and Auditing Standard Number 2 provide tools for a company to make sure they controls that carry out management's objectives for efficient and effective operations, accurate financial reporting, and compliance with laws and regulations. **PCAOB rulemaking should eliminate the practice of process mapping and "advice" giving by Audit Firms to preserve independence.** The businesses themselves should be responsible to improve their operations and automate accounting controls by using the COSO Framework "Evaluation Tools"<sup>34</sup> analysis and by following AS-2 without the "advice" of their auditor.

**CONCLUSIONS:** The problem of mixing the practice of Auditing and other consulting services dilutes the practice of accounting and subordinates audit. "Information Systems – design, installation, or integration" services allowed by the AICPA's independence rules has caused great expense to large public companies with little return to investors because of lack of engineering, process and information systems knowledge, competence and education in the past by Big Eight accounting and consulting firms.

The internal controls that enable company management to assure the effectiveness and efficiency of their operations have also been diminished or overlooked by the consulting practices of the large accounting and consulting firms. Process documenting services for Section 404, like the Y2K practice, is yet another consulting service that Big Four firms are not qualified to perform that affects independence. Accounting and Auditing Firms should be prohibited by the PCAOB from providing information system or process consulting services to any attest or non-attest clients.

Internal accounting practices that allocate costs to justify certain management decisions should be evaluated by auditors to determine if a sufficient risk exists that might cause investor values to be damaged. The Board should consider ethics and independence rule definitions that compel the auditor to investigate all internal accounting practices.

Since the PCAOB rules demand independence – Auditors "should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence."<sup>35</sup> The PCAOB should therefore define the practice of accounting, the professional services, restrict the services offered, and define the supervision of engagements and professional practice of auditing. The Board should consider using the state Engineering Statutes and Rules as a model for the accounting and auditing profession. The PCAOB should act to prevent Audit firms from offering to perform or performing any consulting services outside the practice of services specifically related to auditing. This prohibition from consulting should include any process documentation or other services related to Section 404 of the Sarbanes-Oxley Act. Audit and Accounting Firms should be restricted to auditing and accounting services.

David R. Eshleman  
[deshleman@expertprocess.com](mailto:deshleman@expertprocess.com)

## Footnotes

1. Board Rules, North Carolina Administrative Code, Board of Examiners For Engineers and Surveyors, Title 21, Chapter 56 (<http://www.ncbels.org/CHAPTER21.pdf>), 21-56.070
2. *Business Week*, October 4, 2004, cover story <http://www.businessweek.com/>, article at: [http://www.businessweek.com/@@wIHFSIUQsQgDgBcA/magazine/content/04\\_40/b3902001\\_mz001.htm](http://www.businessweek.com/@@wIHFSIUQsQgDgBcA/magazine/content/04_40/b3902001_mz001.htm)
3. *Financial Executive*, January/February 2005 issue <http://www.fe.org/mag/>, Financial Executives International, [http://www.fe.org/mag/articles/2-2005\\_president.cfm](http://www.fe.org/mag/articles/2-2005_president.cfm)
4. Internal Control – Integrated Framework, Committee of Sponsoring Organizations of the Treadway Commission, July 1994 (two volumes) and Auditing Standard #2 – An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements, PCAOB, September 8, 2004
5. PCAOB Release 2004-015, December 14, 2004, Page A–1–Rule, SECTION 3. PROFESSIONAL STANDARDS
6. AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)
7. Public Company Accounting Oversight Board Bylaws and Rules – Rules – Professional Standards As of December 3, 2004, page 41; and SECTION 3. PROFESSIONAL STANDARDS page 38
8. PCAOB Release 2004-015, December 14, 2004, Page 2-5, Section I. Background, page 3
9. PCAOB Release 2004-015, December 14, 2004, Page A–1–Rule, SECTION 3. PROFESSIONAL STANDARDS
10. (Public Company Accounting Oversight Board Bylaws and Rules – Rules – Professional Standards As of December 3, 2004, page 42 and page 38, SECTION 3. PROFESSIONAL STANDARDS)
11. (AICPA Professional Standards, ET §§ 101 and 191 Section 100, INDEPENDENCE, INTEGRITY, AND OBJECTIVITY (AICPA 2002)
12. *ibid*
13. *ibid*
14. <http://www.ncees.org/>
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National Council of Examiners for Engineering and Land Surveying
16. Industrial Engineering Exam [http://www.ncees.org/exams/professional/pe\\_industrial\\_exam\\_specs.pdf](http://www.ncees.org/exams/professional/pe_industrial_exam_specs.pdf)  
National Council of Examiners for Engineering and Land Surveying
17. General Statutes of North Carolina Chapter 89C, <http://www.ncbels.org/GS89C8-2000.pdf>
18. Chapter 89C of the General Statutes, Engineering and Land Surveying, § 89C 3. Definitions
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20. *ibid*, § 89C-23
21. *ibid*, § 89C 20
22. *ibid*, § 89C 22
23. *ibid*, § 89C-25.1
24. Board Rules, North Carolina Administrative Code, Board of Examiners For Engineers and Surveyors, Title 21, Chapter 56 (<http://www.ncbels.org/CHAPTER21.pdf>), 21-56.070
25. *ibid*, 21-56.070 (2)
26. *ibid*, 21-56.070 (3)
27. *ibid*, 21-56.070 (4)
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29. *ibid*, 21-56.070 (f)
30. *ibid*, 21-56.070 (g)
31. PCAOB Release 2004-015, December 14, 2004, Page A–1–Rule, SECTION 3. PROFESSIONAL STANDARDS
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34. Internal Control – Integrated Framework, Evaluation Tools, Committee of Sponsoring Organizations of the Treadway Commission, July 1994 (two volumes)
35. PCAOB Release 2004-015, December 14, 2004, Page 2-5, Section I. Background, page3

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**From:** dinda evans [dindamcp4@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 7:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. dinda evans  
PO Box 178695  
San Diego, CA 92177-8695

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**From:** Faith Evans [faith.evans@verizon.net]  
**Sent:** Tuesday, January 18, 2005 2:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Faith Evans  
42 Darwin Ave  
Hastings On Hudson, NY 10706-1812

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**From:** Michael W Evans [mikerain@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 6:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael W Evans  
12325 Charnock Rd  
Los Angeles, CA 90066-3105

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**From:** Clyde Everton [ecliff@cableone.net]  
**Sent:** Tuesday, January 18, 2005 9:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Clyde Everton  
5720 Becliffe Ct  
Boise, ID 83704-2046

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**From:** Joseph Fahey [jayfahey@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joseph Fahey  
201 W 89th St  
New York, NY 10024-1848

---

**From:** Harry Farr [hfarr040@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Harry Farr  
27742 Oneil St  
Roseville, MI 48066-7912

---

**From:** Marilyn G. Farreras [mgf00011@teleline.es]  
**Sent:** Tuesday, January 18, 2005 6:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Marilyn G. Farreras  
Absentee Voter  
51 Leroy St  
New York, NY 10014-3923

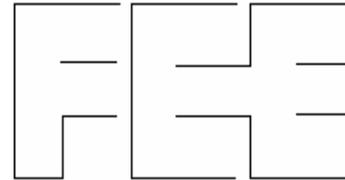
Date  
14 February 2005

Le Président

Fédération  
des Experts  
Comptables  
Européens  
AISBL

Ave d'Auderghem 22-28  
1040 Bruxelles  
Tél. 32 (0) 2 285 40 85  
Fax : 32 (0) 2 231 11 12  
E-mail : secretariat@fee.be

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](mailto: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 firm 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.

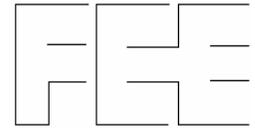
In addition to our overall comments on matters of principle, this letter includes comments on specific paragraphs.

**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**

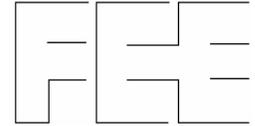
European independence regulations are set in the European Commission Recommendation on Statutory Auditor's Independence in the European Union (EC Independence Recommendation) and in the IFAC Code of Ethics for Professional Accountants (IFAC Code of Ethics) and in the proposed Eighth Company Law Directive 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.

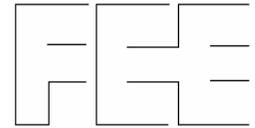
We accept that a registered public accounting firm should not be promoting such aggressive and artificial tax planning arrangements to an audit client where the assessment is that the arrangements are not likely to be successful.

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.

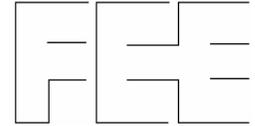
Given the fact that the financial reporting oversight responsibility over the preparation of the financial statements is *either* an individual responsibility of particular members of the board of directors or its equivalent but not of each member of the board of directors *or* a collective responsibility 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 fulfill 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.

\* \* \*

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

Yours sincerely,

David Devlin  
President



February 14, 2005

Mr. William J. McDonough  
Chairman  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

***Re: PCAOB Rulemaking Docket Matter No. 017***

Dear Chairman McDonough,

On behalf of Financial Executives International's (FEI) Committee on Taxation (COT) and Committee on Corporate Reporting (CCR), we are writing to express our support for PCAOB Release No. 2004-015, *Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*. As drafted, the proposed rules would ban non-audit tax services related to certain potentially abusive tax transactions; establish additional requirements regarding audit committee pre-approval; codify the ban on contingent fees; and ban auditor provided tax services to officers in a financial reporting oversight role. The proposed rules correctly identify services which audit firms should not provide to their audit clients. However, we believe some clarifications in the final rulemaking are in order.

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives, and other financial executives. CCR and COT are technical committees of FEI, which review and respond to research studies, statements, pronouncements, pending legislation, proposals, and other documents issued by U.S. and international agencies and organizations. This document represents the views of CCR and COT and not necessarily those of FEI.

Proposed Rule 3522 provides that the auditor or an affiliate shall not be considered independent if it provides any non-audit service to an audit client related to planning or opining on potentially abusive tax transactions. Such transactions are defined as transactions either listed by the IRS under Treas. Reg. sec. 1.6011-4(b)(2) or transactions substantially similar to the listed transactions; confidential transactions as defined in Treas. Reg. sec. 1.6011.1-4(b)(3), irrespective of fee size; and transactions initially recommended

by a registrant's auditor or another tax advisor, a significant purpose of which is tax avoidance, unless the proposed tax treatment's allowance under applicable laws is at least more likely than not. We strongly agree that audit firms should not provide aggressive tax advice or planning schemes to their audit clients since doing so could call into question the veracity of the audit report.

Proposed Rule 3524 codifies a variety of requirements around the pre-approval process, including provision of the engagement letter relating to the service; discussion with the audit committee of the potential effects of the services on the independence of the firm; and documentation, by the auditor, of the substance of its discussion with the audit committee. While the rule's requirements will ensure a fruitful dialogue with the audit committee regarding the provision of tax services, we would encourage the PCAOB to craft a *de minimis* exception to this rule. We suggest that routine tax consulting and tax compliance projects with fees of less than 1% of the annual audit fee should not require the audit committee to review the engagement letter. Companies would continue to follow their pre-approval policies and provide summary-level information to their audit committees for those services. These matters would not include significant tax planning projects or major transactions that would require a full tax opinion. Requiring an engagement letter from the audit firm and then pre-approval of that engagement letter by the audit committee for routine day-to-day tax matters would prove extremely burdensome to all concerned. It could effectively eliminate the use by a company of the audit firm's tax team to assist with these routine tax matters, which is a service that has always been considered a fundamental part of an accounting firm's service to its clients.

On a related note, large, multinational companies have routine tax consulting and compliance services being provided in hundreds of countries. The pre-approval requirement would force these companies to move their tax work since it would be entirely counterproductive to attempt to review detailed engagement letters for all of this work with the audit committee. Implementing a *de minimis* exception to the rule as discussed above would alleviate these concerns.

Proposed Rule 3521, adapted from the Commission's rule on contingent fees, would treat registered public accounting firms as not independent of their audit clients if they enter into contingent fee arrangements with those clients. We believe this restriction fits well with the overall purpose of the rulemaking, which is to maintain the audit firms' independence from their clients.

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, provides any tax service to an officer in a financial reporting oversight role. The proposed rule addresses valid concerns that performing tax services for individuals involved in the financial reporting process may create an appearance of a mutual interest between the auditor and those individuals.

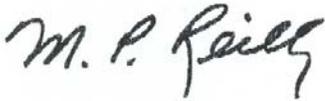
Lastly, the PCAOB proposes that the proposed rules become effective on the later of October 20, 2005 or 10 days after the date that the SEC approves the rules. We believe the fourth quarter effective date (October 20, 2005) is somewhat troubling as it starts in the

middle of the quarter. Instead, we suggest that the rules should be effective for the first fiscal year or first reporting period beginning after the current October 20 start date.

We applaud the PCAOB for narrowing the focus of this rulemaking to the critical areas discussed above. We fully support the Board's mission to ensure the integrity of the work performed by the audit firms, and believe this rulemaking correctly identifies those tax services which audit firms should not be permitted to provide to their clients. Should you have any questions or concerns regarding this submission, please contact either Mark Prysock at (202) 626-7804, or Christine DiFabio at (973) 765-1071.

Sincerely,

M.P. Reilly

Handwritten signature of M.P. Reilly in black ink.

Chair  
FEI Committee on Taxation

Frank H. Brod

Handwritten signature of Frank H. Brod in black ink.

Chair  
FEI Committee on Corporate Reporting

---

**From:** Tim Ferguson [tferguson@behr.com]  
**Sent:** Tuesday, January 18, 2005 2:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the accuracy of financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tim Ferguson  
1061 Castlerock Ln  
Santa Ana, CA 92705-6110

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**From:** Daniel Fewster [dpf1@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 1:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Daniel Fewster  
10309 Malcolm Cir Apt C  
Cockeysville, MD 21030-3993

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**From:** David Field [field.d@comcast.net]  
**Sent:** Tuesday, January 18, 2005 4:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

David Field  
178 Lester Ln  
Los Gatos, CA 95032-2738

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**From:** John Fischer [snowy@ecologyfund.net]  
**Sent:** Wednesday, January 19, 2005 2:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I am joining with Restore The Trust in expressing belief that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. Thank you. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Fischer  
230 Grove Acre Ave Apt 313  
Pacific Grove, CA 93950-2342

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**From:** Joyce Fisher [cjfisher@htc.net]  
**Sent:** Monday, January 31, 2005 11:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 31, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Joyce Fisher  
27 Lookout Dr  
Columbia, IL 62236-4538

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**From:** John Flaherty [jflaher2@twcny.rr.com]  
**Sent:** Tuesday, January 18, 2005 3:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that ethical standards should be enforced in order that to maintain the independence of auditors from of his or her audit client. Auditors compromise their independence whenever they sell tax shelters and/or provide strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Flaherty  
507 Timber Ridge Dr  
Camillus, NY 13031-8607

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**From:** shannon fletcher [sfletcher@cpoltd.com]  
**Sent:** Wednesday, January 19, 2005 1:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

shannon fletcher  
3692 Colet Ter  
Fremont, CA 94536-6005

---

**From:** Edward Flounoy Jr. [eflounoy262000@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 2:53 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edward Flounoy Jr.  
2287 Mott Ave Apt 3F  
Far Rockaway, NY 11691-3050

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**From:** Bobbie Dee Flowers [b\_flowers@hotmail.com]  
**Sent:** Sunday, January 23, 2005 3:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bobbie Dee Flowers  
418 W 17th St Apt 22A  
New York, NY 10011-5826

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**From:** Robert Flynn [rflynn@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 6:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Flynn  
101 Cliffside Dr  
San Antonio, TX 78231-1510

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**From:** Chad Fordham [chabbu@planet-save.com]  
**Sent:** Tuesday, January 18, 2005 4:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Chad Fordham  
805 W 27th Ave Apt B1  
Sault S Marie, MI 49783-9445

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**From:** Earl Forsman [eforsman1@msn.com]  
**Sent:** Tuesday, January 18, 2005 5:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Earl Forsman  
7413 W Deno Rd  
Spokane, WA 99224-9589

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**From:** Mark Foy [mfoy@vitalita.com]  
**Sent:** Wednesday, January 19, 2005 2:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mark Foy  
2150 Ashby Ave  
Berkeley, CA 94705-1836

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**From:** David Fredericks [davewrite@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 2:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The direction of American history should always be toward higher standards, more integrity, increased equity, and public trust. Tactics that assist the most affluent and privileged among us to avoid fiducial responsibility and accountability is a step backwards.

Therefore I believe that the auditing profession must remain independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Fredericks  
650 Sierra Vista Dr Apt 330  
Las Vegas, NV 89109-3971

---

**From:** JOHN FREYTAG [johnjoanfreytag@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 2:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

JOHN FREYTAG  
698 S 9th Ave  
Yuma, AZ 85364-2924

---

**From:** Kevin Frindik [revnum9@bellsouth.net]  
**Sent:** Friday, February 25, 2005 2:29 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kevin Frindik  
Pob 711  
45207 Gomez Rd  
Robert, LA 70455-1947

---

**From:** Jon Gallion [j\_gallion@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jon Gallion  
15756 Donahoo Rd  
Basehor, KS 66007-3099

---

**From:** Jay GARFEN [haramisonj@juno.com]  
**Sent:** Tuesday, January 18, 2005 3:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jay GARFEN  
8804 161st Ave  
Howard Beach, NY 11414-3419

---

**From:** Jay Gassman [lihhi@planet-save.com]  
**Sent:** Tuesday, January 18, 2005 7:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Jay Gassman  
1919 Middle Country Rd  
Centereach, NY 11720-3501



February 10, 2005

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

Re: PCAOB Rulemaking Docket No. 017

Dear Board Members:

We appreciate the opportunity to comment on PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees." We would like to specifically address the portion of the proposal that would implement Rule 3523, providing that audit firms will not be deemed independent if the firm provides any tax services to selected senior officers of an audit client. We believe that Rule 3523 would disproportionately penalize senior officers of public companies that operate in geographically remote or rural areas and could have a chilling effect on economic development in these regions. In addition, we submit that the proposed *per se* prohibition of such tax services is unnecessary in light of the availability of adequate safeguards to ensure that auditor independence is not compromised, such as those safeguards that permit auditors to provide routine tax services to audit clients.

By way of background, our company is the leading integrated, facilities-based communications provider in Alaska, offering local, wireless and long-distance voice, cable video, data and Internet communications services to residential and business customers under our GCI brand. We are one of approximately one-half dozen public companies in all of Alaska, three of which are bank holding companies. This absence of public companies has also created a paucity of audit firms in the region that are properly staffed to service public companies and their officers. At the moment, KPMG is the only one of the so-called "Big Four" registered public accounting firms that maintains an office in Alaska. KPMG has been our audit firm for the past 16 years, during which time they frequently have provided routine tax preparation services for some of our senior officers.

We are fortunate at GCI to have a management team that is instilled with a unique entrepreneurial spirit. It is this entrepreneurial spirit that often precipitates some rather intricate and involved tax returns that realistically can be prepared only with the assistance of a professional that is well versed in not only the rules and regulations universally applicable to an officer of a publicly held company, but also in certain provisions of Alaska law. For example, one of our senior officers filed a tax return for 2003 that was in excess of 100 pages, covering

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issues pertaining to the taxation of deferred compensation and the appropriate taxation with respect to certain capital leases. Although Alaska does not have a state income tax, the return still addressed certain provisions of Alaska law such as the treatment of transactions pertaining to real property located in Alaska. If proposed Rule 3523 were to be implemented, this officer would be required to seek the assistance of a professional in a major metropolitan area outside of Alaska who likely would have a very low level of familiarity with Alaska specific tax issues. Because this officer personally meets several times per year with his tax professional in order to go over the documents, spreadsheets and supporting materials that go into the preparation of such an elaborate return, and further considering the logistical difficulties attendant to traveling in and out of Alaska, proposed Rule 3523 would mandate an unnecessary diversion for our corporate officers.

Another adverse byproduct of proposed Rule 3523 is the chilling effect that it could have on economic development in our region. Given the nature of our business, we have an acute interest in encouraging locally developed businesses to remain in the region during all phases of their maturation process and in encouraging public companies to relocate their operations to Alaska. In furtherance of this pursuit, local officials constantly need to convince businesses that operating out of Alaska will not present any unmanageable logistical issues. This obviously is a somewhat daunting task given our relative geographic isolation. However, when you couple this isolation with onerous and unnecessary regulations such as proposed Rule 3523, then our obstacles become even more formidable.

We would like to stress that we take issue only with the portion of the proposal dealing with the provision of routine tax services to senior officers of an audit client. We applaud the PCAOB's efforts in the proposal to curtail any conflicts of interest between an audit firm and its client that could undermine the integrity of audited financial statements. We have no reservations in concurring with the PCAOB that the audit firm should not be permitted to provide tax advice to senior officers on potentially abusive tax transactions such as tax shelters or other tax-motivated financial products.

The situation is vastly different with respect to the provision of routine tax services, which simply do not create the same "mutual interest" that the proposal is attempting to curtail. The PCAOB's own proposed rules recognize this distinction, in that public companies will still be able to engage their auditor to provide routine tax services as long as the services have been approved in advance by the audit committee. As stated in the PCAOB's initial release for this proposal:

Research and tax planning in connection with routine and even non-routine business transactions initiated by the audit client generally have not raised auditor independence concerns, except in

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the case of aggressive strategies, and so long as the management of the audit client makes all decisions relating to, and takes responsibility for, both the tax work and the presentation of tax-related accounts and other matters in the financial statements. For example, these types of routine services do not appear to create the *mutuality of interest* that exists with regard to aggressive tax transactions.<sup>1</sup>

We cannot perceive any reason why the situation should be different for the provision of routine tax services to audit client officers. An entity obviously can act only through its natural persons who serve as officers and agents. To allow an auditor to provide routine tax services to its client, but not to the client's officers is tantamount to an assertion that the client's officers are preoccupied only with their own personal tax situations and do not have any sort of vested interest in tax issues of their employer. This assertion could not be further from the truth, especially considering the onus and personal accountability placed on individual officers by the Sarbanes-Oxley Act of 2002.

The underpinning rationale for the rule permitting the provision of routine tax services to an audit client seems to be that any potential conflict of interest on behalf of the auditor can be appropriately managed through audit committee oversight. We would in fact welcome a rule that would extend the audit committee's authority to the approval of routine tax services provided to senior officers. Such an extension would be well within the emerging paradigm of the post-Sarbanes-Oxley Act audit committee as the overall manager of the relationship between the auditor on the one hand and the client and its representatives on the other.

Given the onus and personal accountability placed on modern audit committee members, it would indeed be imprudent to approve the provision of any tax services that could hinder the auditor's independence. As is the case for routine tax services provided to audit clients, installing the audit committee as the gatekeeper for routine tax services to audit client officers should abrogate the need to implement any sort of *per se* prohibition. Even if the audit committee were to be derelict in its oversight duties, Securities and Exchange Commission Rule 2-01(b) would continue to render an auditor as not independent if "a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not capable of exercising objective and impartial judgment." The upshot of this discussion is that the PCAOB and the Securities and Exchange Commission have a full panoply of available

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<sup>1</sup> PCAOB Release 2004-105 (the "Release"), December 14, 2004, at page 15 (emphasis added). *See also* the Release at page 7 (providing that the Securities and Exchange Commission does not consider "conventional tax compliance and planning" to be a threat to auditor independence).

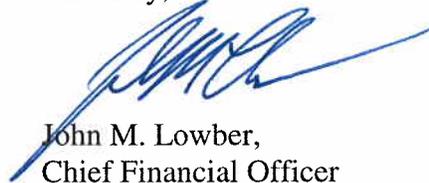
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Page 4

safeguards at their disposal to address any perceived independence issues and there is simply no need to implement a *per se* prohibition of the provision of tax services to senior officers.

In case the PCAOB does elect to implement proposed Rule 3523, we would like to provide one additional comment that is not unique to companies located in geographically remote or rural areas. Our auditor has expressed an opinion that under the proposal it would not be able to have any contact whatsoever with our officers with respect to their personal tax situations, even if the communication relates only to past periods for which the auditor has provided tax advice. This would preclude each of our officers from contacting our auditor about their personal tax situations even if any such officer becomes subject to an audit for a period in which he or she received tax services from our auditor. If the PCAOB does implement the proposed prohibition, we would urge it to explore an appropriate exemption for tax services related to prior tax years.

Please contact me at (907) 868-5628 or our Chief Executive Officer, Ron Duncan, at (907) 868-5640 if you would like to discuss the views raised by this comment letter. We would also welcome the opportunity to travel to Washington to personally present our position on the proposal to the PCAOB.

Sincerely,



John M. Lowber,  
Chief Financial Officer

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**From:** Susan Gellert [susruss@starpower.net]  
**Sent:** Tuesday, January 18, 2005 8:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Susan Gellert  
3101 Chesapeake St NW  
Washington, DC 20008-2230

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**From:** Dwight Gerrelts [dwgerre@yahoo.com]  
**Sent:** Saturday, January 22, 2005 11:30 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dwight Gerrelts  
1240 24th Rd NW  
Lebo, KS 66856-9152

---

**From:** Charles T. Giambrone [charlestgiambrone@comcast.net]  
**Sent:** Wednesday, January 19, 2005 8:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles T. Giambrone  
4621 Winston Ln N  
Sarasota, FL 34235-2257

---

**From:** Liz Giba [lizgiba@aikenfine.com]  
**Sent:** Tuesday, January 18, 2005 4:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Liz Giba  
10230 10th Ave SW  
Seattle, WA 98146-1414

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**From:** Peter Gillard [pmgill@chartermi.net]  
**Sent:** Tuesday, January 18, 2005 6:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Peter Gillard  
555 E Lake St Apt 15  
Petoskey, MI 49770-2587

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**From:** laura gillespie [lauracgillespie@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 12:33 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

laura gillespie  
75 6th Ave Apt 2L  
Brooklyn, NY 11217-2443

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**From:** L. Glasner [lyngla@rcn.com]  
**Sent:** Tuesday, January 18, 2005 4:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. L. Glasner  
27 W 96th St  
New York, NY 10025-6515



January 31, 2005

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. 017

Dear Sirs:

The Public Companies Accounting Oversight Board (PCAOB) is to be commended for proposing rules to promote the ethics and independence of registered public accounting firms. Glass Lewis applauds and supports the efforts of the PCAOB to strengthen the independence and improve the ethical conduct of independent auditors.

### **Summary**

In summary, we believe:

- Auditors should be able to provide tax compliance services (i.e., the preparation of tax returns), but only if the audit committee with all the relevant facts has pre-approved the services, finding they are in the best interests of shareholders, and have disclosed that finding in filings with the Securities and Exchange Commission (SEC).
- In pre-approving all non-audit services provided by an independent accountant, the audit committee should have all the relevant facts including the terms of the engagement as set forth in the engagement letter. Otherwise, we fail to see how an audit committee can make a finding consistent with the SEC's rules which set a standard of "...a reasonable investor with knowledge of all relevant facts and circumstances..."<sup>1</sup>
- An auditor should not provide tax planning including tax opinions, structuring, shelter or expatriate type services to a company they audit, as they result in an auditor auditing their own work, acting as an advocate, or engaging in

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<sup>1</sup> Regulation S-X, Article 210.2-01(b) which states: "The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission."

questionable ethical conduct. An auditor should not provide a tax opinion on tax issues that subsequently must be examined by the independent auditor in connection with an examination of the financial statements. In situations such as expatriate tax work, we believe the service does not contribute at all to the quality of an audit but results in sizable contracts that may not be in the best interest of investors and raise questions about the impact of those fees on the independence of the auditor.

- An auditor should not provide services to Section 16(b) officers or members of the audit committee. These services put the auditor into the conflicted position of having to serve the interests of those individual officers that, at times, may conflict with those of investors.
- We concur that an auditor should be prohibited from entering into contingent fee or commission arrangements with a company they audit. We support the clarifying language the PCAOB is proposing.
- We believe the SEC's definitions of key terms, such as an affiliate of an accounting firm, should be adopted by the PCAOB and not "watered down."

Accurate financial information is necessary in order for investors to make reasonably informed decisions and for the orderly functioning of the U.S. capital markets. Independent auditors play a key role as the "gatekeepers" for this information. In that public interest role, auditors are to make an independent and unbiased examination of a company's financial statements and render an opinion as to whether they fairly present the results of operations, cash flows and financial condition of the company. This vital role allows investors to have confidence in the financial information they receive, and enhance their ability to make informed investment decisions, with confidence in the company, its management and its numbers. We note that in the opinion of the U.S. Supreme Court in 1984 in the matter of *United States vs. Arthur Young*, the court held the auditor owes its ultimate allegiance to the corporation's creditors and stockholders as they fulfill their "public watchdog" role.

Unfortunately, the role undertaken by accounting firms and some individuals in promoting abusive tax shelters to companies or executives of those companies, such as Qwest, Sprint and Enron, contribute to concerns investors have with respect to a lack of objective and independent auditor judgment. The troubling record exposed by congressional investigations and hearings provide a clear cut need for the PCAOB to address the shortcomings in the ethical conduct of individuals and firms within the accounting profession.<sup>2</sup> We also are aware that auditing firms continued to provide tax services in exchange for contingent fees, despite new rules adopted by the Securities and Exchange Commission (SEC) in 2000 prohibiting such arrangements. The Chief Accountant of the SEC's 2004 communication, which repeated the position set forth

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<sup>2</sup> *U.S. Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals. Four KPMG Case Studies: FLIP, OPIS, BLIPS, AND SC2.* Report Prepared by the Minority Staff of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate. 2003.

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SEC's rulemaking process in 2000, gives rise to further concerns regarding the ethics of the firms and their commitment to the highest level of ethical conduct. Accordingly, it is important the PCAOB enacts rules to permit it to take timely, appropriate actions with respect to those who fail to comply with both the intent and letter of the law when it comes to ethics and independence in the accounting profession.

International tax matters, including expatriate tax services have also resulted in disciplinary actions in the profession. The recent six-month suspension Ernst & Young received from the SEC was a direct result of expatriate tax services. The judge's opinion noted (1) EY's International Tax Group had an Application Software partnership with PeopleSoft for EY/GEMS for PeopleSoft, and (2) EY was a PeopleSoft customer and used PeopleSoft's HRMS Payroll and Financials for its internal operations. The release also notes EY's business relationships with PeopleSoft concerning software developed by its Tax Group and its consulting activities were at issue.<sup>3</sup>

### **Glass, Lewis & Co., LLC**

Glass, Lewis & Co., LLC is an independent proxy and financial research firm that provides research to institutional investors and other users of financial statements of public companies. In that regard, we rely on audited financial statements and disclosures that public companies provide to investors, regulators and the capital markets. Our staff has many years of experience as financial analysts, auditors, chief financial and accounting officers, preparers of financial statements and securities counsel. Two of our staff also serve as chair of audit committees of public companies. From our perspective, it is vitally important to investors and the capital markets, that the registered public accounting firms and individuals within those firms, exercise unbiased, neutral and independent judgment. Without confidence that such judgments are made, investors are likely to lose faith in the financial statements they receive, as occurred in 2001 to 2002 when the U.S. capital markets lost trillions in value.

### **General Comments**

The report of the Conference Board Commission on Public Trust and Private Enterprise, Co-Chaired by former U.S. Secretary of Commerce, Peter Peterson and John Snow, current U.S. Treasury Secretary, states:

“Public Accounting firms should limit their services to their clients to performing audits and to providing closely related services that do not put the auditor in an advocacy position, such as novel and debatable tax strategies and products that involve income tax shelters and extensive off-

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<sup>3</sup> INITIAL DECISION RELEASE NO. 249, ADMINISTRATIVE PROCEEDING FILE NO. 3-10933, In the Matter of Ernst & Young LLP. Initial Decision of April 16, 2004. See section titled “EY's Global Expatriate Management System for PeopleSoft.” Available at: <http://www.sec.gov/litigation/aljdec/id249bpm.htm>

shore partnerships or affiliates...Public accounting firms are permitted to perform certain tax services for their clients. The Commission believes that any work performed by the company's outside auditors be closely related to the audit. Auditors' development and recommendations of new tax strategies for their clients is not closely related to the audit and, in our opinion, removes focus from their audit work and poses a potential conflict of interest. Furthermore, the development and recommendations of these tax strategies have often been accompanied by "success fees." In turn, these strategies, if implemented, were often then subject to an audit by the firm. This practice, in our opinion, is highly undesirable...

The Commission does not believe that there is a conflict of interest in a public accounting firm providing certain income tax and other services, such as preparing tax returns for corporations, provided that these services do not place the auditor in the roles of acting as an advocate for the company."<sup>4</sup>

We are concerned registered public accounting firms have designed, promoted and sold tax products and/or services whose only purpose was to evade or get around tax laws, rules and regulations on a federal, state and local level. It is hard to understand how a reasonable investor would believe such behavior is ethical for a firm of public accountants who have been entrusted by Congress with a public franchise built on trust.

The principles of the Code of Professional Conduct of the American Institute of Certified Public Accounts (AICPA) "call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage."<sup>5</sup> Article III of the Code states:

- "01. Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.
- 02. Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.
- 03. Integrity is measured in terms of what is right and just. In the absence of specific rules, standards or guidance, or in the face of conflicting

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<sup>4</sup> *Report of the Commission on Public Trust and Private Enterprise*. The Conference Board.2003. Page 41.

<sup>5</sup> *Principles of Professional Conduct*. ET Section 51. AICPA. 2004.

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opinions, a member should test decisions and deeds by asking: “Am I doing what a person of integrity would do?...”

04. Integrity also requires a member to observe the principles of objectivity and independence and of due care.”<sup>6</sup>

We do not believe an accounting firm providing a product or service, whose purpose is to circumvent the tax laws, rules and regulations of this country, meets the above principles of conduct that have long been established for the public accounting profession. We believe such services violate the ethics the profession has established for itself. Accordingly, while we support the proposed rules of the PCOAB in this matter, we also believe it is equally important the PCAOB undertake to consider ethical guidelines that prohibit such conduct by registered public accounting firms.

We believe when an accounting firm provides tax planning or strategy advice, the firm’s independence is impaired as a result of the auditor subsequently having to audit and reach an unbiased and objective opinion on the advice the firm has previously rendered. An example of this is when a firm develops or assists a company in developing an international tax and inter-company pricing strategy. We believe such services put the auditor in the awkward position of challenging the work and findings of his firm, possibly exposing the firm to litigation. We also believe such services are inconsistent with the recommendations of the Commission on Public Trust.

Yet, we are also mindful Congress and the SEC has left the broader issues regarding tax compliance services to the judgment of the audit committee and/or PCAOB. Accordingly, we believe the PCAOB should take an approach to a tax service that is somewhat similar to one of the views discussed in the report of the Panel on Audit Effectiveness.<sup>7</sup> We believe that tax compliance services should be permitted but only if (1) the audit committee pre-approved such services, (2) found those services to be in the best interest of the shareholders, and (3) provided disclosure of that finding to investors in the annual proxy to shareholders.

#### **Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules.**

We agree with the board that it should clearly define key terms such as “Affiliate of the Accounting Firm” and “Affiliate of the Audit Client.” During the SEC’s rulemaking efforts in 2000, there was agreement between the SEC and the profession on terms such as “Affiliate of the Audit Client”, “Investment Company Complex,” “Audit and Professional Engagement Period”, and “Audit Client.” Accordingly, we believe the

<sup>6</sup> Ibid, ET Section 54. AICPA. 2004

<sup>7</sup> *The Panel on Audit Effectiveness, Report and Recommendations.* AICPA. August 31, 2000. Page 119, paragraph 5.38.

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PCAOB should adopt the definitions used in the rules of the SEC for these terms, so as to avoid differences that could contribute to confusion among auditors.

In the past half dozen years, improper recognition of revenue has been the leading cause of restated financial statements. The vice president responsible for sales is perhaps the most critical person with an oversight role related to this function. Individuals in this role have been involved in a number of frauds cited in SEC enforcement actions. If an effective audit is to be achieved, the audit engagement teams, including the engagement partner are going to have to interact with this person. Accordingly, in light of the prevailing evidence regarding problems with revenue recognition, we believe that the vice president of sales should be incorporated into the definition of financial reporting oversight role. In turn, we believe an audit firm should not provide tax services to this individual.

The definition of contingent fees in proposed rule 3501(c)(i) is appropriate and an improvement on the prior definition of the SEC. We strongly concur with deleting the language from the previous SEC rule regarding tax services subject to governmental findings or judicial proceedings. This language, which was clarified in the SEC adopting release, resulted in registered firms continuing to enter into inappropriate contingent fee arrangements and should be deleted. We also support removing the language in the proposed definition referring to "other public" authorities as the proposing release is unclear as to who such a party might be.

#### **Rule 3502. Responsibility Not to Cause Violations.**

We understand this rule would establish the PCAOB'S authority to take action against an individual who violated the independence rules of the PCAOB or SEC as well as the securities laws. We strongly believe the PCAOB should take action against an individual who causes a firm to violate the applicable laws and rules. Accordingly, we support the PCAOB adoption of this rule. We also believe the PCAOB should have the ability to take action against a firm when its lack of quality controls indicates a systemic breakdown in the firm. For example, the PCAOB should have the power to take actions such as those taken by the SEC in recent years against E&Y in the PeopleSoft matter and PricewaterhouseCoopers.

#### **Rule 3520. Auditor Independence.**

We agree with this proposed rule requiring the auditor of a company to be independent throughout the audit and professional engagement period. This should be consistent with the similar rule of the SEC.

We believe the four basic principles for auditor's independence that are set forth in the preliminary note to SEC Regulation 210.2-01, and which served as the foundation for the prohibited services set forth in SOX, should be encapsulated into this rule. These

principles include whether a relationship or service (a) creates a mutual or conflicting interest between the accountant and the audit client, (b) places the accountant in the position of auditing his or her own work, (c) results in the accountant acting as management or an employee of the audit client, or (d) places the accountant in a position of being an advocate for the audit client. We would also incorporate into the rule the language from the AICPA's code of conduct which states that an auditor should avoid any subordination of their judgment.<sup>8</sup>

#### **Rule 3521. Contingent Fees.**

An auditor should not be permitted to provide services or products for contingent fees or commissions. Such fees should not be permitted either through direct or indirect payments. Contingent fees were cited in a July 2002 SEC enforcement action against PricewaterhouseCoopers. We are also aware of situations where auditors proposed providing tax services in exchange for a fee plus a percentage of any reduction in taxes generated by the auditor. When an auditor has such a mutual interest with the company in a key number in the financial statements, such as the income tax liability and expense, we do not believe an auditor can exercise unbiased judgment. We also do not believe a reasonable investor, with knowledge of all the facts (which unfortunately they are unable to get in such situations), would ever perceive the auditor as being independent. Accordingly, we believe an auditor is not independent when services are provided for contingent fees or commissions.

We are alarmed the profession, notwithstanding the language in the SEC's adopting release in 2000, has evaded the SEC's written rule. Accordingly, we believe it is important the PCAOB adopt this rule so as to provide it with the necessary tool to take action were such behavior to continue.

#### **Rule 3522. Tax Transactions.**

First, as background, fees paid to auditors for tax services as a percentage of audit fees decreased among the Fortune 500 companies from 57% in 2002 to 43% in 2003, the last year current data is available. In fact, 126 or over 25% of the companies paid their auditors nothing or less than 10% of their audit fees for tax services work in 2003. Yet 43 companies paid their auditor tax fees that exceeded the amount of audit fees for 2003. A survey of 1805 non Fortune 500 companies found fees paid to auditors for tax work decreased from 47% in 2002 to 38% in 2003. Among these companies, 568 or more than 33% paid their auditors nothing or less than 10% of their audit fees, while 466 had done so in 2002. In fact, the evidence clearly demonstrates many companies have an internal tax department that performs the necessary tax work or an accounting firm, other than the

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<sup>8</sup> *Principles of Professional Conduct*. ET Section 55. AICPA. Paragraph .02 states: "Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment."

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auditor, is retained to perform these services. We are not aware of any indications from the auditors or companies they audit, where the auditor is not engaged for tax services, or engaged for only minimal services, that there are substandard audits being performed. As a result, the argument often put forth that the auditor performing tax services is necessary for a quality audit, are not born out by the facts.

We believe a simpler approach to tax services is the one we have previously described in the summary above. In addition, we believe there are certain tax services such as the preparation of expatriate tax returns, tax planning and providing tax opinions that do not enhance the quality of the audit or the independence of the registered public accounting firm. For example, we note that if the criteria for evaluating the independence of an auditor, set forth in the Panel on Audit Effectiveness and the Financial Reporting Codification of the SEC are applied to expatriate tax work, such work would not be approved.<sup>9</sup> This is in part because such tax work does not contribute to the audit or knowledge of the auditors in any meaningful way. However, such engagements do usually result in fees that may approach or exceed the amount of audit fees. A survey of financial analysts by the American Institute of Investment Management (AIMR – now the CFA Institute) in 2000 noted that non-audit fees that exceeded 50 percent of audit fees caused a majority of the analysts to conclude an auditor's independence was impaired.

We are also concerned given recent disclosures (or the lack thereof) indicating the major accounting firms are continuing to provide prohibited services in connection with foreign expatriate services or prohibited services for certain foreign affiliates of international companies that a firm audits. The proposing release states the Board has “not identified independence or ethical issues when an accounting firm provides these routine tax return preparation services to its audit clients...” However, we understand the Board is fully aware of related services the major accounting firms have provided that do clearly violate the independence rules, including the types of bookkeeping and tax payment services firms often provide when doing expatriate tax return work. Clearly, this has become a problem for the profession. We are also aware one Big Four firm and many of the affected companies it audits, have taken the high road and made disclosure of such violations of the independence rules. However, we also understand other auditing firms are advising the companies they audit not to disclose such violations. Such behavior is unethical and one would be hard pressed to understand how it serves investors and meets the principles of the profession's code of conduct. Furthermore, this creates a serious un-level playing field for the one firm that has exhibited the appropriate behavior. We would urge the PCAOB and SEC to quickly level the playing field and ensure investors receive information necessary to make informed judgments when voting proxy issues involving the selection of auditors. We find it concerning regulators would willingly accede to nondisclosure of known violations of SEC regulations, without taking action to

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<sup>9</sup> *Audit Committees and Independence*. Codification of Financial Reporting Policies. Section 601.03. Securities and Exchange Commission.

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ensure investors are provided information regarding those violations. If auditors continue to advocate a lack of transparency, one can only question their motives for doing so.

However, should the PCOAB decide to continue with the rule as proposed, we would recommend the Board include a mechanism designed to deal with changes that might be incorporated in the tax code or regulations with respect to listed, confidential or tax avoidance transactions at a later date. We do not believe the PCOAB's rules should be automatically modified without public comment, due to a change in the rules of the Treasury Department or Internal Revenue Service. Accordingly, we believe the applicable language, as it exists today in the Code of Federal Regulations, Title 26, Sections 1.6011-4 and 1.6662-4(g) should be incorporated into the final PCAOB rule.

We also believe the language in the rule should be modified to clarify it includes prohibited tax services provided either in the U.S. or abroad. A recent article in the Wall Street Journal noted that a European court has also given tax shelters in foreign jurisdictions a negative review as well.<sup>10</sup> Accordingly, to clarify that the equivalent of listed or confidential transactions in foreign jurisdictions are also covered by the proposed rules, we believe Rule 3522 should be modified by add the language "or its equivalent" at the end of both paragraph 3522(a) and (b).

The proposed rule would also allow an auditor to provide a tax opinion on an aggressive tax position, so long as the company first obtained advice on that transaction from another firm. This would permit a company to seek advice from another firm, and then obtain a tax opinion from their auditor on the tax position. We believe an auditor's independence is impaired when it issues a tax opinion on a transaction, and that transaction is subject to examination in the audit, regardless of who proposed or initially recommended the aggressive tax position. Accordingly, we believe the language in 3522(c) should be modified to eliminate the word "initially." Allowing another firm to provide an opinion would be an easy loophole to avoid violations without changing current practices.

#### **Rule 3523. Tax Services for Senior Officers of Audit Client.**

We believe an auditor's independence is impaired when they are providing tax services to senior officers of an audit client, as well as those on the Board of Directors in an oversight role. We are aware of at least one major accounting firm who has indicated it would not provide tax services to Section 16(b) officers and directors without first receiving the pre-approval of the audit committee.

Accordingly, we believe the Board should expand its proposal to prohibit tax services being provided to at least the members of the audit committee of the board of directors.

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<sup>10</sup> *European Court Gives Tax Shelter Negative Review.* Wall Street Journal. January 28, 2005.

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The PCAOB has acknowledged in its Auditing Standard No. 2, the key role the audit committee plays in the oversight of the finance and auditing functions.<sup>11</sup> Given the audit committee hires, evaluates and when necessary fires the auditor, we have a difficult time understanding any basis the Board might have for not including the audit committee in the prohibition while including others with perhaps lesser roles.

We also note with growing concern the business relationships auditors have entered into with members of Boards of Directors. The recent disclosures surrounding such relationships at Best Buy and TIAA-CREF indicate a weakness in the quality controls of accounting firms in identifying inappropriate business relationships, such as were identified in these situations. We believe a member of an audit committee receiving payments from the auditors is an inherent conflict that results in a lack of independence. This would include situations where the audit committee member serves as an expert witness and/or advocate for the auditor. Accordingly, we recommend the PCOAB's final rule prohibit not only the auditor from providing tax services to members of the audit committee, but also from entering into business relationships, financial interests and mutuality of interests between the auditor and committee member. We also believe an auditor should be required to disclose in writing to the full audit committee any relationships between a member of the audit committee and the auditor.

#### **Rule 3524. Audit Committee Pre-Approval of Certain Tax Services.**

We strongly support the PCAOB proposal with respect to audit committee pre-approval of certain tax services. Congress, while choosing not to tackle the politically sensitive issue of auditors providing certain tax services, did chose to rely on audit committees for making judgments regarding whether non-audit services would impair the independence of the auditor.

We understand accounting firms have already expressed concerns with this part of the PCOAB proposal. However, we find it entirely consistent with the guidance in the Taub memo referenced in the proposing release. We note that prior to this memo, accounting firms advocated providing information to audit committees that would have failed to provide them with sufficient detail to make informed decisions.<sup>12</sup> Given the previous behavior of the accounting firms regarding audit committee pre-approval, we believe the

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<sup>11</sup> *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements*, Auditing Standard No. 2. PCAOB. 2004. Paragraph 55 states: "The company's audit committee plays an important role within the control environment and monitoring components of internal control over financial reporting." Paragraph 59 states: "Ineffective oversight by the audit committee...should be regarded as at least a significant deficiency and is a strong indicator that a material weakness in internal control over financial reporting exists."

<sup>12</sup> See the letter to SEC Chairman William Donaldson dated June 5, 2003, from the Consumer Federation of America, Consumers Union, Consumers Union, Consumer@ction and U.S. Public Interest Research Group.

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PCOAB's proposal is warranted and necessary to ensuring audit committees fulfill their mandate under the Sarbanes-Oxley Act of 2002 and applicable SEC regulations.

In particular, we believe the best way to ensure audit committees fulfill their responsibility is to ensure they are provided copies of the engagement letter that includes descriptions of the scope of any tax service under review and the fee structure for the engagement. We understand that such letters were not commonly provided to audit committees in the past, including when such letters included inappropriate contingent fees that audit committee members may have found troublesome. Accordingly, audit committee members were unable to exercise judgment on these matters and may have even been "in the dark" with respect to them.

We are also aware some independence violations that have occurred were not listed or even mentioned in letters registered public accounting firms are required to provide to the audit committee, commonly referred to as the ISB No. 1 letter. ISB Standard No. 1 requires each auditor to disclose in writing to its client's audit committee all relationships between the auditor and the company that, in the auditor's judgment, reasonably may be thought to bear on independence. The auditor and audit committee are also required to discuss the auditor's independence. As the SEC has clarified its perspective on the ISB No. 1 letter in its adopting release in 2000 concerning auditor's independence, we again must question the motives of firms who have failed to make this disclosure to the audit committees.<sup>13</sup> We believe the lack of transparency in ISB No. 1 letters unequivocally indicates the need for audit committees to obtain and understand the engagement letters.

We have heard some in the profession express the view that this will mean the audit committees will need to review an extensive number of engagement letters. Our experience as both auditors and members of audit committees does not support that view.

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<sup>13</sup> See Revision of the Commission's Auditor Independence Requirements, Securities and Exchange Commission. November 2004. The release states:

"In a letter to the SECPS, ISB Chairman William Allen clarified the use of the auditor's judgment under the standard. He stated:

[I]n asking itself whether a fact or relationship is material in this setting the auditor may not rely on its professional judgment that such fact or relationship does not constitute an impairment of independence. Rather the auditor is to ask, in its informed good faith view, whether the members of the audit committee who represent reasonable investors, would regard the fact in question as bearing upon the board's judgment of auditor independence.

Letter from William T. Allen, Chairman, ISB, to Michael A. Conway, Chairman, Executive Committee, SECPS (Feb. 8, 1999). We believe that Chairman Allen's interpretation is appropriate."

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Our responses to the specific questions the Board has asked for comment on are attached hereto as Appendix A. We would be pleased to discuss our responses with the Board and/or its staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Turner", with a long horizontal flourish extending to the right.

Lynn E. Turner  
Managing Director of Research

cc: Mr. Donald Nicholiasen – Chief Accountant, Securities and Exchange Commission

## Appendix A

### Responses to Questions

#### **Question on Pages 16 and 17. Provision of Routine Tax Return Preparation and Tax Compliance, General Tax Planning and Advice, International Tax Services and Employee Tax Services.**

*Like international assignment tax services, registered firms' provision of personal tax services for employees of their audit clients has not raised significant independence concerns, except for personal tax services for officers who function in a financial reporting oversight role at the audit client. Accordingly, the Board's proposed rules to restrict auditors from providing personal tax services to audit client employees are limited to those officers who serve in a financial reporting oversight role.*

*The Board invites comment on this discussion. In particular, the Board seeks comment on whether any of the types of services discussed in this section of the release raise independence concerns the Board has not identified. The Board also seeks comment on whether there are other types of tax services that could appropriately be included in this discussion.*

#### **Response:**

Tax services such as developing international tax strategies, international inter-company pricing agreements, result in an auditor having to audit their own work. Accordingly, we believe such services should be prohibited. In addition, we do not believe expatriate tax return work, which has recently resulted in violations of existing SEC independence rules by international accounting firms, contribute in any meaningful way to the quality of the audit. Often these expatriate employees become Section 16(b) officers and, as a result, ultimately result in a conflict for the accounting firm, the employee and the company. Accordingly, we do not believe such services should be permitted.

#### **Question on Page 19. Proposed Rule 3502 Regarding Responsibility Not to Cause Violations.**

*As discussed in Section B1, Rule 3520 requires registered firms to be independent of their audit clients. When an associated person negligently causes the registered firm to not be independent, Rule 3502 would allow the Board to discipline that associated person for that action.*

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*The Board invites comments on any aspect of proposed Rule 3502 and encourages commenters to consider certain issues in particular. First, are there categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason? Second, in a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation?*

Response:

There should be a finding against an individual in a case where it is found a firm knowingly or recklessly engaged in misconduct. We note that disregard of the SEC independence rules is considered a violation that can result in a Rule 102(e) sanction by the Commission.

We do not believe any actions should be exempted from the proposed rule at this time.

**Question on Page 20. Proposed Rule 3520 Regarding Fundamental Ethical Obligation of Registered Public Accounting Firm to be Independent Throughout the Audit and Professional Engagement Period.**

*The Board invites comments on any aspect of proposed Rule 3520, and encourages commenters to consider one issue in particular. Would the scope of the ethical obligation described above impose any practical difficulties? Commenters who foresee any such difficulties are encouraged to describe in detail any ways in which the proposed scope of the rule would cause or require auditors to follow any different practices and procedures than they currently follow to comply with existing legal requirements.*

Response:

We believe the proposed rule is consistent with the SEC rule adopted in November 2000 which became effective in 2001. Accordingly, provided a registered public accounting firm and its staff have complied with the rules of the SEC, there should not be any practical difficulties in implementing the rule proposed by the PCAOB.

**Question on Page 23. Contingent Fees**

*Accordingly, the exception would permit fees that are contingent on "the amount [being] fixed by courts or other public authorities and not dependent on a finding or result."<sup>14</sup> Although the approval of a bankruptcy court is the most obvious contingency that may be imposed on auditors' fees from audit clients, the proposed exception extends to other*

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<sup>14</sup> Proposed Rule 3501(c)(i)(2).

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*"courts or other public authorities." The Board invites comment as to whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary.*

Response:

We are not aware of "other public authorities" that would fall within the language of the proposed rule. Accordingly, if the PCOAB continues to use this language, which we believe should be deleted, we would urge it to clarify what other public authorities it is referring to so as to avoid further abuses by the profession.

**Question on Page 29. Aggressive Tax Positions and Listed Transactions.**

*Although the proposed rule does not address situations in which a transaction planned, or opined on, by the auditor becomes listed after it is executed, the Board seeks comment on whether the rule should address the possible impairment of an auditor's independence in such situations. The Board also seeks comment, more generally, on whether proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor's independence.*

Response:

We believe an auditor's independence would become impaired if a listed transaction it planned or advised on was listed subsequent to its advice or opinion. That is because we believe the independence is impaired, as it would be placed in the position of auditing its own work. Accordingly, we believe tax planning and strategy services, in addition to developing or marketing tax shelters, listed or confidential transactions should be prohibited to avoid unnecessary conflicts and complexity in the rules.

26 C.F.R. defines listed and confidential transactions as follows:

**"(2) Listed transactions.** A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

**(3) Confidential transactions--**(i) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee. (ii) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that

advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction. (iii) Minimum fee. For purposes of this paragraph (b)(3), the minimum fee is: (A) \$250,000 for a transaction if the taxpayer is a corporation. (B) \$50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is \$250,000. (iv) Determination of minimum fee. For purposes of this paragraph (b)(3), a minimum fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.”

We believe the minimum fee amount of \$250,000 in the above regulations should be eliminated such that regardless of the fee amount, a listed transaction would be prohibited. We believe an auditor provided services in connection with a listed transaction, regardless of the fee amount, is inconsistent with an auditor being independent and also inconsistent with the ethical behavior expected of the auditor.

We believe the final rule should incorporate the following language in the 26 C.F.R. 1.6662-4(g) including defining what constitutes a tax shelter:

“(2) **Tax shelter**--(i) In general. For purposes of section 6662(d), the term “tax shelter” means--

- (A) A partnership or other entity (such as a corporation or trust),
- (B) An investment plan or arrangement, or
- (C) Any other plan or arrangement, if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax. The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose. Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and

deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

**(ii) Principal purpose.** The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose.”

### **Question on Page 31. Confidential Tax Positions**

*The Board seeks comment on whether confidential transactions should be treated as *per se* impairments of a registered public accounting firm's independence from an audit client. More broadly, the Board also seeks comment on whether other provisions of the Treasury's regulation on reportable transactions – that is, other than the provisions on listed and confidential transactions included here – should be incorporated by reference in the Board's rules on tax-oriented transactions that impair independence.*

Response:

We note 26 C.F.R. 1.6011-4 includes six categories of transactions. These include (1) listed transactions, (2) confidential transactions, (3) transactions with contractual protection, (4) loss transactions, (5) transactions with significant book-tax differences and (6) transactions involving a brief asset holding period. A transactions with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained.

A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. We believe transactions with contractual protection result in an auditor who has advised on such a transaction, and the company who has paid a fee for such services, as having a mutual interest, in addition to requiring the auditor to audit their own tax advice and work. Accordingly, such services should be specifically prohibited.

### **Question in Footnote 70 on page 34. Aggressive Tax Positions**

*Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. 1.6662-4(d)(3)(ii) for analysis of whether a tax treatment has "substantial*

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*authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax). The Board seeks comment on whether the analysis described in the Treasury's regulations provides useful guidance on the application of proposed Rule 3522(c).*

Response:

Regulations 1.6662-4(d) discusses substantial authority as follows:

“The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in Sec. 1.6662-3(b)(3). The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.”

We believe the appropriate standard to be applied to Listed, Confidential, Aggressive and Contractual protection transactions is the “more likely than not” standard rather than the less stringent “substantial authority” standard. We believe transactions that do not meet the “more likely than not” standard for prevailing with the taxing authorities and courts, result in the auditor having to advocate for a transaction they have advised or opined on when there is less than a 50 percent chance of prevailing. This creates a very significant conflict for an auditor as the applicable criteria for determining the proper accounting for an aggressive tax position in financial statements is considered by some firms to be the “probable” standard included in Statement of Financial Standard No. 5.

#### **Question on Page 35. Aggressive Tax Positions**

*The Board invites comments on any aspect of proposed Rule 3522(c) and encourages commenters to consider certain issues in particular. First, is the term "initially recommended by the registered public accounting firm or another tax advisor" sufficiently clear? Is there a better way to describe aggressive tax transactions, strategies, and products that a registered public accounting firm ought not to sell to an audit client? Second, does the "more likely than not" standard draw the right line between aggressive tax strategies and products that a registered public accounting firm ought not to plan, or opine on the tax treatment of, for an audit client and routine tax planning and advice? In addition, the Board invites comments on whether the Board also should require a registered public accounting firm to obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have a material effect on the audit client's financial statements.*

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Response:

As previously noted, we believe auditors should be prohibited from providing tax services other than tax compliance services. However, should the PCOAB determine to permit such services, we believe:

- The more likely than not standard is an appropriate standard.
- Clarify what is meant by “initially recommended.”
- Prohibit an auditor from providing a tax opinion on a transaction the auditor must then examine in the course of the audit.

**Question on Page 37. Rule 3523. Tax Services for Senior Officers of Audit Client**

*The Board invites comments on any aspect of proposed Rule 3523 and encourages commenters to consider certain issues in particular. Are there other classes of employees to whom an accounting firm should not offer tax services? Would a registered public accounting firm's independence be perceived to be impaired if it offered tax services to members of an audit client's audit committee, or to other members of the audit client's board of directors?*

Response:

As previously stated, we believe an auditor should not provide any services to the Section 16(b) officers, including any officers in a financial reporting oversight role and any directors on the audit committee. We also believe senior officers in a financial reporting oversight role should be expanded to include the officer with key responsibility for sales, a subject most often the cause of misstated financial statements.

**Question on Pages 42 and 43. Rule 3524. Audit Committee Pre-approval of Certain Tax Services**

*The Board welcomes comment on any aspect of proposed Rule 3524 and encourages comment on certain matters in particular. Should additional information or documentation that is not described in proposed Rule 3524 be provided to audit committees in the pre-approval process? In addition to the communications required by proposed Rule 3524, should auditors be required to have additional communications with the audit committee with regard to the tax advice that has been provided to the audit client?*

Response:

The SEC has defined the test for determining an auditor's independence as a reasonable investor with knowledge of all relevant facts and circumstances. The audit committee is the investors elected representative and, accordingly, is put in the position of assessing

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whether an auditor's independence is impaired and, accordingly, should not provide pre-approval of services be pre-approved. In making that judgment, we believe the audit committee should be provided with all the relevant facts and circumstances. To meet that test, we believe it is imperative the audit committee obtain copies of the actual engagement letters. We believe the failure of auditors to disclose questionable circumstances to audit committees such as contingent fees support this requirement.

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**From:** CHARLENE GLASSMAN [sharlibits@msn.com]  
**Sent:** Tuesday, January 18, 2005 6:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. CHARLENE GLASSMAN  
2136 S 85th St  
West Allis, WI 53227-1746

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**From:** Steve Gluhanich [tern@atmc.net]  
**Sent:** Tuesday, January 18, 2005 2:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Steve Gluhanich  
1757 Oxpen Rd SW  
Supply, NC 28462-3965

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**From:** Douglas Goddard [dgoddar1@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 7:32 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Douglas Goddard  
9935 Raisin St  
Maybee, MI 48159-9701

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**From:** Fred Goldman [michaelg618@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Fred Goldman  
100 Fairway Park Blvd Apt 308  
Ponte Vedra Beach, FL 32082-2621

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**From:** kenn goldman [goldma@planet-save.com]  
**Sent:** Tuesday, January 18, 2005 1:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. kenn goldman  
PO Box 43835  
Tucson, AZ 85733-3835

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**From:** Jerry Goodnight [bigjg@charter.net]  
**Sent:** Tuesday, January 18, 2005 8:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jerry Goodnight  
PO Box 397  
Drexel, NC 28619-0397

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**From:** ANNE Grady [agrady@massbay.edu]  
**Sent:** Tuesday, January 18, 2005 4:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. ANNE Grady  
6 Drury Ln  
Natick, MA 01760-1225

Accountants and Business Advisors

February 14, 2005

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

Via e-mail: (comments@pcaobus.org) and Hand Delivery

Re: PCAOB Rulemaking Docket Matter No. 017, *Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees* (PCAOB Release No. 2004-015).

Dear Board Members and Staff,

Grant Thornton LLP appreciates the opportunity to comment on the Public Company Accounting Oversight Board's ("Board" or "PCAOB") *Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees* ("Proposed Rules"). We support the Board's commitment to promote the ethics and independence of registered public accounting firms that audit and review financial statements of U.S. public companies ("registered firms").

We issued a press release supporting the Proposed Rules on December 15, 2004 (the day after the Proposed Rules were released; a copy of our press release is attached hereto). In this comment letter, we address certain provisions in sections 3502, 3521, 3522, and 3523 of the Proposed Rules to assist the PCAOB in establishing a principles-based framework to auditor independence. Please note that page citation references herein are to the PCAOB Release No. 2004-015 (December 14, 2004) ("Release 2004-015").

### Grant Thornton Summary Points

- The Board, through Proposed Rule 3502, appropriately seeks to evaluate the types of circumstances for which associated persons with registered firms may be disciplined for causing a violation of the Sarbanes-Oxley Act. We believe that the "knew or should have known" negligence standard articulated by the Proposed Rule is an effective standard to implement. However, Grant Thornton recommends that in finalizing the Proposed Rule, the Board expressly provide an exception from violation for actions or omissions that occur notwithstanding reasonable and diligent efforts made in good faith undertaken by an associated person to satisfy applicable standards, rules and laws, including the Sarbanes-Oxley Act.
- Grant Thornton embraces Proposed Rule 3521's prohibition of contingent fees on engagements between public company audit clients and registered firms. We recommend extending the prohibition in Proposed Rule 3521 to include value-added fee arrangements.

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- Grant Thornton fully supports Proposed Rule 3522's effort to address the threat posed to investor confidence, integrity in the public accounting system, and auditor independence when a registered firm provides tax services to a public company audit client based on an aggressive interpretation of the tax law. However, to accomplish these objectives without unintentionally curtailing the ability of taxpayers to be properly advised on tax matters, we recommend that the Board adopt independence standards that focus on whether the tax transactions or strategies in issue involve reportable transactions, as that term is applied in the Internal Revenue Code.
- Grant Thornton appreciates and supports Proposed Rule 3523's prohibition on tax services being provided by registered firms to persons in a financial reporting oversight role at a public company audit client. It is critical for the registered firm and these individuals to avoid even the appearance of mutuality of interest. In furtherance of the principle underlying Proposed Rule 3523, however, we recommend strengthening the reach of Proposed Rule 3523 to prohibit tax services to all members of a board of directors, which would include audit committee members.

The following is a detailed discussion of our summary points.

### **Responsibility Not to Cause Violations – Proposed Rule 3502**

Integrity is a core value at Grant Thornton and, we are convinced, it is a cornerstone for building and maintaining investor confidence in the public company audit system. It is vital that registered firms foster a culture of ethical expectation and demand that professionals act in accordance with applicable ethical standards, rules, and laws to promote an environment of the highest integrity.

Grant Thornton agrees with the premise of Proposed Rule 3502 that a registered professional services firm, in whatever form (*e.g.*, general partnership, LLP, or professional corporation), can act only through the natural persons who comprise the firm. It makes sense and is entirely appropriate, we think, that the Board be authorized to discipline a person associated with a firm where the associated person knew or should have known that his or her actions or omissions would cause the firm to violate applicable rules, standards or laws. We view the “knew or should have known” negligence standard of Proposed Rule 3502 as an effective standard to implement. However, we are concerned that Proposed Rule 3502 does not expressly provide that actions or omissions that occur notwithstanding reasonable and diligent efforts made in good faith to adhere to applicable rules, standards and laws are not considered violations of Proposed Rule 3502. We believe Proposed Rule 3502 needs to take into account such efforts made by associated persons to interpret and apply PCAOB standards, rules, and related laws.

The Board has identified “state of mind” (p. 18) as a fundamental measure in determining whether an associated person negligently caused a firm to violate PCAOB rules, standards, or related laws, and we agree with that principle. To that end, evaluation of specific facts and circumstances seems necessary to the fair application of Proposed Rule 3502. For example, did an associated person act alone in a matter that resulted in a violation, or seek

input and advice on independence issues from qualified professionals within the registered firm? Did the person follow such advice or deviate in some way (and if so, why)? If the person acted without seeking assistance, what efforts were undertaken to ensure that independence would be maintained? What policies and procedures exist at the registered firm to help ensure independence is maintained, and did the person follow such policies and procedures? The Board underscores the importance of associated persons acting with reasonable and diligent efforts made in good faith, explaining that under Proposed Rule 3502, an associated individual's ethical obligations include "not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation" (p. 18). We recommend that Proposed Rule 3502 expressly provide an exception from violation for reasonable and diligent efforts made in good faith undertaken by an associated person, even if an action or omission is in error and causes the registered firm to not be independent.

The Board inquires whether, under Proposed Rule 3502, if a registered firm knowingly or recklessly engaged in misconduct, it would be appropriate to find a violation by an associated person who only negligently contributed to the violation. If it is a *given* that an associated person negligently contributed to the violation of Proposed Rule 3502, we think that person may be subject to appropriate discipline for such negligent action. However, we express concern if the question being posed is whether an associated person who contributed only negligently to a violation should be held subject to more severe discipline than warranted by negligence, simply because the registered firm itself is determined to have "knowingly or recklessly" engaged in misconduct. In citing to Section 105(c)(5) of the Sarbanes-Oxley Act, the Board underscores that application of higher threshold sanctions is appropriate when violations occur as a result of conduct that is intentional, knowing, or reckless, or where negligence is a repeated matter (p. 18, fn. 40). The correlative implication is that lesser misconduct should not carry the same sanction. We encourage the Board to clarify this question under Proposed Rule 3502 and explain its rationale for further comment if, in fact, the Board is considering attributing a higher threshold violation by the firm to an associated person who committed only a lesser threshold violation.

### **Ethics and Independence – Contingent Fees – Proposed Rule 3521**

Grant Thornton supports Proposed Rule 3521's prohibition on contingent fee arrangements involving public company audit clients. We agree that such fee arrangements are incompatible with a public auditor's independence and must be precluded without exception. We support the Board's clarification that contingent fee arrangements are precluded whether made between a registered firm and a client directly, or whether the fee arrangement is made indirectly with the client, for example through an arrangement between the registered firm's subsidiaries and/or other affiliates and the client. Allowing contingent fees between subsidiaries and affiliates of the registered firm and the client would promote form over substance and violate the spirit and intention of the prohibition.

Although not specifically addressed in the Proposed Rules, Grant Thornton also is concerned that "value added" fee arrangements could be potentially used in lieu of contingent fee arrangements. We recommend that Proposed Rule 3521 be amended to

incorporate an identical prohibition on the use of value added fee arrangements involving public company audit clients. Value added fee arrangements are traditionally viewed as fee arrangements where the terms of engagement provide that any fee amount to be paid to the auditor above an agreed, specified fee amount is left to the client's unfettered discretion at the end of the engagement. In structuring a value added fee arrangement, the auditor's hope is that the client will determine that the auditor provided services of greater value than the specified fee and will make an additional payment. The client obtains the benefit of not making a payment if it concludes that the value of the services does not warrant additional payment. Any fee payment above the specified fee is thus considered to be made voluntarily by the client, and therefore not an independence-impairing contingent fee.

Value added fee arrangements are not precluded by either the SEC or AICPA rules as presently written. But such fee arrangements are cause for strong concern for independence issues. In a May 21, 2004 letter to the Professional Ethics Executive Committee of the AICPA, Donald Nicolaisen, the SEC's Chief Accountant, emphasized the tension created in the auditor-client relationship by value added fees; the auditor seeking to encourage a large fee, and the client controlling leverage to not pay a fee if dissatisfied with the engagement. He also cautioned about "wink and a nod" arrangements, where the additional fee is in substance tied to a specific service benefit. Mr. Nicolaisen explained in his letter (and Grant Thornton agrees), that value added fees "could have an adverse affect on a reasonable investor's conclusion that the accounting firm is capable of exercising objective and impartial judgment."

The SEC has thus cautioned registered firms that the SEC staff will closely review facts and circumstances surrounding value added fee arrangements to determine whether a fee labeled "value added" is in substance a contingent fee. However, to best ensure integrity in the audits of public companies in light of the clear concerns with value added fees, Grant Thornton believes that regulatory emphasis should be on prohibiting such fees arrangements. We recommend that the Board include an express prohibition on value added fees in Proposed Rule 3521, consistent with the intent that the term "contingent fee" should be understood broadly to include the aggregate amount of compensation for a service (p. 22). In demonstration of our thought leadership on the matter, Grant Thornton no longer enters into value added fee arrangements with public company audit clients.

We presume that cases may arise where registered firms have proper contingent or value added fee arrangements with public companies for which they are not auditors when the fee arrangement is entered into to, but subsequently are considered for the performance of audit services. In order not to cause unintended independence impairment under the Proposed Rules to the detriment of public companies and investors, we recommend that the Board clarify in the final rule that independence is maintained as long as any unconcluded portion of a contingent (or value added) fee arrangement is terminated or otherwise converted to a fixed-fee or time and materials arrangement prior to the beginning of the period of engagement for audit and professional services.

## Aggressive Tax Positions – Proposed Rule 3522

Our focus in this comment is on Proposed Rule 3522(c) (“aggressive tax positions”). The Proposed Rule provides that a registered firm cannot be independent from its public company audit client if it provides “any service” related to planning or opining on the tax consequences of a transaction that has a “significant purpose” of tax avoidance, and is not at least more likely than not to prevail, if the transaction also was “initially recommended” by the registered firm (or an affiliate) or another tax advisor.

We understand that with Proposed Rule 3522, the Board is targeting independence issues involving abusive tax strategies and transactions and the “sale” of such strategies and transactions by the registered firm to its public company audit client (p. 35). We recognize that abusive tax practices have the effect of undermining the public’s confidence in tax advisors, their firms, and the profession. In that regard, we appreciate that Proposed Rule 3522(c) “is intended to provide registered public accounting firms more clarity and predictability as to the types of transactions that impair independence” (p. 33). Grant Thornton supports that goal. In fact, we do not market listed transactions or similar questionable tax shelter products or practices, nor do we engage in tax services under conditions of confidentiality with regard to any client, whether or not the client is a publicly traded audit client. However, we are concerned that Proposed Rule 3522(c) is overly broad as drafted. By its terms, we believe Proposed Rule 3522(c) may cause independence impairment for matters not intended by the Board and have an adverse impact on public company taxpayers, particularly middle market/mid-cap taxpayers. Similarly, as addressed below, we also do not think Proposed Rule 3522(c) as drafted will accomplish the Board’s goal of increased clarity and predictability for the registered firm in applying independence principles in tax matters.

Tying the definition of an aggressive tax position to a transaction that has a “significant purpose” of “tax avoidance” is one difficulty with the Proposed Rule. Those terms do not frame a distinct meaning or standard within federal tax law such that they identify a sufficiently clear or understood category of improper, abusive tax transactions. Not every transaction that has a significant purpose of tax avoidance is an inappropriate transaction. To the contrary, many appropriate business and tax planning strategies have no connection at all to tax shelter abuses, yet have at their root a purpose to lessen, eliminate, or defer tax liability.

Moreover, the view of the Internal Revenue Service (“IRS”) as to what is an abusive tax shelter, sham transaction, or other improper tax strategy is decidedly important, but not the definitive measure. Cases are regularly litigated over such issues, and court decisions highlight that complex tax planning undertaken with a significant intent to reduce or avoid taxes is appropriate in the proper context. *See, e.g., UPS of Am. V. Comm’r*, 254 F.3d 1014, 1020 (11<sup>th</sup> Cir. 2001) (“The transaction under challenge here simply altered the form of an existing, bona fide business, and this case therefore falls in with those that find an adequate business purpose to neutralize any tax-avoidance motive.”); *TIFD III-E Inc. v. United States*, 342 F. Supp. 2d 94, 108 (D. Conn. 2004) (“There is no dispute that the Castle Harbour transaction created significant tax savings for [the taxpayer]. The critical question, however,

is whether the transaction had sufficient economic substance to justify recognizing it for tax purposes.”). Congressional testimony by the Commissioner of Internal Revenue underscores the point that tax advice intended to minimize tax burden is not necessarily improper tax avoidance or evasion. On November 20, 2003, while testifying before a Senate Committee specifically on tax shelter matters, the Commissioner explained that “[t]ax laws are complex and taxpayers *are permitted to take aggressive positions within the bounds of the law.*” Statement of Honorable Mark Everson, Senate Committee on Governmental Affairs, “U.S. Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals” (November 20, 2003) (emphasis added).

Considering the matter from an independence perspective, we believe Proposed Rule 3522(c) must be refocused in order to achieve the Board’s goal of clearly and predictably identifying transactions that have a high risk profile of being abusive tax transactions. We believe the Board may achieve the high degree of predictability and clarity it seeks for taxpayers, tax advisors and registered firms by looking to existing provisions of the Internal Revenue Code (“Code”) requiring taxpayers to disclose on their federal tax returns, transactions known as “reportable transactions.” Code section 6011, regulations thereunder, and other administrative authority define reportable transactions as including all listed transactions, and certain other transactions that the IRS has earmarked for evaluation as potentially improper tax avoidance transactions based on specific risk factors. The Code thus has a clear mechanism for defining precisely the type of aggressive tax positions the Board seeks to frame within Proposed Rule 3522(c). Such transactions, once identified, may readily be subjected to the independence principles the Board understandably seeks to implement. Accordingly, as we discuss below, we recommend that the Board apply the “more likely than not” threshold standard in Proposed Rule 3522(c) as drafted *only* to “reportable transactions.” For transactions that are not reportable transactions, the Board’s independence interests are appropriately protected by evaluating all such transactions under the threshold standard of “substantial authority.”

As presently drafted, Proposed Rule 3522(c) applies the “more likely than not” standard to all transactions, without any filtering for transactions that do not have a high-risk, tax abuse profile. From an independence perspective, we believe this is an overly-broad use of the more likely than not standard that is likely to result in unintentional independence impairment (or an inability of public companies to be properly advised) relative to tax advice that is appropriately supported by applicable legal authority and not subject to penalty under the Code. Pursuant to rules set forth in sections 6662, 6662A and 6664 of the Code, the “more likely than not” standard is a significant standard for penalty protection, and the only standard that may apply to provide penalty protection to taxpayers in connection with the type of potentially tax-abusive transactions intended to be captured by Proposed Rule 3522(c), *i.e.*, tax shelters and reportable transactions.

For other transactions not targeted as potentially abusive, the Code provides that taxpayers may avoid the imposition of penalties by establishing that a tax position is supported by “substantial authority.” “Substantial authority” is a term defined in tax law providing that authority supporting the tax treatment of a transaction is “substantial” when, under a meaningful evaluation of relevant facts and authorities, the weight of authority in favor of

the transaction's purported tax treatment is substantial in relation to contrary authority. Treas. Reg. Sec. 1.6662-4(d)(3). Such analysis contemplates the taxpayer's purpose for participating in a transaction, which is in symmetry with the Board's independence position that aggressive tax positions involving public company audit clients of registered firms may impair independence. Because the "substantial authority" standard is sufficient to support all taxpayer positions but those with the high-risk potential for tax abuse inherent in tax shelter or reportable transactions, Grant Thornton believes that distinguishing between the "more likely than not" and "substantial authority" standards for independence purposes harmonizes the relationship between the Board's independence concerns and fundamental tax principles. The result is independence framing that appropriately acknowledges the difference between permissible, routine tax planning and advice and "aggressive tax strategies and products" that a registered firm ought not plan or opine on the tax treatment for a public company audit client (p. 35).

We thus recommend that Proposed Rule 3522(c) be redrafted to provide that no independence impairment occurs with regard to tax services provided to public company audit clients by registered firms if a reportable transaction is at least "more likely than not" to be sustained on the merits if challenged by the government, or if a tax position is not a reportable transaction, it nonetheless is supported at least by substantial authority.<sup>1</sup>

Recent changes to the Code and to professional ethics rules and standards in tax matters further underscore the appropriateness of an independence framework based on the distinction between reportable transactions and other types of transactions. The American Jobs Creation Act (P.L. 108-357, the "Act", October 22, 2004) added a number of provisions to the Code specifically targeted at promoting the disclosure of reportable transactions (including listed transactions), and codified significant penalties imposed on taxpayers for failure to disclose such transactions (Code section 6707A). The Act also encouraged taxpayers not to engage in improper tax shelter activity by placing certain limitations on a taxpayer's ability to rely on the opinions of advisors for relief from accuracy-related penalties and imposing special accuracy-related penalties for reportable transactions. (Code sections 6662A and 6664). The Act further authorized the imposition of monetary penalties against tax practitioners and/or their firms as appropriately determined for unethical professional behavior. Finally, recent revisions to Treasury Circular 230 address tax shelter matters, including establishing opinion standards and best practices for tax advisors. (Circular 230 governs standards of practice before the IRS; the recent revisions were finalized and published on December 20, 2004, just after the release of the Board's Proposed Rules). Collectively, these recent developments in the law emphatically demand that tax advisors and taxpayers act alike with integrity in their relationship to the tax system, a

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<sup>1</sup>In recommending that tax positions that are not reportable transactions be subject to a minimum threshold of "substantial authority" under Proposed Rule 3522(c), Grant Thornton is nevertheless advocating an independence standard that is higher than the tax return preparer standard for establishing a tax return position for an item (which requires only that a return position at least have a "realistic possibility of being sustained on its merits" under Code section 6694(a)). We support a minimum independence standard above the return preparer standard because the focus of the Board's independence concern properly is whether the registered firm is able to fairly scrutinize a transaction and understand clearly associated risk undertaken by the public company audit client, not on whether the client has taken a mere filing position on its tax return.

principle in clear harmony with the Board's goals for establishing independence in the public company audit system.

A further (but related) concern we note is Proposed Rule 3522(c)'s focus on whether a transaction was "initially recommended" by the registered firm or another tax advisor, as opposed to the public company audit client identifying the issue or being apprised of it from a non-tax advisor source. This aspect of the "aggressive tax position" definition seems likely to force taxpayers into a troubling conflict between impairing auditor independence and properly receiving tax advice from a professional tax advisor. By establishing independence impairment for tax advice initiated from a tax advisor, the Proposed Rules again misapprehend that not all tax strategies or transactions are abusive strategies or transactions, even if there is a significant purpose of reducing taxation.

The tax law is complex and its application very often is not a "black or white" matter. The Commissioner of Internal Revenue made clear in his November 20, 2003 testimony that "[t]ax professionals should assist taxpayers in navigating through this challenging landscape to determine their fair share of taxes." *Statement of Honorable Mark Everson, supra*. The tax professional's acknowledged role thus is to apply expertise to discern when strategies or transactions that have tax reduction, elimination or deferral as an objective are improper strategies or transactions, and when they are not. As a function of tax complexity, this requires a case-by-case analysis of facts, circumstances and applicable law surrounding the tax advice. Not all public company taxpayers, and certainly few middle market/mid-cap taxpayers, maintain in-house tax staff sufficient to address complex tax matters. Even where such staffs are maintained, removing the tax professional as a resource for corporate governance to avoid impairing independence is inconsistent with the critical function that outside advisors serve in the tax system, as Commissioner Everson made plain in his Senate Committee testimony. Yet, Proposed Rule 3522(c) as drafted may have the unintended impact of a typical middle market/mid-cap taxpayer being unable to preserve independence with its audit firm if any outside tax advisor initiates assistance to the taxpayer in navigating the challenging tax landscape.

Unless Proposed Rule 3522(c) is reframed to address this concern, we foresee a real possibility of unintended, significant, disruption for public companies trying properly to manage their tax obligations without the assistance of professional advisors. To implement Proposed Rule 3522(c) within its intended context, we focus on our prior recommendation that the Proposed Rule reflect the "more likely than not" and "substantial authority" standards within our suggested framework. That is, we suggest the Board provide that independence is not impaired where tax advice is initiated by the registered firm of a public company audit client or another tax advisor so long as the strategy or transaction does not involve a reportable transaction that is not at least more likely than not to be sustained if challenged or, for transactions that are not reportable transactions, are not supported by a position with substantial authority. We believe these articulated standards directly target the result desired by the Board that "a registered public accounting firm ought not to sell" an improper, abusive tax strategy or transaction to a public company audit client (p. 35), while permitting the public company audit client to receive business tax planning advice having no

connection to potential abuses that are the focus of the Board's objectives in the Proposed Rules.

Moreover, reframing Proposed Rule 3522(c) to permit proper advice by the auditor or another tax advisor will not damage or compromise investor confidence in the auditor's judgment and objectivity (p. 26). To the contrary, we believe an independence framework based on clearly understood standards, as reframed in accordance with our comments, provides predictable guidelines for advising taxpayers on proper, non-abusive tax strategies and transactions and supports the fundamental principle that taxpayers *should* be professionally advised within the bounds of the tax law. We thus believe our recommended changes to Proposed Rule 3522(c) advance the pursuit of integrity and independence in the relationship between registered firms and public company audit clients related to tax matters.

### **Tax Services for Officers in a Financial Reporting Oversight Role – Proposed Rule 3523**

The appearance of independence is critical to public confidence in tax advisors, their firms, and the accounting profession. Grant Thornton supports Proposed Rule 3523, which provides that a registered firm is not independent of the public company audit client if during the audit and professional engagement period any tax services are provided to an officer in a financial reporting oversight role at the client. The Proposed Rule precludes tax services regardless of whether they are paid for by the public company or by such officers. Grant Thornton supports this decision; we recognize that this independence issue concerns an unacceptable mutuality of interest resulting from an improper service relationship, not which party pays for the services.

However, we do recommend that Proposed Rule 3523 be revised to preclude tax services to all members of the board of directors of the public company audit client, rather than distinguish among board members by perceived financial oversight function on the board. From an independence perspective, we believe all board members (including audit committee members, who both select the registered firm performing audit services and approve the performance of other permissible services as required by law) fundamentally serve in a financial reporting oversight role as corporate governors responsible for directing the public company. Allowing tax services to be performed for *any* board member under Proposed Rule 3523 seems inconsistent with the spirit of avoiding even the appearance of compromised independence, and may undermine public confidence in the integrity of advisors, firms and the profession. Accordingly, regardless of formal board assignment role, we believe the provision of tax services to a board member should be considered improper during the audit and professional engagement period.

We also are concerned that Proposed Rule 3523 does not reflect commonplace, business realities, such as the promotion or hiring or appointment of new personnel to serve in a financial reporting oversight role. We recommend that Proposed Rule 3523 be revised to provide transition relief with regard to persons having tax services engagements in place with the registered firm who are in a financial reporting oversight role at the public company before the registered firm becomes the auditor, or who assume that role while the registered

firm already is performing audit and professional services for the company in a period of engagement. It is a regular business occurrence that persons assume financial oversight roles from within a company by promotion or are specifically hired or appointed from outside the company to serve such a role. No registered firm can guard against such action, which typically occurs without the registered firm having advance notice. Creating independence impairment related to a corporate business matter occurring outside the knowledge of the registered firm, which cannot be practically managed in advance, seems an unintended, harsh application of the Proposed Rule.

Of course, it is paramount that registered firms address the independence issue once the financial reporting oversight role is identified; and so long as the improper services relationship terminates, we see no challenge to the integrity of the system or the public's perception as to the independence of the registered firm. Grant Thornton recommends that Proposed Rule 3523 be clarified to provide that once an individual for whom the registered firm is engaged to perform tax services assumes a financial reporting oversight role at the public company audit client, it is in the best interest of public companies and investors to permit the registered firm to resign from the tax services engagement without creating an independence impairment.

### **Conclusion**

As a leading public accounting, tax and business advisory firm, Grant Thornton embraces the opportunity to commit publicly to principles of integrity and professional responsibility and acknowledge our obligation to act in a manner that serves the public interest and honors the public trust. In conclusion, we again commend the Board for its commitment to the development and promotion of integrity, ethics, and independence of registered public accounting firms that audit and review financial statements of U.S. public companies. Grant Thornton appreciates the opportunity to comment on these critical matters.

We would be pleased to discuss our comments with you. If you have any questions, please contact Dean Jorgensen, Partner in Charge of the National Tax Office, at (202) 861-4102 or Karin French, Managing Partner of SEC/Regulatory, at (703) 847-7533.

Very truly yours,



GRANT THORNTON LLP

Grant Thornton LLP  
US member of  
Grant Thornton International

**News release**

*For immediate release*  
December 15, 2004

*Contact:* Holly Wehmeyer  
Grant Thornton LLP  
312.602.8434  
holly.wehmeyer@gt.com

**Grant Thornton supports proposed PCAOB rules on providing tax services to public audit clients**

CHICAGO, Dec. 15, 2004 – Grant Thornton LLP supports the Public Company Accounting Oversight Board's (PCAOB's) proposed rules for providing tax services to public audit clients. We support their goal of upholding the ethical standard of auditor independence, which serves to foster high quality, objective audits and to promote investor confidence.

We believe that a principles-based approach should be adopted for all standards-setting areas regarding auditor independence. The current rulebook approach fosters a culture where there is more concern about the form of transactions than their substance. A principles-based framework provides greater assurance to the public that management and auditors will do the right thing. Grant Thornton began advocating this approach months before the passage of the Sarbanes-Oxley Act in 2002.

Furthermore, we support the PCAOB's decision to prohibit audit service providers from entering into contingent fee arrangements for tax services with their public company audit clients. This decision reaffirms and reinforces existing Securities and Exchange Commission (SEC) rules on contingent fees and is entirely appropriate.

Our tax professionals share high-quality ideas, solutions and positions with our clients, and ensure that every client receives the best advice possible. Our tax professionals help clients make prudent decisions about Federal, State and Local and International Taxes. We do not market questionable tax shelter products (listed transactions or those sold under a confidentiality agreement), nor do we provide tax advice that is unethical or would place our clients at risk. We support the PCAOB's decision to prohibit audit service providers from creating, selling or opining on these kinds of tax shelter products.

Grant Thornton is committed to the highest level of professional excellence and to providing outstanding independent professional business advice. We support PCAOB efforts to promote ethical behavior and auditor independence throughout the accounting industry, and we expect the proposed rules will be beneficial in restoring and supporting investor confidence. Over the course of the 60-day public comment period, we intend to thoroughly analyze the implications of the proposed rules and provide our feedback to the PCAOB.

**About Grant Thornton**

Grant Thornton LLP is the U.S. member firm of Grant Thornton International, one of the seven global accounting, tax and business advisory organizations. Through member firms in 110 countries, including 49 offices in the United States, the partners of Grant Thornton member firms provide personalized attention and the highest quality service to public and private clients around the globe. Visit Grant Thornton LLP at [www.GrantThornton.com](http://www.GrantThornton.com)

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**From:** Harrison Grathwohl [hgrathwohl6448@msn.com]  
**Sent:** Friday, January 21, 2005 7:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Harrison Grathwohl  
5507 258th Ave NE  
Redmond, WA 98053-2515

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**From:** Nelsie Aybar-Grau [nelsie@hvc.rr.com]  
**Sent:** Wednesday, January 19, 2005 9:53 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nelsie Aybar-Grau  
36 Chestnut Hls  
High Falls, NY 12440-9730

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**From:** Roger Graves [rhgraves@mindspring.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Roger Graves  
4006 Hazel Ln  
Greensboro, NC 27408-3190

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**From:** marty green [mgdelray@adelphia.net]  
**Sent:** Wednesday, January 19, 2005 9:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

marty green  
6040 Sunberry Cir  
Boynton Beach, FL 33437-3308

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**From:** Steve Green [badkat@fidalgo.net]  
**Sent:** Wednesday, January 19, 2005 9:20 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Steve Green  
29000 Outlook Ln  
Sedro Woolley, WA 98284-8416

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**From:** Karen Greenfield [ksggreenfield@cox.net]  
**Sent:** Tuesday, January 18, 2005 5:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Karen Greenfield  
202 Hartford Dr  
Newport Beach, CA 92660-4228

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**From:** Phil Grenetz [jvden-1@comcast.net]  
**Sent:** Wednesday, January 19, 2005 7:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Phil Grenetz  
87 Arbor Rd  
Churchville, PA 18966-1007

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**From:** Stewart Grey [s\_grey@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Stewart Grey  
1302 Edgewood Ave  
Trenton, NJ 08618-5112

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**From:** Gary Grice [fuzgar@comcast.net]  
**Sent:** Tuesday, January 18, 2005 5:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gary Grice  
897 Graceland Ave Apt 3E  
Des Plaines, IL 60016-6453

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**From:** David Grimesey [dude\_93@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 8:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Grimesey  
2424 Jay Ave  
Sioux City, IA 51106-1033

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**From:** Diana Grob [d\_grob@yahoo.com]  
**Sent:** Saturday, January 22, 2005 10:30 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Miss Diana Grob  
PO Box 2274  
Gresham, OR 97030-0635

I am writing to comment on Proposed Rule 3523 as described on page 35 of the PCAOB release of December 14, 2004.

As I understand the rules currently in effect, the selection of the audit firm and determination of its independence of judgment is no longer a decision by the management of the client public company and now is the responsibility of the company's Audit Committee of the Board of Directors. The members of the Audit Committee are to be independent and certified as such by the company's Board of Directors, which also has to have a majority of independent members. The relationship is between the Audit Committee and the audit firm with management on the side. The burden is on the Audit Committee to act independently of management and it is on the audit company to act independently of management and in conformity with its professional standards.

With these rules and relationships in place, it seems the proposed new rule seeks to correct a presumption of influence from a party truly relegated to the side of the decision making regarding independence. The Audit Committee is charged with watching for undue influence by management over the audit firm, and the audit firm is charged with watching for undue influence by management over the Audit Committee. So it seems the proposed rule is a bit misplaced in its attention.

While it would be naïve to assume officers in financial oversight roles will never try to steer decisions by the auditors or by the Audit Committee, it also seems that this tension and whether the result might compromise the audit firm's or the Committee's judgment are more dependent on the force of personality of the officer than the incidental choice that officer has made on who does his or her personal tax work.

There is also a privacy issue to consider. This rule would require all the financial oversight officers to disclose publicly who prepares his or her tax return. While no one including managers likes having salaries or incentives publicly known, one can accept there is some public interest in this information. It seems to me disclosure of one's tax preparer takes transparency a step too far.

People and firms act in their own financial best interest. A public accounting firm would not find it in its best interest to jeopardize huge fees from the company audit side by paying attention to or compromising its judgment on any unethical demands of a private client whose fees paid to the firm are penny ante, relatively speaking.

I also do not believe Proposed Rule 3523 can be practically applied. Consider this hypothetical situation: A public company has three officers with financial oversight roles, e.g., the CEO, the COO, and the Controller. Imagine that the CEO and CFO have sufficiently complex personal financial matters that they want to use a national firm for their tax preparation. The public company uses one national audit firm for external audit and one national accounting firm for internal audit. Since there are only four or five national accounting firms, someone in this scenario is likely to have to switch accounting/audit firms, to a disadvantage from the view of continuity and, likely, expense. The prospect of another job coming up during a year, e.g., an appraisal or an acquisition/merger, makes this even more complicated.

Further, I can foresee the application of Proposed rule 3523 creeping toward extension, maybe not through an expanded PCAOB rule but through extensions by ISS and the like. A wider net would say that independence is compromised if there is a link between the company's audit firm and the Chairman, or the Chairman of the Audit Committee, or the members of the Audit Committee. Extensions like these, which are easily visualized, would be more impractical, somewhat insulting, a real hardship, a further violation of privacy, and would not serve the public by tying all these parties in knots.

Stepping back and understanding the principle, true independence of the audit firms and the Audit Committees, I think it is time to let the current, adequate rules take hold. I do understand the public's and PCAOB's concern that a cozy relationship between management and the audit firm may exist. I would suggest that PCAOB give thought to ways for a company to rotate audit firms every 5-7 years, especially with a practical, affordable way to have a transition or overlap year, because, just as coziness is a problem, continuity and familiarity with the company procedures and the personalities are beneficial to the company, the audit firm and the public.

Respectfully submitted,

William M. Gottwald

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**From:** Hank Gruemmer [hgrmmer@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 2:45 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Hank Gruemmer  
20315 Fox Haven Ln  
Humble, TX 77338-1614

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**From:** SAJIB GUHASARKAR [sajibgs@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 7:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. SAJIB GUHASARKAR  
4370 Kissena Blvd  
Flushing, NY 11355-3769

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**From:** James Gunther [jgunther62@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 6:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Gunther  
116 S Highland Ave  
Joplin, MO 64801-1734

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**From:** Susan Gwertzman [sgwertz@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 9:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Susan Gwertzman  
215 W 88th St Apt 10E  
New York, NY 10024-2305

---

**From:** THERESA HABSHEY [tahabs@bellsouth.net]  
**Sent:** Wednesday, January 19, 2005 12:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Again and again and again, the role of the government is to protect its citizens from conflict of interest and the appearance of same. When regulation is not in place and enforced, the human inclination is to take the road of least resistance in their own self interest. These people and these organizations can and will take care of themselves. The government must only insure a level playing field. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

THERESA HABSHEY  
2220 Myrtlewood Dr  
Birmingham, AL 35216-5124

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**From:** Patrick Hagan [haganp@rcn.com]  
**Sent:** Wednesday, January 19, 2005 9:51 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Patrick Hagan  
305 E 40th St Apt 20E  
New York, NY 10016-2024

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**From:** Serna Hahn [sernbern@aol.com]  
**Sent:** Thursday, January 20, 2005 11:10 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Serna Hahn  
1045 Central Park Ave  
Flossmoor, IL 60422-2224

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**From:** James Halbig [jhalbig@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Halbig  
4169 Glenview Dr  
Santa Maria, CA 93455-3316

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**From:** Denise Hammer [archhero@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Denise Hammer  
1735 Aliso Dr NE  
Albuquerque, NM 87110-4901

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**From:** James Hampton [hampf100@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 7:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Hampton  
500 Perrin Dr  
Spartanburg, SC 29307-3011

## Rulemaking Docket Matter No. 017, Release No. 2004-015

My comments do not deal with the technical aspects of the proposed rulemaking but with their application.

In their current form, I believe a literal reading of the proposed rules indicates that a registered public accounting firm would not be treated as independent in respect of any of its audit clients if it entered into contingent fee arrangements with those clients. However, it would seem to me that the proposed rulemaking should only apply to those publicly-held entities that come under the jurisdiction of the SEC.

The stated purpose for which the PCAOB was created was to oversee the auditors of public companies. For this reason, it seems incongruous that the PCAOB would attempt to pass a rule that dictated a public accounting firm's relationship with a privately-held client.

Perhaps this was clearer to those that drafted the proposal and I am reading too much into the wording. But I feel that someone reading this rule would consider a registered public accounting firm's independence deemed compromised with respect to any contingent fee engagement with an audit client – regardless of whether that client is publicly-held or not. The authors may feel it is implied that the rule would only apply to the publicly-held clients of registered public accounting firms. But if that is their intention, I believe it would be appropriate to make this clear in the language of the rule.

It would also seem to potentially treat public accounting firms of approximately the same size and client base differently. For instance, assume that the current literal reading of the proposal is enacted. A firm with only one SEC client would be deemed to lose its independence with regard to any audit client for which it performs contingent-based engagements. However, a similar public accounting firm without any SEC clients could continue to provide contingent fee arrangements for all of its clients without any deemed loss of independence.

Based upon these reasons, I believe it would be appropriate to amplify and clarify Proposed Rule 3521 to “treat registered public accounting firms as not independent of their SEC/publicly-held audit clients if they enter into contingent fee arrangements with those clients.”

Stephen Hanebutt, CPA

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**From:** Edward Harkins [ed.harkins@verizon.net]  
**Sent:** Tuesday, January 18, 2005 2:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edward Harkins  
15920 Larch Way  
Lynnwood, WA 98037-2639

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**From:** Amy Harlib [aharlib@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 10:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Amy Harlib  
212 W 22nd St Apt 2N  
New York, NY 10011-2707

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**From:** Michael Harrington [mrh62@tds.net]  
**Sent:** Wednesday, January 19, 2005 9:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Michael Harrington  
4201 Heffernan Dr  
Madison, WI 53704-1187

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**From:** Thomas Harris [tdharris@gwi.net]  
**Sent:** Wednesday, January 19, 2005 11:50 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Thomas Harris  
56 Zion Hill Rd  
Salem, NH 03079-1512

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**From:** Carrie Hartt [carriehartt@ameritech.net]  
**Sent:** Tuesday, January 18, 2005 1:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Carrie Hartt  
1116 Iroquois St  
Detroit, MI 48214-2700

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**From:** Irene Harvey [ieharvey@att.net]  
**Sent:** Tuesday, January 18, 2005 1:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Irene Harvey  
60 E 9th St Apt 204  
New York, NY 10003-6403

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**From:** CJ Hathaway [cj@cjhathaway.com]  
**Sent:** Tuesday, January 18, 2005 1:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. CJ Hathaway  
6194 Flowering Plum Rd  
San Jose, CA 95120-1539

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**From:** Jayleen Hatmaker [jayla@woh.rr.com]  
**Sent:** Wednesday, January 19, 2005 6:36 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jayleen Hatmaker  
162 E State Route 73  
Springboro, OH 45066-9108

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**From:** Edward Hauck [ejhauck@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe the auditor must remain independent of auditor's clients. As a corollary to this need to be independent, auditors should further refrain from selling tax shelters and other aggressive tax strategies to audit clients or provide tax services to the company officials who oversee the financial reporting process. This, to me, is a no-brainer for avoiding compromise of their independent role. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edward Hauck  
20514 Swecker Farm PI  
Potomac Falls, VA 20165-4783

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**From:** Molly Hauck [mollyhauck@verizon.net]  
**Sent:** Tuesday, January 18, 2005 11:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Molly Hauck  
4004 Dresden St  
Kensington, MD 20895-3812

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**From:** James Haun [jhaun10@comcast.net]  
**Sent:** Tuesday, January 18, 2005 8:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Haun  
2624 Standifer Chase Dr  
Chattanooga, TN 37421-1483

---

**From:** Marilyn Hayes [grietzmacher@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Marilyn Hayes  
156 Elliott St  
Danvers, MA 01923-3834



January 17, 2005

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

Re: PCOAB Rulemaking Docket Matter No. 017

We appreciate the opportunity to comment on the PCAOB's proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. We respect the difficult job that the PCAOB has in assuring independence of auditors to protect the public interest while at the same time allowing the auditors and their firms the ability to work with clients to legally and properly minimize their tax liability which is also in the best interest of the investing public.

The comments below are focused on public companies that are "small business issuers," as defined by Regulation S-B. All of the public companies that we serve are in this category. We understand some of the issues related to tax shelters and other tax positions taken by large public companies, but the public interest issues impacting small business issuers are different as they relate to tax services. Small business issuers are much more limited in their access to professionals and expertise in tax planning. In fact, many small business issuers are start-up companies that desperately need tax planning advice, but their capacity for hiring professional advisors is extremely limited because investors apply pressure to minimize expenses in order to become profitable as soon as possible. Our small business issuer clients desire to obtain tax planning advice in a very economical manner in order to remain in compliance with the tax law while taking full advantage of the common benefits and deductions that are available. Whenever possible, we believe the PCAOB's rule-making process should provide allowances for small business issuers that avoid costly burdens that limit their growth.

1. The PCAOB's Proposed Rule 3522( c) includes a provision that would treat a registered public accounting firm as not independent if the firm provides services related to planning or opining on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations. While independence of the auditor is essential to the confidence of the public investors, those same investors are concerned that the value of their investments continue to grow and hold the officers and board of directors in a somewhat fiduciary capacity to assure that the company and its finances are properly managed.

Part of the proper financial management by the board of directors and the officers of any company is the duty to consult in those situations where their own knowledge is not sufficient to allow them to make the best decisions on behalf of their employees and their investors. In any publicly held company, the minimization of taxes is an important part of the financial management of the company. It is not illegal for a company, its officers and its board of directors to arrange the financial affairs to the company in such a manner to minimize its tax liability, even to the extent of taking an aggressive position on tax matters. In fact, it might be argued that these persons had violated their responsibility to the shareholders and investing public if they did not work to minimize the taxes as well as other significant costs to the business.

Another issue might be in interpreting when a transaction has been based upon "aggressive" interpretation of applicable tax laws and regulations. If no aggressive positions were ever taken, we would not need the tax courts and other courts of appeal. However, many of our tax laws are subject to interpretation. In fact, one of the major problems that businesses and tax practitioners face every day is the continuing tax legislation that is passed every year by Congress without having the corresponding regulations which provide the IRS interpretation of those laws. It is often two to three years after the laws are effective before the IRS issues its regulations. During that time, tax practitioners review the law and the Committee Reports to ascertain applicability and limitations. The IRS later issues its regulations which may reach further than the law itself and the intent of Congress as expressed in the Committee Reports. The IRS also has the benefit of reviewing or examining the tax returns up to three years after the returns have been filed during which time it may have issued far-reaching regulations. Interpretations that may have not been viewed as aggressive when looking at the actual law and Committee Reports may be considered aggressive when viewed in light of subsequently issued regulations.

To prohibit the firm that audits a business from also working with that same business regarding its tax planning is to take away one of the major tools that the business has to work with in meeting its financial goals. The proposed rule would require that the audited business go to another firm that is not auditing its financial statements for its tax planning. We believe that it is more hazardous to the investing public to have a second or third firm planning or opining on an isolated transaction that is not already familiar with the total company operations as the auditor's firm would be. To require that another firm provide this tax planning for the audited company is an unnecessary risk for the business and would require further financial outlay for the firm and its investors in the time that would be required by the second or third firm to learn all it needed to know about the business before it could adequately assist the firm in its planning for tax issues.

This proposed rule would also give businesses an excuse to go outside the firm performing their audits to another firm to structure transactions that it did not wish to bring to the auditor's attention. We believe that anytime a business starts fragmenting its auditing and tax services among firms that there is an increased audit risk to their financial statements. This fragmentation should cause every auditor concern that the management of the business has

availed itself of a means to handle certain transactional planning away from the eyes of the auditor who might view the transaction differently and require reserves or disclosure of contingent liabilities in the audited financial statements.

We therefore request that the PCAOB reconsider this proposed rule in its present form. We suggest that more clarification of "aggressive interpretation" is needed. For small business issuers, good business and tax planning advice from auditing firms that are familiar with their operations is essential for their future survival.

2. The PCAOB's Proposed Rule 3523 would set a new requirement to treat a registered public accounting firm as not independent if the firm provided tax services to officers in a financial reporting oversight role of an audit client. This proposed rule would seem to require that all financial officers, the chief executive officer and the board of directors have their income tax returns prepared by a firm or person other than the firm auditing the financial statements of the business they represent since it could be construed that all of these individuals have financial reporting oversight.

We find this particularly interesting since we think that the auditor for the business is in the best possible position to assist the board and officers of the business in filing their own income tax returns accurately. The taxability and amount to be included in taxable income from various fringe benefits and the correct reporting of these fringe benefits by the business to the IRS as well as to the officers and board of directors is best addressed by the auditor with his or her awareness of the various benefits being earned by these individuals.

Example: If the business owns a company airplane, it would not be unusual for the higher-level executives to have the opportunity to use the airplane for personal trips, but the IRS regulations are specific in their direction regarding the computation of the amount of compensation to be reported to the executive who uses the company airplane for personal purposes. The auditing firm is in position to know about the company airplane as a result of its review of the corporation's fixed assets whereas the firm who does not perform the audit would not necessarily be aware that the compensation of the executive should include any amounts for the personal use of the company airplane.

Because so much of the executive compensation package in many companies is not in the form of a bank deposit to the executive's checking account, it is even more important that the tax returns for the executives are prepared by the firm that has a clear understanding of the business and its various compensation and benefit plans. Prohibiting the auditing firm from preparing the individual income tax returns of the officers and board of directors in essence allows those persons more opportunity to commit errors in reporting their taxable income, which is contrary to the interests of another government agency, the IRS.

During the year, there are also various elections being made such as IRC Section 83(b) elections regarding stock transfers that require documentation to the IRS within 30 days and also require both the business and the individual to attach such documentation to their returns.

Requiring the splitting of these returns between firms providing tax services would increase the possibility of noncompliance through omission of these documents from all required returns. Taking this example one step further, preparation of the officer's return by the firm handling the planning and documentation relative to the Section 83(b) election allows the preparer to inspect the detail of the officer's compensation to ascertain that the transaction was included on the officer's Form W-2 for the year of the transaction.

In addition, Proposed Rule 3523 would require that auditing firms make determinations of which executives are in "a financial reporting oversight role." This determination could be subject to some interpretation. In many companies, it may not be clear whether some employees would come within that definition. This would also require the auditing firm to determine each year if a change in title or duties has occurred that would affect the auditing firm's eligibility to serve as an executive's tax preparer. Again, this would seem to undermine compliance with the tax laws and IRS regulations in that changing preparers increases the risk that tax attributes such as carryover items and basis adjustments to assets will be lost in the transition, which further undermines tax compliance.

Again, we request that the PCAOB reconsider this proposed rule and withdraw it from its final passage.

\* \* \* \* \*

Representatives from our firm would be pleased to discuss these comments with you if you desire. Please contact Warren E. McEwen at 423-785-1353 if you have any questions.

Very truly yours,

**HAZLETT, LEWIS & BIETER, PLLC**



Warren E. McEwen

WEM:tlb

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**From:** JIM HEAD [jimheadjr@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. JIM HEAD  
2279 Thomas Ave  
Berkley, MI 48072-3239

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**From:** Deirdre Healy [deirdre.healy@us.ngrid.com]  
**Sent:** Tuesday, January 18, 2005 1:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Deirdre Healy  
963 Pleasant St  
Worcester, MA 01602-1932

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**From:** R Heck [rheck@sonnenschein.com]  
**Sent:** Tuesday, February 08, 2005 4:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 8, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

R Heck  
559 Washington Ave  
West Hempstead, NY 11552-3320

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**From:** Harriet Helman [ainthair2@aol.com]  
**Sent:** Saturday, January 22, 2005 5:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Harriet Helman  
70 Juniper Ave  
Ronkonkoma, NY 11779-5926

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**From:** Carl Henne [carlhenne@cox.net]  
**Sent:** Wednesday, January 19, 2005 5:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Carl Henne  
1803 Genther Ln  
Fredericksburg, VA 22401-5207

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**From:** Tom Henninger [tomtheflowerman@msn.com]  
**Sent:** Tuesday, January 18, 2005 8:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tom Henninger  
1616 E Marks Dr  
Tampa, FL 33604-3436

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**From:** Charles Hensel [henselgary@mindspring.com]  
**Sent:** Tuesday, January 18, 2005 3:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Charles Hensel  
8414 Oak Ave  
Gary, IN 46403-1427

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**From:** William Herbick [yukoncornelius861953@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Herbick  
228 Sunapee Dr  
Johnstown, PA 15904-3616

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**From:** Tess Herrera [shiatsu2k@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 6:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Miss Tess Herrera  
1315 N Marengo Ave Apt 6  
Pasadena, CA 91103-2222

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**From:** William Herrera [bherrer@chs.srvusd.k12.ca.us]  
**Sent:** Tuesday, January 18, 2005 4:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. It is time to end the collusion that exists in the business world today. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Herrera  
82 Park Ave  
Walnut Creek, CA 94595-1610

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**From:** Susan Hesse [amazonhrt@aol.com]  
**Sent:** Wednesday, January 19, 2005 12:04 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that a professional auditor should uphold ethical standards by ensuring that auditors remain independent of their clients. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to their clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Susan Hesse  
PO Box 5545  
Endicott, NY 13763-5545

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**From:** Neil Hilmer [nhilmer@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Neil Hilmer  
10516 Noddy Tern Rd  
Weeki Wachee, FL 34613-3317

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**From:** Peter Hoag [hoagph@aol.com]  
**Sent:** Tuesday, January 18, 2005 10:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter Hoag  
13124 Cedar Ridge Dr  
Clifton, VA 20124-1430

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**From:** Henry Hofmann [hhofmann@slgg.com]  
**Sent:** Tuesday, January 18, 2005 1:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Henry Hofmann  
14309 Burbank Blvd  
Van Nuys, CA 91401-4803

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**From:** Stephen Hofstatter [steve@craftsmanconsulting.com]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Stephen Hofstatter  
1816 Park Rd  
Charlotte, NC 28203-5202

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**From:** Larre Hoke [larrehoke@aol.com]  
**Sent:** Tuesday, January 18, 2005 8:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Larre Hoke  
905 Francine Dr  
Cherry Hill, NJ 08003-2809

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**From:** Howard H. Holmes [bhunter@windsorwines.com]  
**Sent:** Tuesday, January 18, 2005 2:03 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Howard H. Holmes  
1589 Marmont Ave  
Los Angeles, CA 90069-1621

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**From:** sarah holland [holland@soton.ac.uk]  
**Sent:** Wednesday, January 19, 2005 6:36 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. sarah holland  
2708 Lakeside Dr  
Louisville, KY 40205-2567

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**From:** Regina Holt [reginamholt@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. We should do everything in our power to restore corporate responsibility to our nation's companies. We should never again have a situation such as "Enron and Arthur Anderson" and the many others that have made headlines over the past several years. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Regina Holt  
6331 Wimbledon Ct  
Elkridge, MD 21075-5906

---

**From:** Brian Hoort [hoortbri@msu.edu]  
**Sent:** Tuesday, January 18, 2005 1:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brian Hoort  
901 Britten Ave  
Lansing, MI 48910-1325

---

**From:** D Hopson [djb3h@aol.com]  
**Sent:** Tuesday, January 18, 2005 8:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. D Hopson  
8510 W 820 Rd  
Fort Gibson, OK 74434-5833

---

**From:** Janet Hose [janethose1@comcast.net]  
**Sent:** Tuesday, January 18, 2005 6:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Janet Hose  
1335 Beacon St  
Waban, MA 02468-1739

---

**From:** SANDY HOWARD [pnshoward@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. SANDY HOWARD  
11349 SW 112 CIRCLE LA-N  
MIAMI, FL 33176

---

**From:** Welton Howard [weltonhoward@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 1:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Welton Howard  
515 Topsl Beach Blvd  
Destin, FL 32550-7286

---

**From:** Linda Hoyt [llhoyt@yahoo.com]  
**Sent:** Wednesday, January 26, 2005 3:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Linda Hoyt  
5340 Bancroft Ave  
Saint Louis, MO 63109-2321

---

**From:** Jodi Hubbell [jodihubbell@hotmail.com]  
**Sent:** Thursday, January 20, 2005 12:11 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jodi Hubbell  
11495 Silverfir Dr  
Truckee, CA 96161-3210

---

**From:** Kim Huber [khuber@cwa1168.org]  
**Sent:** Wednesday, January 19, 2005 6:56 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Kim Huber  
215 Leydecker Rd  
West Seneca, NY 14224-4551

---

**From:** Gary Huddleston [ghud1@cox.net]  
**Sent:** Tuesday, February 01, 2005 10:58 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 1, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gary Huddleston  
PO Box 6671  
San Pedro, CA 90734-6671

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**From:** Jerry Humphrey [hjerryh60@aol.com]  
**Sent:** Friday, January 21, 2005 12:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jerry Humphrey  
2106 Eastern Pkwy  
Louisville, KY 40204-1409

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**From:** Arlene Hunt [ladyah@care2.com]  
**Sent:** Tuesday, January 18, 2005 6:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Arlene Hunt  
7935 Southway Rd  
Charlotte, NC 28215-2743

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**From:** Robin Hunt [robinmhunt@msn.com]  
**Sent:** Wednesday, January 19, 2005 11:57 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robin Hunt  
2708 Mountain View Ave  
Longmont, CO 80503-2311

---

**From:** Toni Hurst [aufalt@att.net]  
**Sent:** Friday, January 21, 2005 7:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Toni Hurst  
4640 S Vandalia Ave  
Tulsa, OK 74135-4715

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**From:** roburt hustus [rohustus2003@yahoo.com]  
**Sent:** Wednesday, July 27, 2005 12:02 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jul 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies.

I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process.

I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies.

I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. roburt hustus  
622 N Eutaw St  
Baltimore, MD 21201-4515

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**From:** M. E. Hutchinson [meh@adelphia.net]  
**Sent:** Tuesday, January 18, 2005 2:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. M. E. Hutchinson  
1939 W 30th St  
Lorain, OH 44052-4207

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**From:** patricia hynds [hyndzite@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Like many Americans I am losing or have lost my confidence in the integrity and ethical conduct of our corporations. You can do your part to stop this conflict of interest - and I urge you to submit this proposal for passage immediately. We the people need to have our confidence restored! I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. patricia hynds  
3880 Meadow Gtwy  
Broadview Heights, OH 44147-2743



February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006

RE: PCAOB Rulemaking Docket Matter No. 017

Ladies and Gentlemen:

The Audit and Assurance Service Committee of the Illinois CPA Society ("Committee") is pleased to comment on the following proposal, ***Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*** dated December 14, 2004. The Committee is a voluntary group of CPAs from public practice, industry, education, and government. Our comments represent the collective views of the Committee members and not the individual views of the members or the organizations with which they are affiliated. The organization and operating procedures of our Committee are outlined in **Appendix A** to this letter.

The Committee generally supports the contents of the proposal and believes that the proposed rules represent a balanced and reasoned approach to the identification of prohibited tax services. We offer certain suggestions below for your consideration.

We recommend that the proposed rules broaden certain transition provisions to accommodate those entities initially registering with the Securities and Exchange Commission ("SEC"). Specifically, the effective date for these companies could and should be referenced to the date on which an initial registration statement becomes effective, or first filed. Failure to provide such an accommodation would provide an undue burden on those companies, executives and audit firms where officer/shareholder tax returns have been prepared by the audit firm, prior to the entity registering with the SEC.

The format of the draft document is such that it provides for a mix of proposed guidance and background rationale by topic. Other promulgated guidance has been effective when it distinguishes sections by rulemaking and basis for conclusions.

Certain members believe that the prohibition on providing tax return preparation and tax compliance services to senior executives of an audit client is not consistent with the concept of being able to provide these services to the audit client itself. Additionally, the criteria developed around the "financial reporting oversight role" seems sufficiently broad that differing interpretations may cause inconsistent application.

The Board invited specific comments on certain aspects of proposed Rule 3522(c). The Committee does not believe that there should be a requirement for a public accounting firm to obtain a third-party tax opinion in support of certain aggressive tax treatment, if the potential effect of the treatment could have a material effect on the audit client's financial statements. We do believe that the public accounting firm should obtain and review any third-party tax opinion obtained by the audit client.

The definition of "aggressive tax positions" in proposed Rule 3522(c) references transactions initially recommended by the registered public accounting firm. While this definition may be intended to apply only to transactions that the audit firm has marketed and promoted, it is not clear in the circumstances.

The members of the Audit and Assurance Service Committee of the Illinois CPA Society thank you for the opportunity to respond to this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "W. P. Graf". The signature is written in a cursive style with a large, sweeping initial "W".

William P. Graf, Chair  
Audit & Assurance Service Committee

APPENDIX A

ILLINOIS CPA SOCIETY  
 AUDIT AND ASSURANCE SERVICES COMMITTEE  
 ORGANIZATION AND OPERATING PROCEDURES  
 2004 - 2005

The Audit and Assurance Services Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members appointed from industry, education and public accounting. These members have Committee service ranging from newly appointed to more than 20 years. The Committee is an appointed senior technical committee of the Society and has been delegated the authority to issue written positions representing the Society on matters regarding the setting of auditing standards. The Committee's comments reflect solely the views of the Committee, and do not purport to represent the views of their business affiliations.

The Committee usually operates by assigning Subcommittees of its members to study and discuss fully exposure documents proposing additions to or revisions of auditing and attest standards. The Subcommittee ordinarily develops a proposed response that is considered, discussed and voted on by the full Committee. Support by the full Committee then results in the issuance of a formal response, which at times includes a minority viewpoint. Current members of the Committee and their business affiliations are as follows:

**Public Accounting Firms:****Large:** (national & regional)

James A. Dolinar, CPA  
 Jeffrey A. Gordon, CPA  
 William P. Graf, CPA  
 G. W. Graham, CPA  
 Leslie A. Kivi, CPA  
 James P. McClanahan, CPA  
 Gary W. Mills, CPA  
 Michael J. Pierce, CPA  
 Monica R. Toparcean, CPA

Crowe Chizek and Company LLC  
 KPMG LLP  
 Deloitte & Touche LLP  
 Grant Thornton LLP  
 PricewaterhouseCoopers LLP  
 Altschuler, Melvoin & Glasser LLP  
 Virchow Krause & Company, LLP  
 American Express Tax & Business Services  
 PricewaterhouseCoopers LLP

**Medium:** (more than 40 employees)

Sharon J. Gregor, CPA  
 Stephen R. Panfil, CPA

Selden, Fox and Associates, Ltd.  
 Bansley & Kiener LLP

**Small:** (less than 40 employees)

Antonio Davila, Jr., CPA  
 Jeffrey M. Goltz, CPA  
 Loren B. Kramer, CPA  
 Andrea L. Krueger, CPA  
 Ludella Lewis, CPA  
 JoAnne M. Malito, CPA  
 Robert W. Owens, CPA  
 Richard D. Spiegel, CPA

Hill, Taylor LLC  
 Rosen, Goltz & Associates  
 Kramer Consulting Services, Inc.  
 Corbett, Duncan & Hubly P.C.  
 Ludella Lewis & Company  
 McGreal, Johnson and McGrane  
 Wermer, Rogers, Doran & Ruzon  
 Steinberg Advisors, Ltd.

**Industry:**

James R. Adler, CPA

Adler Consulting Ltd.

**Government:**

Scott P. Bailey, CPA

Metropolitan Pier & Exposition Authority

**Educators:**

Simon P. Petravick, CPA  
 Oliver R. Whittington, CPA

Bradley University  
 DePaul University

**Staff Representative:**

C. Patricia Mellican, CPA

Illinois CPA Society

Public Company Accounting Oversight Board  
 Office of the Secretary  
 1666 K Street, N.W.  
 Washington, DC 20006  
 United States

Düsseldorf, February 9, 2005  
 482

Dear Sirs,

**PCAOB Rulemaking Docket No. 017 “Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees”**

The IDW, the professional organization representing public auditors in Germany, appreciates the opportunity to comment on the aforementioned Rulemaking Docket. We are pleased to see that tax services in general continue to be permissible. We also fully support the proposed ban on contingent fee arrangements in Rule 3521, because such arrangements significantly threaten auditor independence. Our comments focus mainly on three issues and can briefly be summarized as follows:

- Rule 3522: We suggest that the Board clarify certain aspects related to the application of the proposed ban on an auditor involvement in so-called listed and confidential transactions. Furthermore the Board should consider certain amendments to the criteria of an “aggressive tax position”.
- Rule 3523: The notion of a “financial reporting oversight role” (although this term has been defined in Rule 3501), together with the rationale underlying the ban on any kind of tax services to senior officers are not sufficiently clear. Further clarification by the Board is crucial; at any rate we would have strong reservations if the rule were intended to be interpreted as extending this ban to services provided to non-executive management.
- Rule 3524: We oppose the considerable extension of the pre-approval requirements for permissible tax services, as proposed. There does not appear to be any justified reason to treat these services differently from other permissible non-audit services. Also, the IDW fears that if the proposed modified pre-approval procedures were to be implemented, audit committees would become

Institut der Wirtschaftsprüfer  
 in Deutschland e.V.  
 Tersteegenstr. 14  
 40474 Düsseldorf  
 Postfach 320580  
 40420 Düsseldorf

Telefonzentrale 0211/4561-0  
 Fax Geschäftsleitung 0211/4541097  
 Fax Fachabteilung 0211/4561233  
 Fax Bibliothek 0211/4561204  
 Internet <http://www.idw.de>  
 E-Mail [info@idw.de](mailto:info@idw.de)

Geschäftsführender Vorstand:  
 Prof. Dr. Klaus-Peter Naumann,  
 WP StB, Sprecher des Vorstands  
 Dr. Gerhard Gross  
 Dr. Wolfgang Schaum, WP StB

Bankverbindung:  
 Deutsche Bank AG  
 Düsseldorf  
 BLZ 300 700 10  
 Kto. Nr. 7 480 213

very reluctant to engage the auditor to provide even permissible tax services (effect of a de facto prohibition). A de facto prohibition, however, is not only inconsistent with the Board's view that tax services apart from those explicitly banned usually do not raise independence concerns but would also impair audit quality.

## **Services Related to Tax Shelter Transactions**

### General Remarks

Proposed Rule 3522 intends to prevent the statutory auditor's involvement in abusive or potentially abusive tax transactions. Specifically, a statutory auditor may not engage in planning, or opining on the tax treatment of, (a) a listed transaction, (b) a confidential transaction or (c) an aggressive tax position. We understand that these kind of services can raise independence concerns which the Board seeks to address. However, we believe that certain clarifications as to the applicability of the Rule are needed. Furthermore, the Board should consider certain amendments to the criteria that define an aggressive tax position (Rule 3522 (c)) for the purpose of this PCAOB Rule.

We are aware that Rule 3522 is specifically tailored to accommodate the characteristics of the US tax system and in requesting the Board to take appropriate action in this regard, we have taken into account the fact that non-US auditors may face considerable difficulties when trying to apply this rule properly. For example, Germany has no "listing program" comparable to that of the IRS in the US, whereby all transactions characterized as potentially abusive are individually listed. Similarly, specific tax rules on so-called confidential transactions are unknown in Germany. As a consequence, when applying the PCAOB's rules, German auditors will have to look, in particular, to Rule 3522 (c), which we believe to be of a more general nature and to implicitly include listed and confidential transactions as specific subcategories of aggressive tax positions. In addition, these difficulties in applying the Board's proposed rules in an international context reveal the shortcomings of a rules-based approach that is aimed at accommodating the specifics of an individual jurisdiction. We believe that in this respect a framework concept, as underlying the IFAC Code of Ethics as well as the EU Recommendation on Auditor Independence, is clearly superior.

### Applicability of Rules 3522 (a) and (b)

As stated above, listed and confidential transactions do not exist in Germany and probably in many other countries neither. Also, Rules 3522 (a) and (b) define listed

and confidential transactions by making reference to specific provisions of U.S. tax laws. Therefore, our understanding is that the applicability of Rules 3522 (a) and (b) is limited to transactions that are subject to U.S. tax jurisdiction. Nonetheless, we suggest that the Board explicitly confirm that view on the applicability of these Rules.

Furthermore, the Rulemaking Docket states, with regard to listed transactions, that once a transaction is actually listed, the listing act can impair the independence of an audit firm that formerly participated in the transaction, even if the firm's independence was intact at the time the transaction was executed because it reasonably and correctly concluded that the transaction was not the same, or substantially similar to, a listed transaction (refer to pages 28 and 29 of the Rulemaking Docket). That is, a subsequent listing shall also be able to affect the audit firm's independence. We believe that the Board should reconsider this treatment. Referring to future events introduces a degree of uncertainty that is neither acceptable for the audit firm nor the audit client. The parties must be able to finally assess both the current and the future impact of the service on auditor independence when determining whether or not the audit firm shall provide the service. Should the Board nonetheless maintain its present view, it must at least clarify that the listing act may only have a prospective effect on auditor independence. For example, if the listing act is concurrent with the audit firm's examination of the financial statements, the audit firm would not be considered as not independent with respect to that specific engagement, but only with respect to future audits (that is, there is no need to exchange the audit firm before termination of the engagement). Also, it remains unclear whether the Board's reasoning that a subsequent listing may impair auditor independence may also extend to other cases of future events. For example, the question arises if an auditor will be deemed no longer independent pursuant to Rule 3522 (c) after a transaction he formerly correctly judged to be more likely than not to be allowable later on turns out as impermissible under applicable tax laws.

In addition, we ask the Board to explicitly affirm that a tax-advisor-imposed condition of confidentiality, if taken on its own, does not necessarily cause the service to be qualified as prohibited under Rule 3522 (b). Conditions of confidentiality may be imposed for several reasons, a common one of which is avoidance of the tax advisor's liability to third parties. If this is the sole purpose of a confidentiality condition, we do not believe that a prohibition is warranted. Rather, it is primarily the combination of the confidentiality condition and the audit firm's intention to market the tax product to multiple clients that gives rise to a self-interest threat for the audit firm and, thus, for concerns about an impairment of the firm's independence.

### Amendments to the Criteria of Rule 3522 (c)

In drafting Rule 3522 (c) the Board has identified three criteria that shall constitute an aggressive tax position. We strongly suggest that the Board consider redrafting the second criterion by replacing “a *significant* purpose of which is tax avoidance” with “*the sole business* purpose of which is tax avoidance”. This is also the wording used in the Commission’s guidance to the audit committee (refer to page 32 of the Rule-making Docket).

The Board should consider the fact that one of the main purposes of almost any tax advice – that is, not only of advice in connection with aggressive tax positions but of permitted general tax planning and advice as well – is to reveal to the client the potential for tax savings. Accordingly, the second criterion as currently proposed does not contribute sufficiently to providing an unambiguous distinction between allowable and prohibited tax services. In contrast, if the Board implements the amendment we have suggested, this criterion will more accurately reflect the nature of aggressive tax positions, since a unique feature of such positions is usually the absence of a significant business purpose apart from tax avoidance. In this respect, it will assist in providing a clearer distinction between “normal” (permissible) transactions and the abusive or potentially abusive strategies at which Rule 3522 is aimed.

The Board further introduces into Rule 3522 (c) the criterion that the tax service is prohibited only if the proposed tax treatment is more likely than not to be not allowable under applicable tax law. We suggest that the Board clarify that this likelihood is related to the advisor’s expectation about the outcome of a final ruling by the tax courts, rather than the position he expects the IRS to take on the tax treatment (that is, whether or not the IRS is likely to challenge the transaction).

Another area of doubt associated with the more-likely-than-not-criterion in Rule 3522 (c) is whether the auditor shall be considered as not independent even in such circumstances where the outcome of his tax service is the advice that the audit client should abstain from the transaction because it is more likely than not to be not allowable under applicable tax laws. Indeed, to assume an impairment of auditor independence under such circumstances would seem extremely illogical to us. In principle, the same applies if the auditor’s advice is confined to merely enumerate various alternatives, without, however, actively promoting those alternatives that will probably not be allowable. Consequently, we believe that a decisive criterion for applicability of Rule 3522 (c) should be that the auditor actively promotes a transaction that is more likely than not to be not allowable under applicable tax laws. In our view, the current term “initially recommended by the registered public accounting firm” conveys that idea only insufficiently. Moreover, we believe that this argument is particularly rele-

vant if it was not the auditor or an audit firm of the auditor's network that initially recommended the transaction but another tax advisor.

Finally, we suggest that the Board consider introducing into Rule 3522 (c) a kind of materiality exemption. Tax services are often provided on an ongoing basis involving numerous tax transactions, rather than on an item-by-item basis. Therefore, we believe that auditor independence should not be considered to be impaired if only one or a few of these transactions represent an aggressive tax position within the meaning of Rule 3523 (c) and these transactions are of minor importance. This proposal takes into account that Rule 3522 (b) already includes a materiality exemption by referring to the minimum fee described in 26 C.F.R. § 6011.1-4(b)(3).

### **Tax Services for an Audit Client's Management**

Proposed Rule 3523 precludes an audit firm from providing any kind of tax service to an officer in a financial reporting oversight role at the audit client. We have strong reservations about this rule, primarily because its justification remains vague (if existent at all) and it is not sufficiently clear which individuals will actually be affected. In particular, we question whether only members of the executive management are affected or whether the prohibition is also intended to extend to services provided to non-executive officers. The latter point is particularly important for the application of Rule 3523 outside the US in jurisdictions with different corporate governance structures, especially those with a two-tier corporate governance system.

To the best of our knowledge, the approach now taken by the PCAOB to preclude the auditor from providing tax services to an audit client's management is internationally unique. In the national and international discussions of which we are aware, provision of tax services to an audit client's management has never been identified as an issue that, per se, raises significant concerns about auditor independence. The PCAOB's Roundtable held last summer was the first juncture at which some participants indicated that the auditor should refrain from such services. However, even then proponents of a ban did not clearly indicate whether they fear an actual impairment of the auditor's factual independence or only feel a kind of investor specific "uneasiness" when the auditor provides tax services to management.

The Rulemaking Docket is not clear on this point either. It merely states on page 35 that the proposed rule would address concerns that performing tax services for certain individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and these individuals. It is silent, however, on the concrete nature of such a mutual interest and how it could have the

potential to adversely affect the audit firm's independence and objectivity towards the financial statements to be audited.

We assume that the rationale underlying the mutual interest argument is that when an audit firm performs tax services for management, the relationship between management and the auditor might become too "cozy". Thus, when forming an opinion on the financial statements, the auditor could potentially be biased by this parallel relationship with management and thus potentially inclined not to uncover mistakes made by management in the preparation of financial statements. Should this understanding be correct, we suggest that the Board explicitly affirm it as the reasoning upon which Rule 3523 is based.

This additional explanation would also contribute to a clearer distinction of individuals to which the auditor may continue to provide tax services and those for whom performing all tax services will be prohibited, and, thus, to an adequate interpretation of the notion "financial reporting oversight role". Clarifying this matter is indispensable for the proper application of Rule 3523 in jurisdictions with corporate governance structures, which differ from those in the US. For example, under the German two-tier corporate governance system, which stipulates the distinct duties of the management board (executive board) and the supervisory board respectively, we believe that a financial reporting oversight role, as the term is applied in the Rulemaking Docket, rests solely with members of the executive board, and not with those of the supervisory board.

Under German law, preparation of the financial statements is the final responsibility of the management board. That is, financial statements exclusively contain assertions made by management. In contrast, the supervisory board has solely a monitoring function. It controls management, and in discharging its monitoring duties, the supervisory board is, inter alia, obligated to review the financial statements previously prepared by management to propose to the shareholders' meeting the auditor to be elected. Thus the supervisory board is not involved in the process of preparation of financial statements as such, and hence is not in the position to or does not exercise influence over the contents of the financial statements. Accordingly, we do not see that a client relationship between the audit firm and members of the supervisory board could create a mutual interest that has the potential to impair the auditor's objectivity towards the financial statements. Due to their monitoring function, members of the supervisory board have their own vital interest in an auditor exercising an objective and management-independent review. Consequently, our interpretation of Rule 3523 and the related definition of a financial reporting oversight role in Rule 3501 (f) (i) would be that an audit firm should not be prohibited from providing tax

services to members of a supervisory board or a similar oversight body that is not involved in the preparation of the financial statements.

Moreover, the Rulemaking Docket is silent on how Rule 3523 should be applied in the case of group structures. For example, the question could arise whether the auditor of a non-listed entity, which, however, is a subsidiary of a SEC registrant, is precluded from providing tax services to the executive management of that entity. We assume that this is not the case if the executive management of the subsidiary is in no way involved in the preparation of the (consolidated) financial statements of the SEC registrant. Nonetheless, a clarification that Rule 3523 does not prohibit the provision of tax services in such or similar circumstances would be helpful.

### **Pre-Approval Requirements for Permissible Tax Services**

Proposed Rule 3524 is aimed at implementing the Sarbanes-Oxley Act's pre-approval requirements for allowable non-audit services by prescribing certain procedures that must be observed when audit committee pre-approval of permissible tax services is sought. Specifically, under the proposed rule an audit firm seeking pre-approval of such tax services would be required to

- provide the audit committee with detailed documentation of the nature and the scope of the proposed tax service;
- discuss with the audit committee the potential effects on the audit firm's independence that could result from the firm's performance of the service; and
- document the firm's discussion with the audit committee.

We understand that the prescription of such detailed pre-approval procedures is a direct response to the Commission's requirement for a *"detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor"* (refer to page 38 of the Rulemaking Docket). Nonetheless we are seriously concerned that the Board's approach is too bureaucratic, reduces flexibility below the level that is necessary given the variety of services concerned, and may impose disproportionate burdens not only on the audit firm but also, and in particular, on audit committees.

Rule 3524 does in fact also impose specific duties on audit committees, even though its sole direct addressee is the audit firm intending to perform certain tax services for an audit client. As a result, audit committees will be required – irrespective of the facts, circumstances and complexity of the individual case – to conduct an extended analysis of the information to be provided by the audit firm, discuss any potential independence issues resulting from the service with the auditor, form its own judgment

on the desirability of the service, and, in order to minimize the risk of claims for negligence, prepare its own documentation of the pre-approval procedures conducted and the conclusions reached. We fear that prescribing this degree of detail for the pre-approval procedure that must be undertaken will ultimately have a deterrent effect on audit committees. It will promote evasive action by audit committees to a significant degree, simply leading to the advance elimination of the audit firm from the range of potential providers of tax services. Consequently, even legally permissible tax services will indirectly become subject to a de facto prohibition as a result of excessively demanding pre-approval requirements. This is, however, inconsistent with the intention of the Sarbanes Oxley Act; in addition, we believe that it was not the Board's intention to pursue a de facto prohibition in proposing the new pre-approval requirements. We also believe that the involvement of the auditor in advising on the tax affairs of its client, within the bounds of what, under the proposed rules, is considered permissible, is a positive contribution to the quality of the audit because it gives the auditor a more detailed understanding of the client's tax position. Therefore, we strongly urge the Board to revisit Rule 3524 and give full consideration to the aforementioned unintended consequences.

Moreover, Rule 3524 does not take into account that permissible tax services may vary significantly by their nature and that it appears neither warranted nor practicable that each kind of service and each engagement must uniformly undergo the same demanding pre-approval process. This holds particularly true in case of SEC registrants that operate on a global basis with subsidiaries in many different countries. For example, it seems impossible, in terms of practicability, that each time a subsidiary faces a minor VAT issue of the jurisdiction where it is domiciled and on which auditor advice is sought to pass that issue through to the audit committee of the U.S. parent and to initiate a pre-approval procedure of the kind proposed by the Board. Also, the Board does not distinguish between ongoing tax services and those related to a specific project and occurring only occasionally. Whilst a detailed pre-approval procedure might be acceptable for project-related tax services of particular importance for the registrant or the group, this is certainly not the case for services provided on an ongoing basis and often involving the need for short-term reaction. In addition, it should be borne in mind that many tax services can be described only in a very general manner (for example, routine VAT return preparation for a certain subsidiary), leaving it open how the requirements of Rule 3524 can be satisfied in those cases.

Furthermore, we believe that regulatory action by the Board related to the pre-approval issue would be warranted only to the extent that past experience has revealed deficiencies of the pre-approval process in practice. However, we are not aware of any material weaknesses that would currently call for more detailed and rigid rules. In contrast, we understand that since its establishment the audit commit-

tee pre-approval process has functioned satisfactorily and we believe that this is further attributable to the fact that the Commission's existing rules leave sufficient room for flexibility.

We hope that our comments are useful for the Board's further deliberations.

Yours truly,

A handwritten signature in black ink, appearing to read 'Klaus-Peter Naumann', with a stylized flourish at the end.

Klaus-Peter Naumann  
Chief Executive Officer

---

**From:** Lura Irish [lirish@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 9:16 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Lura Irish  
PO Box 578  
Lakebay, WA 98349-0578

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**From:** Billy Jackson [billyjackmn@netscape.net]  
**Sent:** Tuesday, January 18, 2005 7:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Billy Jackson  
8525 160th St E  
Hastings, MN 55033-9521

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**From:** Anna Jacus redacted at the commenter's request  
**Sent:** Friday, January 21, 2005 2:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Anna Jacus  
redacted at the commenter's request

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**From:** Manuel Jaime [majaime@charter.net]  
**Sent:** Saturday, March 05, 2005 1:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Mar 5, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Manuel Jaime  
2316 N. Rusk  
Wharton, TX 77488-2545

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**From:** Misti Jancosek [txgymnst@aol.com]  
**Sent:** Tuesday, January 18, 2005 10:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Misti Jancosek  
51832 Vance Vista Ct  
South Bend, IN 46628-9297

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**From:** Robert Janusko [janusko@optonline.net]  
**Sent:** Tuesday, January 18, 2005 4:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Robert Janusko  
43 Upsala Path  
West Milford, NJ 07480-4244

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**From:** bonnie jay [bonnie@estabird.com]  
**Sent:** Tuesday, January 18, 2005 1:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. bonnie jay  
511 Hill St Apt 310  
Santa Monica, CA 90405-4220

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**From:** Joya Jennings [joyajen@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Joya Jennings  
7625 E Camelback Rd Apt A231  
Scottsdale, AZ 85251-2117

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**From:** Karin Jerdee [vivisection01@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Karin Jerdee  
622 7th Ave  
Santa Cruz, CA 95062-2703

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**From:** John 186-23 121 Ave [injbovell@aol.com]  
**Sent:** Wednesday, January 19, 2005 8:33 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John 186-23 121 Ave  
18623 121st Ave  
Jamaica, NY 11412-3901

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**From:** Audrey Johnson [johmuf@msn.com]  
**Sent:** Tuesday, January 18, 2005 5:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Audrey Johnson  
1190 Margaret St  
Saint Paul, MN 55106-4715

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**From:** Dean Johnson [deanwj@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 8:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dean Johnson  
1319 Marshall Rd Apt 12  
Alpine, CA 91901-2283

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**From:** dixie jo johnson [railcrud@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Miss dixie jo johnson  
450 b hwy 99 n  
eugene, OR 97402

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**From:** Len Johnsen [nonek1@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 12:40 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Len Johnsen  
7351 W State Road 234  
Box 326  
Shirley, IN 47384-9614

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**From:** Russell Johnson [sanrus@cox.net]  
**Sent:** Tuesday, January 18, 2005 4:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Russell Johnson  
1506 Oak Dr Spc 75  
Vista, CA 92084-3511

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**From:** Timothy Johnston [tjohnst@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 12:32 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Timothy Johnston  
3094 Lake Dr Apt F7  
Marina, CA 93933-2867

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**From:** Hubert Jones [hjwater@optonline.net]  
**Sent:** Tuesday, January 18, 2005 8:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Hubert Jones  
478 Carey Ave  
Wilkes Barre, PA 18702-1502

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**From:** verna n. jones [vnjones@se.rr.com]  
**Sent:** Tuesday, January 18, 2005 2:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. verna n. jones  
6846 Crystal Lake Rd  
Keystone Heights, FL 32656-6383

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**From:** william jones [cujo9us@yahoo.com]  
**Sent:** Thursday, January 20, 2005 10:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. william jones  
3317 W Wagoner Rd  
Phoenix, AZ 85053-1032

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**From:** Clyde Jorgensen [cejorgensen@att.net]  
**Sent:** Tuesday, February 22, 2005 2:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Clyde Jorgensen  
16 Winfield St  
San Francisco, CA 94110-5141

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**From:** John Joyce [cjoy@peconic.net]  
**Sent:** Wednesday, January 19, 2005 4:10 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Joyce  
35 Middle Pond Rd  
Southampton, NY 11968-4339

---

**From:** Patricia Kaczmarek [poke11@webtv.net]  
**Sent:** Saturday, January 22, 2005 1:46 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Patricia Kaczmarek  
360 Newton Ave  
Riverhead, NY 11901-4700

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**From:** Linda Kadas [lindakadas@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 8:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Help keep people honest. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Linda Kadas  
1721 SE 33rd Ave  
Portland, OR 97214-5024

---

**From:** Hayden Kaden [kaden@prodigy.net.mx]  
**Sent:** Thursday, January 20, 2005 11:44 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Hayden Kaden  
PO Box 138  
Gustavus, AK 99826-0138

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**From:** Chuck Kaiser [ckaiser@tpt.org]  
**Sent:** Tuesday, January 18, 2005 1:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Chuck Kaiser  
4512 Hillvale Ave N  
Oakdale, MN 55128-2242

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**From:** Jeanne Karis [jmk4644@aol.com]  
**Sent:** Tuesday, January 25, 2005 8:03 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jeanne Karis  
2468 Norcrest Dr  
Muskegon, MI 49441-4451

---

**From:** Dan Karney [dk424@comcast.net]  
**Sent:** Tuesday, January 18, 2005 8:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dan Karney  
424 Lynetree Dr  
West Chester, PA 19380-1709

---

**From:** Christine Kasten [mommadoo@earthlink.net]  
**Sent:** Thursday, January 20, 2005 12:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Christine Kasten  
5386 N Via Papavero  
Tucson, AZ 85750-6055

---

**From:** cecelia keech [cecy4@webtv.com]  
**Sent:** Tuesday, January 18, 2005 8:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. cecelia keech  
27900 Ridgebluff Ct  
Rancho Palos Verdes, CA 90275-3356

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**From:** Herb and Carole Keeler [carherbole@earthlink.net]  
**Sent:** Thursday, February 10, 2005 10:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 10, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Herb and Carole Keeler  
5117 Mockingbird Rd  
Greensboro, NC 27406-9421

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**From:** Chris Kell [ckell@insight.rr.com]  
**Sent:** Wednesday, January 19, 2005 8:33 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Chris Kell  
6645 Dietz Dr  
Canal Winchester, OH 43110-9073

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**From:** D. Kathleen Keller [dkk@i-c.net]  
**Sent:** Tuesday, January 18, 2005 2:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

D. Kathleen Keller  
11531 Edinburgh Rd  
Glen Allen, VA 23060-5916

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**From:** Arthur Kendy [oscky@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 9:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Arthur Kendy  
142 W End Ave Apt 28L  
New York, NY 10023-6123

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**From:** Edward Kennedy [kennedyedward@msn.com]  
**Sent:** Tuesday, January 18, 2005 3:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edward Kennedy  
162 Updikes Mill Rd  
Belle Mead, NJ 08502-5842

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**From:** Vic Kern [vkern@sbcglobal.net]  
**Sent:** Wednesday, January 19, 2005 12:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Vic Kern  
756 Westglen Dr  
Yukon, OK 73099-6741

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**From:** Aaron Kershenbaum [kersh@optonline.net]  
**Sent:** Sunday, January 23, 2005 8:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Aaron Kershenbaum  
60 Schriever Ln  
New City, NY 10956-3314

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**From:** Candace Key [mckassoc@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Candace Key  
578 Woodbine Dr  
San Rafael, CA 94903-2428

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**From:** Lisa Khalil [cb4260@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 1:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Lisa Khalil  
2929 Bainbridge Ave Apt 2H  
Bronx, NY 10458-2834

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**From:** Mitch Kihn [mid-maine\_forestry@juno.com]  
**Sent:** Wednesday, January 19, 2005 8:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Mitch Kihn  
1320 Western Rd  
Warren, ME 04864-4463

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**From:** John Killeen [johnkill1@email.com]  
**Sent:** Wednesday, January 19, 2005 5:19 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Killeen  
2058 Saint Peters Rd  
Pottstown, PA 19465-7113

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**From:** Evelyn Klapholtz [e.klap@verizonmail.com]  
**Sent:** Tuesday, January 18, 2005 7:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Evelyn Klapholtz  
13420 87th Ave  
Richmond Hill, NY 11418-1953

---

**From:** Frank X. Kleshinski [fx.kleshinski@comcast.net]  
**Sent:** Tuesday, January 18, 2005 8:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Frank X. Kleshinski  
209 North Dr  
Jeannette, PA 15644-9629

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**From:** Karl Klonowski [klonowskip@post.com]  
**Sent:** Tuesday, January 18, 2005 7:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. We have had too many frauds and other scandals to allow the present situation to continue. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Karl Klonowski  
PO Box 25583  
Alexandria, VA 22313-5583

---

**From:** Aren Knutsen [arenknut@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 6:33 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Aren Knutsen  
2118 Green Watch Way Apt 100  
Reston, VA 20191-2426

---

**From:** Wayne J. Kohout [wkohout@tceq.state.tx.us]  
**Sent:** Tuesday, January 18, 2005 3:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Wayne J. Kohout  
5222 71st St  
Lubbock, TX 79424-2002

---

**From:** Zora L. Kolkey, MFT [zkol@mindspring.com]  
**Sent:** Saturday, January 22, 2005 12:07 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Zora L. Kolkey, MFT  
PO Box 640484  
San Francisco, CA 94164-0484

---

**From:** Gary Konecky, CPA [konecky@earthlink.net]  
**Sent:** Saturday, January 22, 2005 6:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gary Konecky, CPA  
350 Plaza Rd N  
Fair Lawn, NJ 07410-3640

---

**From:** Elaine Koplik [ekoplik@nycap.rr.com]  
**Sent:** Thursday, January 20, 2005 1:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elaine Koplik  
33 Wellington Rd  
Delmar, NY 12054-3319

---

**From:** Mark Koplik [mkoplik@uamail.albany.edu]  
**Sent:** Thursday, January 20, 2005 1:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Mark Koplik  
33 Wellington Rd  
Delmar, NY 12054-3319

---

**From:** Walter Kortge [kortge@charter.net]  
**Sent:** Tuesday, January 18, 2005 5:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Walter Kortge  
5615 Mill Creek Rd  
The Dalles, OR 97058-8503

---

**From:** Thaddeus Kozlowski [tkozlo@comcast.net]  
**Sent:** Tuesday, January 18, 2005 3:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The demise of Arthur Andersen has by no means removed the possibilities for fraud and abuse in the accounting profession (game?) and financial investment. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thaddeus Kozlowski  
1312 SW Texas St  
Portland, OR 97219-2067



280 Park Avenue  
New York, NY 10017

Telephone 212 909 5400  
Fax 212 909 5699

February 11, 2005

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

Dear Mr. Secretary:

**PCAOB Rulemaking Docket Matter No. 017:  
Proposed Ethics and Independence Rules Concerning Independence,  
Tax Services, and Contingent Fees**

On behalf of KPMG LLP (U.S.) and the other member firms of KPMG International worldwide, we are pleased to submit our comments on the Board's proposed ethics and independence rules. We commend the Board for developing the Proposed Rules that, in our view, are balanced and provide a needed level of clarity concerning what is, or is not, a permissible tax service. We welcome the opportunity to participate in strengthening auditor independence and serving the public interest.

As further explained in this letter, we support:

- the Proposed Rules on prohibiting auditors from providing tax services in connection with aggressive tax transactions;
- the Proposed Rules on prohibiting auditors from providing tax services to certain individuals in a financial reporting oversight role; and
- the Board's conclusion that providing routine tax return preparation and tax compliance, general tax planning and advice, international assignment tax services, and employee personal tax services does not compromise an auditor's independence, in fact or appearance.

We believe the rationale for the Proposed Rules on these matters, as expressed in the Release accompanying the Proposed Rules, is well reasoned and practicable.





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Page 2

We believe the Board should reconsider:

- the language in Proposed Rule 3502 regarding the obligations of persons in a registered public accounting firm because we believe the language is vague and potentially unfair; and
- the requirements in Proposed Rule 3524 for auditors to provide the audit committee with engagement letters for each proposed tax service because (i) we believe audit committees can and do make appropriate decisions about the documentation they require from the audit firms to enable them to effectively pre-approve tax services, and (ii) in some instances the volume of engagement letters would be burdensome to audit committees.

In addition, there are issues relating to implementation of the Proposed Rules that either should be reconsidered or clarified in the Final Rules. In particular, the Proposed Rules would apply certain terminology and concepts found in the U.S. tax regulations to non-U.S. transactions. We encourage the Board to carefully consider the applications of its rules in non-U.S. settings. Where it is determined these terms and concepts should apply outside of the U.S., the Final Rules should clarify their application for non-U.S. auditors.

Our full comments on the Proposed Rules are presented on the following pages in the same sequence as the issues are presented in the Release.

\*\*\*\*\*



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Page 3

### ***Responsibility Not to Cause Violations (Proposed Rule 3502)***

We support the Board's aim to create a rule codifying the ethical obligation of all persons associated with registered public accounting firms "not to be a cause of any violations by the firm" of the Sarbanes-Oxley Act (the Act), the U.S. securities laws, or the rules of the Board. We believe, however, that the text of Proposed Rule 3502 would create problems of vagueness and fairness, regarding both the proper level of intent, and causation, for establishing violations of the Proposed Rule. Indeed, the Proposed Rule text comes from a provision of the Securities Exchange Act designed for a different purpose and, if ultimately adopted, could upset the calibrated scheme established by Congress under the Act. Given the highly technical and complex nature of the accounting profession's regulatory environment, we believe the Board should develop a simpler standard so auditors have fairer and clearer guidance. Such an approach will further the Board's own regulatory goals, and will benefit public companies and the wider community of investors.

Accordingly, we recommend that the Board adopt a more limited standard in accordance with the Board's authority and the sanction scheme established by the Act. Specifically, the last clause of Proposed Rule 3502 should read "due to an act or omission the person knew would cause such violation." This language properly respects the severity of the Board's disciplinary powers under the Act, reflects the complexities inherent in the application of the relevant rules and professional standards, and allows persons associated with a registered public accounting firm to better understand their obligations and any potential sanctions for their acts or omissions.

A more complete discussion of our views on Proposed Rule 3502 is included as Attachment I to this letter.

### ***Auditor Independence (Proposed Rule 3520)***

Proposed Rule 3520 effectively mirrors the current independence requirements of the accounting profession and the Securities and Exchange Commission (SEC). We agree that an accounting firm should meet this "fundamental ethical obligation" to be independent of its audit clients.

### ***Contingent Fees (Proposed Rule 3521)***

We agree with Proposed Rule 3521 which would prohibit contingent fees with SEC audit clients. However, we believe the discussion in footnote 45 in the Release may cause confusion surrounding the intended meaning of "audit and professional engagement period." Specifically, footnote 45 implies that the Board would modify the SEC's definition so that the professional engagement period could be understood to commence when a registered public accounting firm "signs or submits to the audit client" an engagement letter or begins audit procedures, whichever is earlier. This is different from the current SEC definition which starts such period when the auditor "signs an initial engagement letter" or begins procedures, whichever is earlier. We believe that in the



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Release accompanying the Final Rule, the Board's discussion of "audit and professional engagement period" should be conformed to the current definition in Regulation S-X §210.2-01(f)(5).

### ***Tax Transactions (Proposed Rule 3522)***

Proposed Rule 3522 would treat a registered public accounting firm as not independent of its audit client if the auditor provides any non-audit service to the audit client relating to planning, or opining on the tax treatment of, a "listed" or "confidential" transaction or an "aggressive tax position" (each as defined in the Proposed Rule). We generally agree with Proposed Rule 3522. However, as detailed below, we believe revisions are necessary in order to clarify certain terms and the application of Proposed Rule 3522, especially for non-U.S. transactions.

### ***Listed Transactions (Proposed Rule 3522(a))***

Proposed Rule 3522(a) would treat a registered public accounting firm as not independent of its audit client if the firm provides services related to planning, or opining on the tax treatment of, a "listed" transaction. We agree that Proposed Rule 3522(a) adequately describes a class of transactions that carry an unacceptable risk of impairing an auditor's independence.

*Retroactive Treatment.* In discussing the Proposed Rule, the Release addresses the concept of the auditor being required to consider the potential impairment of independence for a transaction that at the time it was executed was not a "listed" (or substantially similar) transaction, but that subsequently becomes "listed." The Release also states, "[registered public accounting] firms should be cautious in participating in transactions that the firms believe could become listed." In our experience, neither an auditor nor its audit client can anticipate whether or not a transaction will become "listed" in the future. The Internal Revenue Service (IRS) does not provide advance notification of transactions that will or may become "listed." The Proposed Rule would place the audit committee and the auditor in the untenable position of having to predict the future actions of the IRS.

We believe if the conclusions on a transaction are reached in good faith and meet the criteria in Proposed Rule 3522(c) at the time the transaction is consummated, the transaction should not cause an independence impairment if it becomes "listed" at a later date. Rather, we suggest the change in status of a transaction to "listed" should be treated in a manner similar to the provision in the Release discussing Proposed Rule 3522(c), where the auditor's independence is not impaired as a result of a change in law after the service was provided or because the tax treatment simply turned out to be not allowed.



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*Non-U.S. Issues.* We are concerned that auditors outside the U.S. may not be sufficiently familiar with the term “listed” transactions (a U.S. tax term) and therefore will not understand the types of transactions “listed” by the IRS. As a result, we believe the Board should consider the impact of Proposed Rule 3522(a) on non-U.S. registrants and on U.S. registrants doing business in non-U.S. jurisdictions. It would be extremely difficult and complex for auditors outside of the U.S. to identify non-U.S. transactions that are substantially similar to “listed” transactions in the U.S. Furthermore, a transaction that is substantially similar to a U.S. “listed” transaction may be permissible in a non-U.S. jurisdiction. Given the Board’s statement in the Release that “Proposed Rule 3522(a) is narrowly tailored to describe a class of potentially abusive transactions...,” we propose that Proposed Rule 3522(a) should be limited in its application to the U.S. tax consequences of a transaction.

In the event that Proposed Rule 3522(a) is not limited in its application to the U.S. tax consequences of a transaction, we ask the Board to provide detailed guidance, sufficient to enable non-U.S. auditors to comply. For example, we believe guidance is necessary on how a “listed” transaction would be defined for transactions outside the U.S., and whether it would be necessary for non-U.S. auditors to understand each individual transaction “listed” by the IRS and to identify “substantially similar” transactions in the non-U.S. jurisdiction.

#### ***Confidential Transactions (Proposed Rule 3522(b))***

*Non-U.S. Issues.* We are concerned that auditors outside the U.S. may not fully understand the meaning of “confidential” transactions. Like “listed” transactions, “confidential” transactions, as used in this context, is a U.S. tax term. Confidentiality requirements and practices vary throughout the world and application of the U.S. concept in non-U.S. jurisdictions could conflict with longstanding and legally recognized practices in other countries. For example, in some non-U.S. jurisdictions clients may be prohibited from sharing tax treatments with third parties. We suggest that the Board not require the application of Proposed Rule 3522(b) to non-U.S. auditors.

In the event that Proposed Rule 3522(b) is applied to non-U.S. auditors, we ask the Board to provide detailed guidance, sufficient to enable non-U.S. auditors to comply with both the Final Rule and potentially conflicting local laws and regulations.

#### ***Aggressive Tax Positions (Proposed Rule 3522(c))***

*Determining Third Party Involvement.* The proposed requirement that an auditor would have an affirmative obligation to ascertain that a transaction was not initially recommended by another tax advisor is problematic if the auditor cannot rely on the audit client’s representation. Certainly, if the auditor has knowledge of the involvement of a third party tax advisor, the provisions of Proposed Rule 3522(c) should apply. However, we have not been able to identify any additional procedures the auditor could perform to reliably identify the participation of a third party tax advisor.



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Accordingly, if the auditor has no such knowledge and the client represents that the transaction was not initially recommended by a third party tax advisor, we believe Proposed Rule 3522(c) should not become operative.

If the Final Rule is not revised in this respect, we ask that the Board provide clear guidance on how an auditor can reach the level of reasonable, good faith diligence to reveal that another tax advisor initially recommended the transaction.

*Advising Not "More Likely Than Not."* It is common practice for an audit client to approach the auditor with a transaction the client is contemplating in order to obtain the auditor's thoughts and advice. If the transaction was initially recommended by a third party tax advisor, we believe the auditor's independence should not be impaired if the conclusion given by the auditor is that the transaction does not meet the "more likely than not" standard. Further, in cases where the auditor advises the client that the "more likely than not" standard is not met, we believe the auditor's independence should not be impaired if the client nevertheless decides to proceed with the transaction. We ask that the Board clarify that independence is not impaired in these circumstances.

*Meaning of "Transaction."* We suggest the Board provide clarification of the meaning of "transaction" as used in Proposed Rule 3522(c). For example, where an audit client is contemplating a business combination and the auditor provides tax services in relation to the proposed business combination, we suggest the Board clarify that the term "transaction" refers to tax advice provided in relation to the transaction and not to the business combination itself. We also suggest that Proposed Rule 3522(c) be clarified to permit an auditor to advise the audit client regarding alternatives available for tax return reporting of client initiated business transactions that are consummated before the auditor provides such advice.

*Non-U.S. Issues.* The concept "more likely than not" is a U.S. tax concept. In many cases, tax advisors in non-U.S. jurisdictions do not apply this terminology. Furthermore, footnote 70 in the Release only references a review by the IRS whereas non-U.S. transactions would be reviewed by a local taxing authority. The Board should clarify that "more likely than not" means that there is a greater than 50 percent chance that a tax position, if challenged by the relevant tax authority, would prevail.

### ***Tax Services for Senior Officers of Audit Client (Proposed Rule 3523)***

*Financial Reporting Oversight Role.* In order to provide a level of consistency with the SEC's independence rules, we believe the prohibition in Proposed Rule 3523 should include all employees in a financial reporting oversight role, whether or not they are officers of an issuer. We also believe the definition of employees to whom an auditor should not provide tax services should be expanded



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to include immediate family members of employees in financial reporting oversight roles of an issuer.

*Non-Executive Directors.* We agree that providing tax services to non-executive members of the board of directors should not impair or be perceived to impair an auditor's independence. Further, we believe a prohibition on such services may pose undue hardship for board members that participate on multiple boards served by different accounting firms, as such prohibition could significantly limit a director's options for obtaining quality tax services.

*Newly Appointed Persons.* Proposed Rule 3523 does not address situations in which a person is promoted during the year from a non-financial reporting oversight role into a financial reporting oversight role. In the interest of fairness to such employee, we suggest that an auditor be permitted to continue to provide tax services related to that particular tax year without impairing independence.

### ***Audit Committee Pre-Approval of Certain Tax Services (Proposed Rule 3524)***

*Engagement Letters.* In line with the SEC's Final Rules stating that effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets, the critical role played by audit committees in the financial reporting process and the unique position of audit committees in assuring auditor independence is widely recognized. We believe audit committees have taken their obligations for pre-approving services, including tax services, seriously and have established robust policies, procedures, and processes for doing so. Consistent with an audit committee's pre-approval policies, procedures, and processes, some audit committees may insist on receiving all engagement letters while other audit committees may require other forms of documentation for their review. In larger companies, auditors often provide routine tax compliance services in many (sometimes hundreds) of jurisdictions. Often, particularly in non-U.S. jurisdictions, this work is covered by individual engagement letters. Requiring the audit committees to receive (and implicitly to review) hundreds of engagement letters covering routine tax services will not improve audit committee oversight and could be counter productive in that regard. Accordingly, we believe audit committees should continue to make their own informed judgments about the nature of documentation required for pre-approving tax services.

If the Board believes it must mandate that the auditor provide individual engagement letters to the audit committee, we suggest that the mandate be limited to engagement letters for tax services other than routine tax compliance services or those with fees that exceed a pre-determined threshold (we suggest 5% of total fees, consistent with the de minimis threshold for pre-approval in the SEC rules). Where the auditor is not required to provide particular engagement letters, the audit committee, nevertheless, would still have the authority to require the auditor to provide the letters.



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*Information About Independence Issues.* The Release also discusses that the auditor should convey information to the audit committee that is sufficient to distinguish between tax services that could have a detrimental effect on the auditor's independence and those that would not. The example given in the Release relates to tax compliance services being provided in the absence of a competent internal tax department. The Release implies a detrimental effect on the auditor's independence in that event. We believe that the Board should reconsider this particular example. Some readers may improperly infer from it that if there is not a formal internal tax function at an audit client the auditor automatically assumes a management function, thereby impairing independence. However, there may be individuals at the audit client that can make informed judgments and take responsibility for the auditor's work. This is particularly important for small and mid-size SEC registrants and SEC registrants that operate in multiple jurisdictions but that do not maintain in-house tax staffs for each jurisdiction.

### ***Effective Date***

*Tax Engagements in Process.* The Proposed Rules call for significant and complex changes to the current independence requirements for tax engagements. Further, many tax engagements that were previously pre-approved by the audit committee (or for services to officers that did not require pre-approval but were nonetheless permitted services) cannot be completed by October 20, 2005. The potential disruption that could be caused by abruptly terminating such engagements should be recognized and considered by the Board. We suggest a transition provision that is consistent with the transition provisions for engagements in process adopted by the SEC in implementing its 2003 independence rulemaking. We believe the Final Rules should apply to all tax engagements entered into after the effective date, and that tax engagements entered into pursuant to contracts in existence on the effective date should be completed no later than one year after the effective date.

*Services Related to Past Tax Returns.* We believe that employees in a financial reporting oversight role should be permitted to continue to utilize the auditor in connection with applicable past tax matters.

*Non-U.S. Issues.* The proposed effective date is based on tax return due dates under the U.S. tax system, however the Rules will affect jurisdictions outside the U.S. which have differing due dates. Therefore, in the event that the Board adopts its proposed effective date, we believe the Board should clarify that in non-U.S. jurisdictions, providing tax services applicable to the 2004 tax year to employees in a financial reporting oversight role will not impair independence.

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Page 9

We would be pleased to clarify any comments or answer any questions about our comments. Please call or write either David Winetroub (212) 909-5552, [dawinetroub@kpmg.com](mailto:dawinetroub@kpmg.com) or Frank Lavadera (212) 909-5448, [flavadera@kpmg.com](mailto:flavadera@kpmg.com).

Very truly yours,

**KPMG LLP**

*cc:*

William J. McDonough, Chairman, Public Company Accounting Oversight Board  
Kayla J. Gillan, Member, Public Company Accounting Oversight Board  
Daniel L. Goelzer, Member, Public Company Accounting Oversight Board  
Willis D. Gradison, Jr., Member, Public Company Accounting Oversight Board  
Charles D. Niemeier, Member, Public Company Accounting Oversight Board  
Douglas R. Carmichael, Chief Auditor, Public Company Accounting Oversight Board  
Donald T. Nicolaisen, Chief Accountant, Securities and Exchange Commission  
Andrew D. Bailey, Jr., Deputy Chief Accountant, Securities and Exchange Commission

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## ***Responsibility Not to Cause Violations (Proposed Rule 3502)***

### ***A. The Board Should Not Incorporate the Concept that an Individual Can Negligently Cause an Intentional Violation into its Final Rule.***

As the Board recognized in its Release, although some of the underlying violations the Board is seeking to prevent are themselves defined as requiring “scienter,” a person might run afoul of Proposed Rule 3502 as currently worded if that person were to negligently “cause” a firm to take actions that would violate the Sarbanes-Oxley Act only if the primary actors had undertaken those actions knowingly or recklessly. But the idea that one individual could negligently “cause” others to commit an intentional violation makes little sense as a matter of logic. Failure to thwart an intentional illegal act might permit a violation to occur, but such a failure would not negligently or unintentionally “cause” (or even “contribute to”) an intentional violation; the intent of the primary parties would be an intervening cause of the illegal act.

The SEC, when invoking its “cease-and-desist” authority under Section 21C of the Securities Exchange Act, 15 U.S.C. 78u-3, has limited its assertion that “negligence is sufficient to establish ‘causing’ liability” to those situations in which “a person is alleged to ‘cause’ a primary violation that does not require scienter.” *See Howard v. SEC*, 376 F.3d 1136, 1141 (D.C. Cir. 2004) (quoting *In re KPMG Peat Marwick LLP*, Exchange Act, Release No. 43862, 2001 WL 47245, 19 (Jan. 19, 2001)). Where the primary violation requires scienter, the SEC instead requires a finding that the individual targeted by the cease-and-desist order had “aided and abetted” the firm’s primary violations of the securities laws. *See Id.* “Aiding and abetting” is a much higher standard than negligence, as the PCAOB legal staff noted in the Board’s meeting on December 14, 2004, see PCAOB Meeting Transcript, 12/14/2004, at 36, and can be proven only when the accused is shown to have had knowledge of the wrongdoing, or when his/her ignorance of the wrongdoing was the product of extreme recklessness. *See Howard*, 376 F.3d at 1143. Proving that a person “should have known” his acts would cause (let alone “contribute to”) an entity to commit a primary violation that itself can only occur when the primary parties have knowingly or recklessly violated the securities laws is not enough to hold that person liable for the violation, *see id.*, and the Board should amend Proposed Rule 3502 so that, like the SEC, it will not purport to hold a person liable for a violation requiring knowledge or intent when that person’s participation in the violation was, at worst negligent.

In sum, with respect to the issue raised at page 19 of the Release, we believe that, if the Board is to incorporate punishment for negligently causing primary violations into the Final Rule, it should limit such punishment to instances in which the primary violation does not require “scienter.”



***B. If the Rule is to Punish Individuals for Negligence, It Should not Equate “Causation” with “Contribution”, Because Such an Equation Would Be Unduly Vague, Would Be Unduly Punitive for Disciplinary Proceedings, and Could Be Inconsistent with Provisions of the Act.***

The current text of Proposed Rule 3502 states that persons “associated with a registered public accounting firm shall not cause that . . . firm to violate the Act, the Rules of the Board, [or other provisions of law], due to an act or omission the person knew or should have known would contribute to such violation.” We believe that the use of the word “contribute” is unduly vague, because it could arguably subject individuals to punishment for unforeseeable violations of which their own acts or omissions were not the proximate or legal cause whenever anyone can demonstrate that the violation might not have occurred “but for” the original acts or omissions.

The Release repeatedly states that the Proposed Rule aims to prevent individuals from “causing” violations by their firms, and claims that “[t]he phrase ‘knew or should have known would contribute to such violation’ . . . is intended to articulate a negligence standard.” This language equating “contribution” with “causation” is borrowed wholesale from Section 21C of the Securities Exchange Act, which gives the SEC authority to issue “cease-and-desist” orders, *see* PCAOB Meeting Transcript, 12/14/2004, at 37. The Release cites to *KPMG LLP v. SEC*, 289 F.3d 109 (D.C. Cir. 2002), in support of its assertion that this language from Section 21C properly articulates a negligence standard.

But this language from Section 21C does not support the use of the “contribution” language in Proposed Rule 3502, because the Proposed Rule will be disciplinary in nature, and the SEC uses the relevant language in Section 21C only when utilizing its “cease-and-desist” powers, and not when seeking to impose other disciplinary sanctions. As the D.C. Circuit pointed out in the *KPMG* case, “cease-and-desist” proceedings and disciplinary proceedings are different types of proceedings involving “fundamentally different remedies.” *See* 289 F.3d. at 119. As even the headings given the relevant sections of the Act indicate, the Board’s powers are entirely “disciplinary,” *see* Section 105, and the Board may seek to prevent violations solely through the deterrent power of “sanctions.” *See* Section 105(c)(4). The Board’s disciplinary power are retrospective in nature, and while the Proposed Rule contemplates punishment for individuals, it does not contemplate “cease-and-desist” remedies to secure prospective compliance by those individuals. Indeed, “cease-and-desist” orders are not included in the statutory list of “sanctions” that the PCAOB may impose under the Act, and they are different in kind from such sanctions.<sup>1</sup> Consequently, contrary to what the Release accompanying Proposed Rule 3502 implies, the D.C. Circuit has not approved Section 21C’s “contribution” language as an appropriate negligence standard for the imposition of disciplinary sanctions. Rather, that court held that negligence was a permissible standard for the very different authority – indeed, the very different type of proceeding – embodied in the SEC’s “cease-and-desist” power.

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<sup>1</sup> The SEC itself was not granted the authority by Congress to issue cease-and-desist orders until 1990.



The use of a standard equating “contribution” with “causation” would be vague enough to risk conflict with the Act’s provisions governing sanctions for “failure to supervise.” Section 105(c)(6) of the Act states that supervisory personnel may be sanctioned for failing to supervise their subordinates, but also provides a safe harbor for supervisors if the firm has established a reasonable program to require compliance and detect violations of the Act or the rules of the Board, and where supervisors reasonably discharged their duties under that compliance program. While it is hard to imagine that supervisors who had followed such a program in such a case could be found to have actually caused their subordinates’ violations, it would be much easier to attack the safe harbor by suggesting that some tangential failure to rigorously discipline or terminate a subordinate somehow “contributed” to a future violation by that subordinate. In such an instance, Proposed Rule 3502’s “contribution” language might eviscerate the protection guaranteed by the Act and upset the balance struck by Congress, which has tried to balance its desire to minimize violations against its recognition that no compliance program can be absolutely foolproof.

In sum, we believe that, if the Board is to incorporate punishment for negligence into the Final Rule, it should avoid vagueness and unfair results by replacing the word “contribute” with the word “cause.”

***C. We Respectfully Suggest that the Board Should Not Adopt “Negligence” as the Standard For Liability.***

Although we recognize that the Release advocates the creation of a “negligence” standard that would support the imposition of certain penalties, we respectfully suggest that there are at least two sound legal and policy reasons to reconsider that position.

First, given the vast body of technical rules and guidance to be applied, along with the difficulties inherent in the application of those rules in real time and to complex fact patterns, penalizing negligent conduct would be oppressive and draconian.<sup>2</sup> There is no reason to believe that Congress feels that such penalties are necessary. Simple negligence as an articulated level of intent justifying PCAOB sanctions appears nowhere in Section 105(c) of the Act, the source of the Board’s authority to sanction persons who violate the Act, certain securities laws, or rules of the SEC or the Board. On the contrary, the only place where the Act discusses levels of intent as prerequisites for the imposition of sanctions is in Section 105(c)(5), where Congress expressly limits the imposition of

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<sup>2</sup> A reading of Section 105(c) advanced in the Open Meeting, *see* Transcript at 37-38, that the sanctions not reserved exclusively for “intentional or other knowing conduct” are somehow “light” sanctions, is mistaken. Censure is without question a serious sanction, one which will be reported to state regulators and to the public at large, *see* Section 105(d), and which will therefore severely impact the sanctioned person’s career. Indeed, the analogous SEC sanction of censure under Rule 102(e) may only be imposed in cases of intentional wrongdoing. Similarly, a penalty of \$100,000 (for individuals) or \$2,000,000 (for firms) under Section 105(c)(4)(D)(i) is scarcely a light penalty. The catch-all provision in Section 105(c)(4)(G), moreover, arguably allows for the imposition of similarly weighty sanctions the Board might adopt. It is thus difficult to argue that Congress plainly intended that such severe sanctions – including sanctions defined solely by the Board and not by Congress – could be imposed for merely “negligent” conduct.



certain penalties to cases of intentional, knowing, or reckless conduct, or to repeated instances of negligent conduct. The signal from Congress is thus that the Board should be wary of imposing sanctions not grounded on intentional conduct.

Second, the practical implications of incorporating a negligence standard into the Final Rule would be sweeping and severe. Such a standard would expose hundreds of thousands of individuals in the accounting field to the risk of severe sanctions for actions that might in some remote way be tied to a violation of the Act or of the securities laws. Even a tightly-limited negligence standard (which we respectfully suggest the Proposed Rule as drafted is not) would inject a great deal of uncertainty into even the most mundane decisions that auditors make every day, and would place intolerable pressure on the difficult judgment calls that those who operate in this highly technical field must make on a regular basis. A “negligence” rule is particularly ill-suited for retrospective judgments about compliance with “professional standards,” and such a rule would operate as an invitation for after-the-fact attacks on conduct that was, at the time, objectively reasonable. Significantly, as discussed above, the SEC itself does not use a mere “negligence” standard to impose sanctions.

In sum, we believe that Proposed Rule 3502 will be more fair and effective if the Board eliminates the words “or should have known” from the last clause of the Proposed Rule.

### ***Conclusion***

Proposed Rule 3502 and the Release inadequately describe the basis and limits of the Board’s reasoning in seeking to adopt a “negligence” standard. Moreover, there are sound policy reasons, grounded in concerns about vagueness and fairness, why the Board should not try to assert such power. Accordingly, we recommend that the Board adopt a more limited standard in accordance with the Board’s authority and the sanction scheme established by Act. Specifically, the last clause of Rule 3502 should read “due to an act or omission the person knew would cause such violation.” This language properly respects the severity of the Board’s disciplinary powers under the Act, reflects the complexities inherent in the application of the relevant rules and professional standards, and allows persons associated with registered public accounting firms to better understand their obligations and any potential sanctions for their acts or omissions.

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**From:** ROBERT KRONISH [bobkro@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 10:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. ROBERT KRONISH  
22574 Esplanada Dr  
Boca Raton, FL 33433-5919

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**From:** paul kubinsky [pkubinsky@msn.com]  
**Sent:** Tuesday, January 18, 2005 7:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. paul kubinsky  
2250 Kinderly Dr  
Columbus, OH 43232-4064

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**From:** Iolette Kuby [lokuby@aol.com]  
**Sent:** Tuesday, January 18, 2005 6:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Wall street and the financial sector of our nation has plummeted in the esteem of the citizenry. Most people think it is inundated with liars and cheats. Certain measures can be taken to help elevate its reputation. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Iolette Kuby  
2972 E Derbyshire Rd  
Cleveland, OH 44118-2755

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**From:** Susan Kulis [susankulis@msn.com]  
**Sent:** Tuesday, January 18, 2005 2:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Susan Kulis  
17506 Devonshire Rd  
Jamaica, NY 11432-2949

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**From:** Bimal Kundu Kundu [bkkndu@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

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th St433S  
Apt. # 2216  
Minneapolis, MN 55415

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**From:** Lonnie Kuntzman [lonnbn@aol.com]  
**Sent:** Wednesday, January 19, 2005 8:44 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Lonnie Kuntzman  
7500 W N Ave  
Kalamazoo, MI 49009-8121

---

**From:** francine Kupferman [hkupferman@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. francine Kupferman  
41 Silber Ave  
Bethpage, NY 11714-1324

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**From:** Andrea Kuryak [akuryak@adelphia.net]  
**Sent:** Wednesday, January 19, 2005 8:47 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Andrea Kuryak  
116 Colton Ave  
Lackawanna, NY 14218-1426

---

**From:** Karen Kwong [klkwong@pol.net]  
**Sent:** Tuesday, January 18, 2005 3:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Karen Kwong  
11 Garibaldi St  
Lake Oswego, OR 97035-1035

---

**From:** Reed Lacy [reed\_lacy@hp.com]  
**Sent:** Tuesday, January 18, 2005 2:06 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Reed Lacy  
2140 NW 25th Pl  
Corvallis, OR 97330-1218

---

**From:** Romeo Lafond [tressy38@comcast.net]  
**Sent:** Tuesday, January 18, 2005 4:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Romeo Lafond  
659 Old Falmouth Rd  
Marstons Mills, MA 02648-1201

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**From:** Lori Lagorio [lorila01@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 8:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Lori Lagorio  
1646 S Cactus Wren Rd  
Cottonwood, AZ 86326-5087

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**From:** John Laing [jlaing@wt.net]  
**Sent:** Wednesday, January 19, 2005 10:35 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. John Laing  
10613 Sierra Oaks  
Austin, TX 78759-5166

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**From:** Chuck Lakin [clakin@sypac.com]  
**Sent:** Tuesday, January 18, 2005 7:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Chuck Lakin  
907 E State Ave  
Phoenix, AZ 85020-5049

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**From:** Carla Lamarr [car9lm@aol.com]  
**Sent:** Tuesday, January 18, 2005 6:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Carla Lamarr  
6715 NW 17th Ct  
Margate, FL 33063-2530

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**From:** Amanda Lang [innovator@comcast.net]  
**Sent:** Tuesday, January 18, 2005 3:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Amanda Lang  
714 Stillwater Dr  
Augusta, GA 30907-3137

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**From:** Liz Langford [bayrod@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Liz Langford  
12201 SW 51st St  
Miami, FL 33175-5504

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**From:** David Lawhon [david@popcultureshack.com]  
**Sent:** Tuesday, January 18, 2005 4:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Lawhon  
4211 Lafayette St Apt 635  
Dallas, TX 75204-4496

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**From:** Francis Leblanc [leblanc.francis@cnf.com]  
**Sent:** Tuesday, January 18, 2005 1:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Francis Leblanc  
7621 SW 51st Ave  
Portland, OR 97219-1427

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**From:** Laura Lee [llee@essilorusa.com]  
**Sent:** Tuesday, January 18, 2005 5:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

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I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Laura Lee  
321 Springoak Ln  
Coppell, TX 75019-3534

---

**From:** Michael Lensbouer [lenny12135@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Lensbouer  
1436 Listie Rd  
Friedens, PA 15541-7150

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**From:** Bobbi Leonard [roberta@chartertn.net]  
**Sent:** Tuesday, January 18, 2005 5:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

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Sincerely,

Ms. Bobbi Leonard  
532D Fleetwood Ct  
Kingsport, TN 37660-3414

SUSAN M. COLLINS, MAINE, CHAIRMAN

TED STEVENS, ALASKA  
 GEORGE V. VOINOVICH, OHIO  
 NORM COLEMAN, MINNESOTA  
 TOM COBURN, OKLAHOMA  
 LINCOLN CHAFFEE, RHODE ISLAND  
 ROBERT F. BENNETT, UTAH  
 PETE DOMENICI, NEW MEXICO  
 JOHN WARNER, VIRGINIA

JOSEPH I. LIEBERMAN, CONNECTICUT  
 CARL LEVIN, MICHIGAN  
 DANIEL K. AKAKA, HAWAII  
 THOMAS R. CARPER, DELAWARE  
 MARK DAYTON, MINNESOTA  
 FRANK LAUTENBERG, NEW JERSEY  
 MARK PRYOR, ARKANSAS

## United States Senate

COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

MICHAEL D. BOPP, STAFF DIRECTOR AND CHIEF COUNSEL  
 JOYCE A. RECHTSCHAFFEN, MINORITY STAFF DIRECTOR AND COUNSEL

February 24, 2005

The Honorable William McDonough  
 Chairman  
 Public Company Accounting Oversight Board  
 1666 K Street, N.W.  
 Washington, D.C. 20006-2803

Filed electronically at [comments@pcaobus.org](mailto:comments@pcaobus.org)

**RE: Comment on PCAOB Rulemaking Docket Matter No. 017,  
 Proposed Rules to Strengthen Auditor Independence and  
 Limit Inappropriate Tax Services**

Dear Mr. Chairman and Members of the Board:

This letter is written in strong support of proposed rules issued by the Public Company Accounting Oversight Board (PCAOB) to strengthen auditor independence and place appropriate limits on the tax services that a registered public accounting firm may provide to an audit client that is a publicly traded corporation.

Auditor independence is essential to public confidence in audited financial statements, but has long suffered from confusion over the requirements for independence and from indifferent enforcement. The proposed rules would revitalize this area by, first, codifying in plain language the fundamental principle that an auditor must maintain independence from an audit client throughout the audit period and related engagement. The proposed rules would also bar a registered public accounting firm from entering into a contingent fee arrangement with an audit client, from providing tax services to certain executives of the audit client, and from planning or opining on certain aggressive tax positions involving the audit client. They would also help clarify and enforce the statutory requirement in the Sarbanes-Oxley Act that registered public accounting firms obtain prior approval from the audit committee of a corporation's Board of Directors before performing any tax service for that corporation.

Together, the proposed rules provide a set of minimum standards that would help restore auditor independence, increase investor confidence in corporate financial statements, and rein in abusive practices within the U.S. tax shelter industry. In fact, the proposed rules would benefit from additional, strengthening provisions, as suggested below.

## **Evidence of Abusive Practices**

The U.S. Senate Permanent Subcommittee on Investigations, on which I serve as Ranking Minority Member, has conducted investigations into a variety of issues related to tax shelters and offshore tax havens. One key Subcommittee inquiry over the past two years has examined the role played by professional firms, such as accounting firms, in the development, marketing, and implementation of potentially abusive and illegal tax shelters. As recognized in the PCAOB materials accompanying the proposed rules, the Subcommittee's investigation culminated in hearings on November 18 and 20, 2003, and a report issued by my staff detailing four case studies of abusive tax shelters known as the Bond Linked Investment Premium Structure (BLIPS), Offshore Portfolio Investment Strategy (OPIS), Foreign Leveraged Investment Program (FLIP), and S-Corporation Charitable Contribution Strategy (SC2), which had been developed and promoted by KPMG.<sup>1</sup> Since then, the full Subcommittee has issued a bipartisan report providing not only additional detail about the KPMG tax shelters, but also information about potentially abusive or illegal tax shelters known as the Contingent Deferred Swap (CDS) and the Bond and Options Sales Strategy (BOSS), which were promoted by Ernst & Young (E&Y) or PricewaterhouseCoopers (PwC).<sup>2</sup>

The full Subcommittee report found that all three of the accounting firms it examined, KPMG, E&Y, and PwC, had been major participants in the U.S. tax shelter industry and involved in the development, marketing, or implementation of aggressive tax products for multiple clients. The evidence collected by the Subcommittee demonstrates that, among other actions, one or more of the firms targeted audit clients or executives at their audit clients when marketing potentially abusive or illegal tax shelters; sold tax products that did not meet the more-likely-than-not standard established within the firm; utilized contingent fee arrangements for these tax services despite legal and professional restrictions on such fees; and, in some instances, established alliances with audit clients to promote or implement potentially abusive or illegal tax shelters. The evidence of these abusive practices, set forth in hearing testimony, documentation and two reports, provides ample support for the proposed rules as summarized below.

### **Promoting Abusive Tax Shelters to Audit Clients**

The Subcommittee investigation provides ample evidence that KPMG, E&Y, and PwC were, at various times from 1997 to 2003, heavily involved in selling potentially abusive or illegal tax shelters to multiple clients. In addition, during that time period all three firms were subject to investigation by the IRS for their tax shelter activities and required to disclose relevant documentation and client lists. Two of the accounting firms, E&Y and PwC, eventually agreed

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<sup>1</sup> U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals" before the Permanent Subcommittee on Investigations (Nov. 18 & 20, 2003)(hereinafter "PSI Hearings"); and "U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals" (Minority Staff Report, S.Prt. 108-34, Nov. 18, 2003), reprinted in the hearing record at 145-274.

<sup>2</sup> See "The Role of Professional Firms in the U.S. Tax Shelter Industry," (hereinafter "PSI Report"), released by the Subcommittee on Feb. 8, 2005.

-3-

to pay millions of dollars to settle the IRS legal actions and committed to dismantling their tax shelter practices; the third investigation is ongoing, but KPMG has publicly acknowledged selling inappropriate tax products, has committed to dismantling its tax shelter practice, and testified that, "Today, KPMG does not present any aggressive tax strategies specifically designed to be sold to multiple clients, like FLIP, OPIS, BLIPS and SC2."<sup>3</sup>

Documentation uncovered during the course of the Subcommittee investigation disclosed that, among its sales efforts, KPMG repeatedly attempted to sell aggressive tax products to its audit clients and their officers and directors. This evidence includes instances in which KPMG mined its audit client data to develop a list of potential clients for a particular tax product;<sup>4</sup> developed tax products that were designed and explicitly called for "fostering cross-selling among assurance and tax professionals";<sup>5</sup> and carried out marketing initiatives that explicitly called upon KPMG tax professionals to contact their audit partner counterparts and work with them to identify appropriate clients and pitch KPMG tax products to those audit clients.<sup>6</sup> Another KPMG document stated that "many, if not most, of our CaTS [a KPMG group that sold generic tax products to multiple clients] targets are officers/directors/shareholders of our assurance clients."<sup>7</sup>

A recent report prepared by the Government Accountability Office (GAO) at my request, analyzing tax shelter services provided by accounting firms to publicly traded companies or their officers or directors, shows that KPMG was not alone in targeting audit clients for tax shelter sales.<sup>8</sup> Using data compiled by the IRS and Standard & Poor's related to 500 of the largest U.S. publicly traded companies in 2003, as identified in *Fortune* magazine, GAO found that for the five year period, 1998 to 2003, 207 corporations, or about 40%, had purchased tax shelter services from a third party, of which 114 had purchased them from an accounting firm, and 61 from the company's own auditor. The GAO report also found that 57 of the Fortune 500 companies saw one or more of their officers or directors purchase tax shelter services from a third party, of which 33 purchased them from an accounting firm, and 17 from their company's own auditor. Altogether, GAO estimated that 114 of the Fortune 500 companies and 4400 individuals in the IRS database had purchased tax shelter services from an accounting firm, resulting in possible tax revenue losses to the U.S. Treasury totaling about \$32 billion.

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<sup>3</sup> See KPMG testimony at PSI Hearings (11/18/03).

<sup>4</sup> See, e.g., Presentation dated 7/17/00, "Targeting Parameters: Intellectual Property – Assurance and Tax," with attachment dated September 2000, entitled "Intellectual Property Services," at page 1 of the attachment, Bates XX 001567-94.

<sup>5</sup> Presentation dated 3/6/00, "Post-Transaction Integration Service (PTIS) – Tax," by Stan Wiseberg and Michele Zinn of Washington, D.C., Bates XX 001597-1611.

<sup>6</sup> See e.g. email dated 8/14/01, from Jeff Stein and Walter Duer to "KPMG LLP Partners, Managers and Staff," "Stratecon Middle Market Initiative," Bates KPMG 0050369.

<sup>7</sup> "CaTS" stands for KPMG's Capital Transaction Services Group which was then in existence and charged with selling tax products to high net worth individuals.

<sup>8</sup> See "Tax Shelters: Services Provided by External Auditors," Report No. GAO-05-171 (2/1/05).

-4-

When accounting firms use their audit partners to identify potential clients and target audit clients for tax shelter sales pitches, they not only take advantage of the auditor-client relationship, but also create a conflict of interest in those cases where they succeed in selling a tax shelter to an audit client. This conflict of interest arises when the accounting firm audits the client's financial statements and, as part of that audit, examines the client's tax return and its use of the tax shelter to reduce its tax liability and increase its income. In such situations, accounting firms, in effect, are auditing their own work and impairing their independence.

### **Selling Dubious Tax Products**

In addition to establishing that accounting firms were major participants in the U.S. tax shelter industry, the Subcommittee investigation found disturbing evidence that, in some instances, the accounting firms it examined were knowingly selling dubious tax products to multiple clients, at times over the objection of one or more of their tax partners. Two examples illustrate the problem.

First is the case of BLIPS, a potentially abusive tax shelter developed by KPMG. The Subcommittee investigation determined that KPMG had used an elaborate procedure to develop BLIPS and try to reach a consensus within the firm on the substance and wording of the KPMG opinion letters to be provided to BLIPS clients supporting the validity of the tax shelter.<sup>9</sup> The evidence showed that, during the BLIPS review and approval process, some KPMG tax experts repeatedly raised strong technical objections to BLIPS and recommended against issuing a more-likely-than-not opinion letter for the product. Senior KPMG personnel pressured these tax experts to "sign off" on the product's technical soundness, despite their concerns. One key KPMG tax expert finally capitulated, sending his superior an email stating in part: "I don't like this product and would prefer not to be associated with it. However, [with] the additional [factual] representations ... I can reluctantly live with a more-likely-than-not opinion being issued for the product." He and other KPMG tax experts remained unconvinced, however, that BLIPS could withstand IRS scrutiny and continued to recommend against issuing a favorable opinion letter. Several months later, the KPMG tax expert wrote to his superiors: "[B]efore engagement letters are signed and revenue is collected, I feel it is important to again note that I and several other [KPMG] partners remain skeptical that the tax results purportedly generated by a BLIPS transaction would actually be sustained by a court if challenged by the IRS."

During this prolonged dispute within the firm, a senior KPMG tax professional sent an email to eight colleagues urging the firm's tax leadership to approve a tax opinion letter concluding that it was more likely than not that BLIPS would be sustained by a court. This senior KPMG tax professional frankly acknowledged the technical problems and reputational risks associated with BLIPS, but recommended going ahead and selling the product to clients. He characterized the key "business decisions" as follows:

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<sup>9</sup> See PSI Report discussion of "BLIPS Development and Approval Process," at 16-24.

-5-

“(1) Have we drafted the opinion with the appropriate limiting bells and whistles . . . and (2) Are we being paid enough to offset the risks of potential litigation resulting from the transaction? ... My own recommendation is that we should be paid a lot of money here for our opinion since the transaction is clearly one that the IRS would view as falling squarely within the tax shelter orbit.”

KPMG began selling BLIPS in 1999, and within a year issued tax opinion letters to 186 clients, obtaining more than \$50 million in fees and making BLIPS one of the firm’s highest revenue-producing tax products. In 2000, the IRS designated BLIPS an illegal tax shelter and took enforcement action against taxpayers who used it. Several of these taxpayers have, in turn, sued KPMG for malpractice in recommending they use BLIPS.

A second example involves a potentially abusive tax shelter known as CDS, which was marketed by E&Y. The Subcommittee investigation found evidence that internal E&Y deliberations over selling CDS to clients were marked by dissension and dissatisfaction.<sup>10</sup> In this case, a small group of E&Y tax partners had reviewed and approved CDS for sale to clients, and arranged for an outside law firm to provide a legal opinion concluding that, if challenged, CDS “should” be upheld in court.<sup>11</sup> E&Y did not, itself, issue a tax opinion in support of CDS. Documents obtained during the Subcommittee investigation indicate that at least two E&Y tax partners expressed significant misgivings about the product, suggesting that it might not meet even the lower standard of “more likely than not.” One tax partner objected to selling the tax product using an outside law firm’s tax opinion, when E&Y itself had not determined that the tax product complied with the law. About the same time, in September 1999, a potential client’s outside counsel wrote to the firm that the CDS transaction “appears to be a classic ‘sham’ tax shelter that would be successfully challenged on audit by the IRS.” The outside counsel outlined numerous serious problems with the tax product and the opinion supporting it. This evidence shows that E&Y clearly knew CDS had technical problems and could qualify as an abusive tax shelter. The firm nevertheless actively marketed CDS from 1999 until 2001, selling 70 CDS transactions involving 132 taxpayers in return for fees exceeding \$27 million. In 2002, the IRS designated CDS an illegal tax shelter.

Both KPMG and E&Y had determined that the firm would only sell tax products that met or exceeded the more-likely-than-not standard. But both firms sold tax products that did not meet this standard and were subsequently determined by the IRS to be abusive tax shelters. These two examples raise serious questions about how a firm determines when the more-likely-than-not standard is met and how internal dissent should be handled.

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<sup>10</sup> See PSI Report discussion of E&Y approval of CDS at 84-87.

<sup>11</sup> E&Y later characterized the approval process in place at the time as “ad hoc, decentralized, and informal,” and told the Subcommittee that it has since been revamped. PSI Report at 82.

## Use of Prohibited Contingent Fees

Another disturbing practice uncovered by the Subcommittee investigation was that all three of the accounting firms it examined had charged clients contingent fees based upon the projected tax savings to be achieved by a particular tax product, despite statutory and professional restrictions on these fees established by the Securities and Exchange Commission (SEC), many states, and the American Institute of Certified Public Accountants (AICPA).<sup>12</sup>

In the case of BLIPS, for example, the Subcommittee found that KPMG had typically set its fee equal to 7% of the generated "tax loss" that a client could expect from the transaction and use to shelter other taxable income. In the case of CDS, the Subcommittee found that, while E&Y expressed its fee as a flat dollar amount in its engagement letters, apparently to avoid contingent fee issues, internal E&Y documents showed that this fee was actually calculated as 1.25% of the tax loss to be generated by the CDS transaction. In fact, a sample E&Y engagement letter gave the following guidance to E&Y personnel writing an engagement letter for a CDS transaction: "Our fee for providing the professional services referred to above will be \$[Insert amount at 1.25% of losses to be generated ....]"<sup>13</sup> According to E&Y, this fee arrangement meant that, in a typical CDS \$20 million loss transaction, E&Y received \$250,000 in fees from its client. A third example involves the case of BOSS, in which the Subcommittee found that PwC had typically required its clients to make an out-of-pocket cash investment equal to 8.5% of the target income to be sheltered or tax loss to be achieved, about half of which was then used to pay fees to PwC and other professional firms implementing the transaction.

Some tax professionals at the accounting firms warned against using such contingent fees. Within KPMG, for example, a senior tax partner took the position that fees based on projected client tax savings were contingent fees prohibited by AICPA Rule 302.<sup>14</sup> However, other KPMG tax professionals disagreed, complained about this interpretation, and pushed hard for the firm to set fees based on projected tax savings. One memorandum declared that the senior tax partner's interpretation of Rule 302 "threatens the value to KPMG of a number of product development efforts," "hampers our ability to price the solution on a value added basis," and will cost the firm millions of dollars.<sup>15</sup> The memorandum also objected strongly to applying the contingent fee

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<sup>12</sup> See, e.g., 17 C.F.R. § 210.2-01(c)(5) (SEC contingent fee prohibition: "An accountant is not independent if, any point during the audit and professional engagement period, the accountant provides any service or product to an audit client for a contingent fee."); AICPA Code of Professional Conduct, Rule 302 ("[A] contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.").

<sup>13</sup> See Sample Engagement Letter, Bates 2003EY011138 (emphasis in original).

<sup>14</sup> Subcommittee interview of Lawrence DeLap (10/30/03); memorandum dated 7/14/98, from Gregg Ritchie to multiple KPMG tax professionals, "Rule 302 and Contingency Fees – CONFIDENTIAL," Bates KPMG 0026557-58.

<sup>15</sup> Memorandum dated 7/14/98, from Gregg Ritchie to multiple KPMG tax professionals, "Rule 302 and Contingency Fees – CONFIDENTIAL," Bates KPMG 0026555-59.

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prohibition to, not only the firm's audit clients, but also to any individual who "exerts significant influence over" an audit client, such as a company director or officer. The memorandum stated this expansive reading of the prohibition was problematic, because "many, if not most, of our CaTS targets are officers/directors/ shareholders of our assurance clients."<sup>16</sup> The position of the objecting tax professionals prevailed over that of the senior tax partner.

In addition, the Subcommittee investigation found that, in some instances, contingent fees restrictions appeared to have been circumvented through disingenuous management of particular engagements. For example, a KPMG document related to OPIS clearly identified the states that prohibited contingent fees. Then, rather than prohibit OPIS transactions in those states or require an alternative fee structure, the memorandum directed KPMG tax professionals to make sure the OPIS engagement letter was signed, the engagement was managed, and the bulk of services was performed "in a jurisdiction that does not prohibit contingency fees."

### **Prohibited Alliances with Audit Clients**

Still another abusive practice uncovered during the Subcommittee investigation involves the willingness of KPMG, at times, to enter into professional alliances with audit clients to market or implement abusive tax shelters, despite SEC and company prohibitions to the contrary.<sup>17</sup> For example, Deutsche Bank, HVB, and Wachovia Bank are all audit clients of KPMG, yet at various times all three played roles in marketing or implementing KPMG tax shelters. Deutsche Bank and HVB provided literally billions of dollars in financing to scores of KPMG clients purchasing either OPIS or BLIPS products. Without this financing, KPMG would have been unable to implement these tax shelters for its clients. Evidence shows that Wachovia Bank, through First Union National Bank, had set up a formal internal procedure to evaluate specific tax shelter promoters and tax products for possible introduction to bank clients. In April 1999, the bank formally approved making client referrals to KPMG (as well as to PwC) and offering KPMG tax products to its clients.<sup>18</sup> First Union eventually referred numerous clients to KPMG, and was paid a \$100,000 fee for each client who actually purchased a tax product from the accounting firm.

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<sup>16</sup> "CaTS" stands for KPMG's Capital Transaction Services Group which was then in existence and charged with selling tax products to high net worth individuals.

<sup>17</sup> The SEC "Business Relationships" regulation states: "An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders." 17 C.F.R. § 210.2-01(c)(3).

<sup>18</sup> First Union also provided referrals to strategy providers other than KPMG and PwC. According to a former First Union employee, the due diligence process was designed in part to centralize referrals of various strategies and strategy providers to banking clients. Multiple banking groups were providing referrals of various strategies and strategy providers designed by law firms and investment advisors. Subcommittee interview with former First Union employee (5/27/04).

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At the time these activities occurred, KPMG Tax Services Manual stated: “Due to independence considerations, the firm does not enter into alliances with SEC audit clients.”<sup>19</sup> KPMG defined an “alliance” as “a business relationship between KPMG and an outside firm in which the parties intend to work together for more than a single transaction.”<sup>20</sup> KPMG policy was that “[a]n oral business relationship that has the effect of creating an alliance should be treated as an alliance.”<sup>21</sup> Another provision in KPMG’s Tax Services Manual stated: “The SEC considers independence to be impaired when the firm has a *direct or material indirect* business relationship with an SEC audit client.”<sup>22</sup>

Despite the SEC prohibition and the prohibitions in its own Tax Services Manual, KPMG worked with audit clients Deutsche Bank, HVB, and Wachovia, on multiple BLIPS, OPIS and FLIP transactions. KPMG tax professionals were clearly aware that doing business with audit clients raised auditor independence concerns.<sup>23</sup> KPMG apparently attempted to resolve the auditor independence issue by giving clients a choice of banks to use in the OPIS and BLIPS transactions, including at least one bank that was not a KPMG audit client.<sup>24</sup> It is unclear, however, whether individuals actually could choose what bank to use. It is also unclear how providing clients with a choice of banks alleviated KPMG’s conflict of interest, since it still had a direct or material indirect business relationship with banks whose financial statements were certified by KPMG auditors. This evidence of a firm’s blatant disregard for auditor independence rules demonstrates the need not only for new rules, but also for new enforcement efforts.

### Analysis and Recommendations

The Subcommittee investigation provides ample support for the auditor independence rules proposed by the PCAOB. In fact, the accumulated evidence suggests that some of the rules should be further strengthened as indicated below.

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<sup>19</sup> KPMG Tax Services Manual, § 52.1.3 at 52-1.

<sup>20</sup> *Id.*, § 52.1.1 at 52-1.

<sup>21</sup> Minutes dated 9/28/98, of KPMG “Assurance/Tax Professional Practice Meeting” in New York, “Summary of Conclusions and Action Steps,” Bates XX 001369-74, at 1373.

<sup>22</sup> *Id.*, § 52.5.2 at 52-6 (emphasis in original).

<sup>23</sup> See, e.g., memorandum dated 8/5/98, from Doug Ammerman to “PFP Partners,” “OPIS and Other Innovative Strategies,” Bates KPMG 0026141-43 (“Currently, the only institution participating in the transaction is a KPMG audit client .... As a result, DPP-Assurance feels there may be an independence problem associated with our participation in OPIS ....”); email dated 2/11/99, from Larry DeLap to multiple KPMG tax professionals, “RE: BLIPS,” Bates KPMG 0037992 (“The opinion letter refers to transactions with Deutsche Bank. If the transactions will always involve Deutsche Bank, we could have an independence issue.”); email dated 4/20/99, from Larry DeLap to multiple KPMG tax professionals, “BLIPS,” Bates KPMG 0011737-38 (Deutsche Bank, a KPMG audit client, is conducting BLIPS transactions); email dated 11/30/01, from Councill Leak to Larry Manth, “FW: First Union Customer Services,” Bates KPMG 0050842 (lengthy discussion of auditor independence concerns and First Union).

<sup>24</sup> See, e.g., email dated 4/20/99, from Larry DeLap to multiple KPMG tax professionals, “BLIPS,” Bates KPMG 0011737-38 (discussing using Deutsche Bank, a KPMG audit client, in BLIPS transactions).

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**Auditor Independence Requirement.** The public has traditionally relied on independent auditors to ensure that financial statement audits of publicly traded corporations are fair, accurate and trustworthy. It is a fundamental principle and ethical obligation that the auditor evaluating the accuracy and fairness of a corporation's financial statement be independent of the audit client throughout the audit and the professional engagement period. Proposed Rule 3520 sets out that principle in clear and unmistakable terms, and should be adopted. Proposed Rule 3501(a)(iii) provides easy-to understand, bright-line rules for determining the beginning and end of the audit and professional engagement period, and provides needed clarity. Proposed Rule 3501(a)(ii) and (iv) together make it clear that the auditor must be independent not only of its direct audit client, but also the audit client's affiliates. Proposed Rule 3502 takes the essential step of stating that not only accounting firms, but also persons associated with those firms, are obligated not to cause the firm to violate any applicable law or regulation.

While strongly supporting these proposed rules, I respectfully suggest that they should be further strengthened in two ways. First, although the PCAOB materials discussing Proposed Rule 3520 cite the importance of auditors maintaining their independence in fact and appearance, the proposed rule itself makes no mention of the need for auditors to avoid circumstances which create the appearance or perception that an auditor's independence is impaired. Unless the proposed rule requires auditors to maintain the appearance of independence as well as actual independence, it will establish a standard that is weaker than and inconsistent with the Statement on Auditing Standards No. 1 and the Supreme Court cases cited in the PCAOB materials.

Secondly, the PCAOB should consider whether proposed Rule 3520 should be further clarified and strengthened by adding a new subsection directing auditors to consider among other factors whether a contemplated action would lead to: (a) a conflict of interest between the accountant and audit client; (b) the accountant's auditing his or her own work; (c) the accountant's acting as a manager or employee of the audit client; or (d) the accountant's acting as an advocate of the audit client. As explained in the PCAOB materials, these "four overarching independence principles" have long guided analysis of auditor independence issues by the SEC, AICPA, and others. Yet there is currently no mention of these principles in the text of the proposed auditor independence rules, despite their proven usefulness in analyzing whether particular practices impair auditor independence. The PCAOB is respectfully urged to incorporate them into proposed Rule 3520.

**Contingent Fee Prohibition.** Proposed Rule 3521 would prohibit accounting firms from providing any service or product to an audit client "for a contingent fee or a commission," paid directly or indirectly. Proposed Rule 3501(c)(i) defines "contingent fee" as "any fee established for the sale of a product or ... service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service."

This prohibition on contingent fees is a necessary step to help eliminate improper incentives that create a conflict of interest between an accounting firm's conducting a

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dispassionate analysis of a client's financial reporting and tax obligations, and adopting an aggressive interpretation to justify charging the client substantial fees based upon the client's alleged savings. Extending this prohibition to cover contingent fees paid "directly or indirectly" is an appropriate response to evidence in the Subcommittee investigation regarding the tactics used by some accounting firms to disguise the contingent nature of their tax shelter fees. The proposed rules' narrow exception to the prohibition is also appropriate in light of the wholesale misuse of the exception in the SEC and AICPA rules by some accounting firms seeking to justify the imposition of contingent fees. As written, the new contingent fee prohibition would provide a clear directive to registered public accounting firms to stop using these fees. To be effective, however, the new rule would have to be accompanied by rigorous enforcement.

**Prohibition on Promoting Aggressive Tax Positions.** Proposed Rule 3522 would prohibit registered public accounting firms from planning or opining for an audit client a transaction which qualifies as a "listed" or "confidential" transaction under IRS regulations, or which qualifies as an "aggressive tax position" under the proposed rule. The proposed rule defines an "aggressive tax position" as one which was "initially recommended" by the accounting firm or another tax advisor, and has "tax avoidance" as a "significant purpose," unless the proposed transaction "is at least more likely than not to be allowable under applicable tax laws."

In essence, the proposed rule seeks to prohibit registered public accounting firms from advocating aggressive tax positions to their audit clients. Recent history has made it clear that the lucrative fees that accounting firms can obtain from promoting aggressive tax positions undermines their independent judgement on the merits of such transactions and encourages abusive tax shelter practices by publicly traded corporations. The prohibition also establishes a useful framework focused on listed transactions, confidential transactions, and aggressive tax positions.

It is also important to note, however, that the proposed rule would impose essentially the same standards for tax products sold by accounting firms which the major accounting firms claim they have already been following for years, but which failed to prevent these firms from promoting abusive tax shelters. For example, all three major accounting firms examined by the Subcommittee claimed that they did not, as a matter of policy, promote listed transactions or confidential transactions as defined by the IRS regulations. They also claimed that each of the tax products examined by the Subcommittee had been analyzed and found by the firm to be more likely than not to survive a court challenge. The proposed rule does not lay down any tougher standards for these firms, nor does the proposed rule indicate how the PCAOB would ensure greater compliance by accounting firms with the more-likely-than-not standard. For example, the rule says nothing about how accounting firms should handle internal dissension, when some of its tax partners dispute the position of other tax partners that a particular tax product is more likely than not to be upheld by a court.

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To enforce the proposed standard, the PCAOB would have to take on the duty of reviewing specific tax products being promoted by accounting firms and, in consultation with the IRS, determine whether these specific products meet the more-likely-than-not standard in the proposed rule. While such PCAOB determinations would dramatically strengthen accounting firm oversight in the tax field, they might also invite substantial litigation that could sap the resources of the Board.

Another, possibly more fruitful approach would be to elevate the standard for tax products promoted by registered public accounting firms to any publicly traded corporation, whether an audit client or not. This elevated standard could require registered public accounting firms to promote only those tax products which, if challenged, "should" be upheld in court. Such tax products are supposed to have a significantly greater probability of being upheld in court than the 51% probability under the more-likely-than-not standard. This higher standard would match the standard already applied to tax transactions that may be included in the financial statements of publicly traded corporations, and would force accounting firms to meet a higher standard than currently. It would also discourage registered public accounting firms from promoting and publicly traded corporations from using questionable tax products that fall close to the line of acceptable practice. To require accounting firms to meet this higher standard, Proposed Rule 3523 could be amended by striking "at least more likely than not" and inserting "should be found."

Moreover, whether or not the Board toughens the standard for tax products promoted by registered public accounting firms, the proposed rule needs to address the issue of how a firm handles dissension within its ranks over whether a tax product should be offered for sale to clients. Proposed Rule 3522 should be amended to address this issue, perhaps by requiring registered public accounting firms to develop written rules for approving new tax products or services for sale, including procedures for resolving differing views on whether a new tax product or service violates the proposed prohibition on aggressive tax positions.

Finally, the proposed rule could be strengthened by adding a new subsection prohibiting registered public accounting firms from engaging in aggressive sales efforts related to tax services, including prohibitions on mass marketing tax products or services to multiple clients, initiating cold calls or other telemarketing pitches to multiple clients, or targeting audit clients for sales efforts. The proposed rule could also prohibit registered public accounting firms from developing sales leads using information collected from clients or prospective clients for tax preparation purposes. As currently drafted, the proposed rule prohibits planning and opining on aggressive tax positions, but not marketing them to multiple clients.

**Tax Services for Certain Officers of Audit Clients.** Proposed Rule 3523 would prohibit accounting firms from providing "any tax service to an officer in a financial reporting oversight role at the audit client." Proposed Rule 3501(f) clarifies that the officers covered by this prohibition are persons who prepare or exercise influence over a company's financial statements. This proposed rule would help eliminate a conflict of interest that has affected the

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auditing profession. The GAO report cited earlier shows that the provision of tax services by an auditor to a company's officers and directors is not widespread, but does take place. The Subcommittee's investigation of KPMG establishes that this firm explicitly targeted the officers and directors of its audit clients for tax shelter sales.

The serious conflict of interest problems that can arise from this situation also became apparent in a review conducted by the Subcommittee into the sale of a tax shelter by E&Y to several officers of an audit client, Sprint Corporation, a publicly traded corporation. The Subcommittee learned that, in early 2000, E&Y used a conference room in Sprint headquarters to present information to a number of Sprint executives about a tax product that would allegedly defer the payment of taxes on large gains from stock options previously awarded to the executives by Sprint. The Subcommittee learned that over half a dozen Sprint executives purchased this tax product from E&Y, including Sprint's chief executive officer (CEO) and chief operating officer. After several of the executives had exercised their stock options, the Sprint stock price began to fall, and the IRS began to investigate the tax product as a potentially abusive tax shelter, several executives, including the CEO, asked Sprint in late 2000 to rescind their stock options and return them to the condition they had been in prior to exercising the options. Sprint consulted with E&Y and the SEC over the impact that such a rescission would have on its financial statement, determined that a rescission would require the company to recognize a multi-million-dollar expense, and declined to rescind the stock options. During the course of these events, E&Y was required to advise both Sprint and its individual officers on their best course of action. Over the course of 2001 and 2002, relations between E&Y and Sprint's top two officers deteriorated, as the IRS pressed both individuals about the tax shelter. In 2003, Sprint asked both officers to leave the company; in 2004, Sprint dismissed E&Y as its auditor. In 2003, Sprint adopted a policy prohibiting its auditor from providing any professional services, including tax services, to its executive officers, officers in its finance division, and audit committee directors.

The experience of the auditor in the Sprint matter, together with the Subcommittee's findings on KPMG and GAO's broader data analysis, provide ample evidence of the need for the prohibition contained in proposed Rule 3523 to prevent conflicts of interest and preserve auditor independence. The PCAOB should also consider amending the proposed rule to apply not only to officers, but also independent directors who exercise influence over the preparation of a corporation's financial statements.

**Audit Committee Pre-Approval of Certain Tax Services.** Proposed Rule 3524 would require a registered public accounting firm to provide to a corporation's audit committee detailed information about the tax services it would like to provide to the corporation. The firm must provide a copy of the actual engagement letter relating to the tax service, and that letter must detail the "scope of the service," "the fee structure," "any amendment to the engagement letter," and "any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service." The firm must also disclose to the audit committee "any compensation arrangement ... referral fee or fee-sharing arrangement" between the auditor and any third party "with respect to the promoting, marketing, or recommending of a transaction

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covered by the service," so that the committee can evaluate the auditor's independence. The proposed rule would further require the firm to discuss the "potential effects of the services on the independence of the firm" and document that discussion.

The proposed rule provides an effective way to implement the requirement in the Sarbanes-Oxley Act that audit committees of a publicly traded corporation make informed decisions about the tax services being provided by the corporation's auditor.

The proposed rule could be further strengthened and clarified by amending subsection (b) to require a registered public accounting firm to provide the audit committee with an analysis showing that a proposed tax service would not impair the firm's independence. Specifically, the rule could be amended to require the accounting firm to discuss orally, and later document in writing under subsection (c), whether the proposed tax service would lead to: (a) a conflict of interest between the accountant and audit client; (b) the accountant's auditing his or her own work; (c) the accountant's acting as a manager or employee of the audit client; or (d) the accountant's acting as an advocate of the audit client. As pointed out earlier, these four criteria have been identified by experts as critical tests in evaluating whether particular practices impair auditor independence. The PCAOB materials indicate that the Board considered including these four tests in the proposed rules, but did not want to limit the discretion of the audit committee or encourage it to apply "a rigid, mechanical application" of any framework or principles when analyzing a proposed tax service. The approach suggested here, however, would not limit the audit committee's discretion or create a rigid framework, but would provide the committee with a useful analysis by its auditor.

## Conclusion

The bipartisan report recently issued by the Permanent Subcommittee on Investigations acknowledges and supports the work being done by the PCAOB to restore public confidence in the auditing profession and the U.S. financial reporting system. As part of that report, the Subcommittee made the following bipartisan recommendation:

"The Public Company Accounting Oversight Board should strengthen and finalize proposed rules restricting certain accounting firms from providing aggressive tax services to their audit clients, charging companies a contingent fee for providing tax services, and using aggressive marketing efforts to promote generic tax products to potential clients."

Thank you for this opportunity to comment on the proposed rules.

Sincerely,



Carl Levin  
Ranking Minority Member  
Permanent Subcommittee on Investigations

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**From:** Harvey Levin [helenharv@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 6:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Harvey Levin  
8566 Sierra Cir # 911-D  
Huntington Beach, CA 92646-8621

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**From:** Diane Lewis [02mlewis@comcast.net]  
**Sent:** Wednesday, January 26, 2005 1:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Diane Lewis  
2156 Golf Course Dr  
Reston, VA 20191-3828

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**From:** Karen Lind [ethelsdatr@aol.com]  
**Sent:** Tuesday, January 18, 2005 8:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Karen Lind  
200 Paterson Plank Rd Apt 409  
Union City, NJ 07087-2889

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**From:** Cassandra B. Lista [cbl4120@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 10:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Cassandra B. Lista  
4120 Whistler Ave  
Santa Rosa, CA 95407-7710

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**From:** Kay Lockridge [kdelanal@comcast.net]  
**Sent:** Tuesday, January 18, 2005 7:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kay Lockridge  
2742 La Silla Dorada  
Santa Fe, NM 87505-6703

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**From:** Charles Loeber [chuckloeber@yahoo.com]  
**Sent:** Wednesday, January 26, 2005 4:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles Loeber  
679 Morford Ave  
Long Branch, NJ 07740-5437

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**From:** June Logie [blogie@att.net]  
**Sent:** Tuesday, February 08, 2005 3:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 8, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. June Logie  
6740 Pansy Dr  
Miramar, FL 33023-4863

---

**From:** MIKE LOOMIS [mike.loomis@mittalsteel.com]  
**Sent:** Wednesday, January 19, 2005 6:40 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. MIKE LOOMIS  
5011 N State Road 39  
Laporte, IN 46350-8606

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**From:** Sharon Loudon [loudon@bwsys.net]  
**Sent:** Tuesday, January 18, 2005 11:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Sharon Loudon  
24203 N 200 East Rd  
Long Point, IL 61333-5042

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**From:** Michael Loveless [lovelem@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Michael Loveless  
750 Quail Hollow Dr S  
Marysville, OH 43040-8759

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**From:** Michael Lowe [mlowe@ufl.edu]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Lowe  
6350 NE 185th Ter  
Williston, FL 32696-6752

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**From:** Nicholas Lubofsky [nlubofsky@email.com]  
**Sent:** Wednesday, January 19, 2005 8:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Nicholas Lubofsky  
901 Englewood Pkwy Apt L303  
Englewood, CO 80110-2363

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**From:** David Luckens [dluckens@fuse.net]  
**Sent:** Tuesday, January 18, 2005 3:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Luckens  
517 Sanford St  
Covington, KY 41011-4349

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**From:** Judie Hilke Lundborg [judie@aloha.net]  
**Sent:** Wednesday, January 19, 2005 3:11 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Judie Hilke Lundborg  
1810 Haleukana St  
Lihue, HI 96766-8924

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**From:** Gary Lyne [racing99@frontiernet.net]  
**Sent:** Tuesday, January 18, 2005 6:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Gary Lyne  
N6540 Washington Lake Rd  
Shawano, WI 54166-1634

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**From:** andy lynn [ascottlynn@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. andy lynn  
3671 Colonial Trl  
Bush Sucks Balls  
Douglasville, GA 30135-1108

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**From:** james macallair [jmacallair@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. james macallair  
190 Spaulding Ave  
Syracuse, NY 13205-3200

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**From:** Linda MacDonald [bestmassge@aol.com]  
**Sent:** Tuesday, February 08, 2005 11:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 8, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Although the following text was provided by another party, I couldn't say it better myself. "I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. "I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. " I support PCAOB's efforts and the overall proposal.

Sincerely,

Linda MacDonald  
PO Box 7487  
Alexandria, VA 22307-0487

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**From:** Mona MacDonald [monamac@consultant.com]  
**Sent:** Wednesday, January 19, 2005 9:00 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mona MacDonald  
6640 Wilkins Ave  
Pittsburgh, PA 15217-1317

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**From:** richard mcdonald [rdmcd@bellatlantic.net]  
**Sent:** Tuesday, January 18, 2005 4:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. richard mcdonald  
397 Orchard St  
Cranford, NJ 07016-1826

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**From:** Wanda McDonald [jazzycatwanda@aol.com]  
**Sent:** Tuesday, January 18, 2005 6:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Wanda McDonald  
503 Jamaica Blvd  
Toms River, NJ 08757-4251

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**From:** Tallman Mahan,II [mahantjmii@msn.com]  
**Sent:** Wednesday, January 19, 2005 10:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tallman Mahan,II  
15499 La Grange Ln  
Sperryville, VA 22740-1762

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**From:** Kathleen Maher [catmmaher@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kathleen Maher  
1201 Evergreen Ave  
Ocean, NJ 07712-4516

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**From:** Sonja Malmuth [malmuth@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Sonja Malmuth  
3955 Indian Way  
Santa Ynez, CA 93460-9675

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**From:** Eleanor Martin [emartinreo@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Eleanor Martin  
2200 W Dawson Rd  
Milford, MI 48380-4106

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**From:** James Martin [nashdavid@comcast.net]  
**Sent:** Tuesday, January 18, 2005 2:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Martin  
810 Bellevue Rd Apt 243  
Building 40  
Nashville, TN 37221-2736

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**From:** marie martrano [mmartrano@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 5:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. marie martrano  
1 Bayview Ave  
Babylon, NY 11702-4307

---

**From:** Scott Marx [smarx@cablespeed.com]  
**Sent:** Tuesday, January 18, 2005 2:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Scott Marx  
2925 W Almondbury Dr  
Pasadena, MD 21122-6346

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**From:** Rhodia Mason [moody1@attglobal.net]  
**Sent:** Friday, January 21, 2005 5:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Rhodia Mason  
4719 N Talman Ave Apt 2  
Chicago, IL 60625-7023

---

**From:** Frank Masters [frank-masters@comcast.net]  
**Sent:** Tuesday, January 18, 2005 8:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Frank Masters  
5501 River Rd  
Harrisburg, PA 17110-1722

---

**From:** Phyllis MATSON [matson@youbetnet.net]  
**Sent:** Wednesday, January 19, 2005 1:12 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Phyllis MATSON  
50795 Almond Ave  
Stanchfield, MN 55080-5155

---

**From:** Elaine Matthew [gosioux@comcast.net]  
**Sent:** Thursday, January 27, 2005 5:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 27, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Elaine Matthew  
7317 64th Ave N  
Brooklyn Park, MN 55428-2316

---

**From:** Thomas Matthews [tmatt@charter.net]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Thomas Matthews  
9 Cherry Hills Dr  
Collinsville, IL 62234-5290

---

**From:** James Mathewson [jimm@ak.net]  
**Sent:** Wednesday, January 19, 2005 10:24 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Mathewson  
PO Box 1042  
Valdez, AK 99686-1042

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**From:** ARTHUR MAURETTI [amauretti@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. ARTHUR MAURETTI  
1130 Prospect St  
Somerset, MA 02726-4421

---

**From:** James Mayor [jmayor@direcway.com]  
**Sent:** Wednesday, January 19, 2005 8:55 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

James Mayor  
952 Hartwell Pond Rd  
Barton, VT 05875-9553

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**From:** David Mazza [mazzad@hawaii.rr.com]  
**Sent:** Tuesday, January 18, 2005 2:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

David Mazza  
2068 Saint Louis Dr  
Honolulu, HI 96816-2035

---

**From:** Elizabeth McCallum [lizmcrn@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elizabeth McCallum  
1411 E Smith Rd  
Bellingham, WA 98226-9766

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**From:** B.E. McClellan [mcclella@indiana.edu]  
**Sent:** Wednesday, January 19, 2005 2:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

B.E. McClellan  
3709 Reed Ct  
Bloomington, IN 47401-4339

---

**From:** Robert McCormick [sterling\_sound@bellsouth.net]  
**Sent:** Monday, February 28, 2005 2:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 28, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert McCormick  
531 N Gurney St  
Burlington, NC 27215-4819

# McGladrey & Pullen

Certified Public Accountants

3600 American Blvd. West  
Third Floor  
Bloomington, MN 55431  
O 952.921.7700 F 952.951.7702

February 14, 2005

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. 017  
Proposed Ethics and Independence Rules Concerning Independence, Tax Services,  
and Contingent Fees**

Dear Mr. Secretary:

McGladrey & Pullen, LLP is pleased to submit written comments on the proposed ethics and independence rules concerning independence, tax services, and contingent fees. McGladrey & Pullen, LLP is a registered public accounting firm serving middle-market issuers.

## **General Comments**

We agree with the Board's conclusion that neither routine tax return preparation and tax compliance services nor general tax planning and advice in connection with business transactions initiated by the audit client raise independence concerns. Furthermore, we see no conceptual basis why these same types of services would raise independence concerns when performed for senior officers.

We agree that auditors should not be permitted to recommend potentially abusive tax positions to their audit clients. However, we are concerned that Proposed Rule 3522, as drafted, poses an extremely difficult standard that, in many cases, will have an unintended consequence – that is, we are concerned that audit committees and auditors will conclude that the risk of violating the rule is simply too great to permit an issuer to utilize the auditor for general tax planning and advice.

Similarly, where the Board has concluded that tax services do not raise independence concerns, we believe that is unnecessary to specify audit committee preapproval requirements in excess of those required by the current rules. We are concerned that the requirements of Proposed Rule 3524 will also have an unintended consequence – it will send a message to audit committees that even permitted tax services should be viewed with extreme skepticism. We are concerned that management and audit committees will simply decide that it's not worth the effort to use the auditor to provide any tax services.

If our fears materialize, issuers will incur substantially greater costs for tax compliance and advisory services, which could have an adverse effect on job creation and competitiveness of the issuers. In addition, we believe separation of audit and tax services would result in decreased competition among the

providers of both services. This may be another example of over-regulation of mid-sized issuers, who are struggling to understand and comply with the existing requirements of the Sarbanes-Oxley Act and the host of existing rules that have been promulgated thereunder.

### **Proposed Rule 3502**

We are concerned that under the proposed rule, an associated person could *cause* the registered firm to violate the Act, the Rules of the Board, or the provisions of the securities laws due to an act or omission the person knew or should have known would *contribute to* such violation. It seems to us that *contributing to* a violation is a far cry from *causing* a violation, especially in the case of an omission. In addition, we are not sure that this rule is necessary, or the best approach, to subjecting associated persons to the Rules of the Board.

### **Proposed Rule 3520**

We are concerned that, as drafted, this rule is overly broad and may conflict with the existing SEC rules. For example, Rule 2-01(c)(1)(iii)(B) provides an exception to the general rule on accountant's financial relationships with respect to a new audit engagement. Accordingly, we suggest that "as required by applicable independence rules" or "subject to exceptions set forth in applicable independence rules" be added to the end of this rule.

### **Proposed Rule 3522 (a)**

Treas. Reg. §1.6011-4 requires taxpayers to disclose transactions meeting one of six categories of "reportable transactions," including transactions that are substantially similar to "listed transactions." The regulations provide that the term "substantially similar" is to be broadly construed in favor of disclosure. Much of the current authority identifying listed transactions is so broadly worded that it captures both transactions having potential for tax abuse and legitimate business transactions. Some of the listed transaction authority also requires disclosure of transactions by parties that receive no tax benefit from the transaction. Requiring disclosure from multiple parties increases the likelihood that the IRS will be able to review a transaction.

The purpose of Treas. Reg. §1.6011-4 is to elicit disclosure of transactions that enables the Treasury and the Internal Revenue Service (IRS) to evaluate whether an individual transaction is in fact abusive. The reporting of a transaction under Treas. Reg. §1.6011-4 (as a listed transaction or otherwise) does not affect the legal determination of whether the Federal income tax reporting of the transaction is proper. This expansive approach to requiring disclosure is entirely appropriate when the purpose is to identify transactions that the IRS believes merit review. An expansive approach is not appropriate when, without further review of a transaction's merits, it is presumed to be abusive.

In the situation in which a transaction bears some similarity to a listed transaction, but where it is unclear whether the transaction is "substantially similar" within the meaning of Treas. Reg. §1.6011-4(c)(4), a registered firm might wish to advise a client to make a "protective disclosure" in its tax return to avoid even a remote chance of incurring a penalty for failure to disclose a listed transaction. However, under the proposed rule, the protective disclosure would be evidence that the transaction was in fact a listed transaction impairing the firm's independence. In this situation, the proposed Rule creates a disincentive for a client to make a protective disclosure or for the registered public accounting firm to recommend protective disclosure. Such a disincentive does not advance public confidence in the registered firm's report on the client's financial statements, nor does it advance the true purpose of the "listed transaction" definition to encourage broad transaction disclosure to facilitate further IRS review.

The IRS may identify a transaction as a listed transaction at any time. The Release accompanying the proposed Rule acknowledges that a firm's independence could be intact when a transaction is implemented, even if the transaction is later listed by the IRS. We believe that the Rule should specifically state that independence would only be impaired if the transaction is listed at the time that the services are performed. In addition, a transaction may become listed during the course of the auditor's services with respect to such transaction. We believe that, so long as the services would have been permitted under proposed Rule 3522(c), this rule should make it clear that the auditor would be permitted to cooperate in transitioning the service to a successor tax advisor without impacting the firm's independence.

Finally, the proposed rule should permit an auditor to provide negative tax advice (*i.e.*, a recommendation not to proceed with a listed transaction) to an audit client concerning a listed transaction proposed by the client or a third party.

### **Proposed Rule 3522 (b)**

Treas. Reg. §1.6011-4(b) provides that a transaction is reportable as a "confidential transaction" if any tax advisor who receives a minimum fee provides tax advice to a client under conditions of confidentiality. The proposed rule fails to consider a situation in which an audit client receives tax advice from more than one advisor. For example, if an audit client seeks tax advice from an independent law firm and from the auditor, if the law firm imposes confidentiality conditions on the audit client, the proposed rule would treat the auditor as not independent.

We do not believe that the actions of an independent third party should determine whether or not the auditor is independent. We believe that the rule should be revised to limit any impact upon independence to situations in which the auditor imposes confidentiality conditions upon the audit client. We believe that Rule 3522 (b) should be revised to read as follows:

**(b) Confidential Transactions – in which the registered public accounting firm imposes conditions of confidentiality** that is a confidential transaction within the meaning of 26 C.F.R. § 1.6011-4(b)(3) (ii), ~~or that would be within the meaning of 26.C.F.R. § 6011.1 4(b)(3) if the fee for the transaction were equal to or more than the minimum fee described in 26.C.F.R. § 6011.1 4(b)(3); or~~

### **Proposed Rule 3522 (c)**

The proposed rule refers to transactions having a "significant purpose" of tax avoidance and requires a registered public accounting firm to reach a conclusion of "more likely than not" in order to provide any tax advice without impairing its independence. This approach mirrors the approach to "tax shelters" and penalties in IRC §6662(d)(2)(C) and §6664. The problem with the "significant purpose" test is that it provides virtually no guidance to distinguish between abusive transactions that may impair a firm's independence and routine tax planning.

What is a "significant purpose" of tax avoidance? Whenever a client seeks tax advice before implementing a tax strategy or transaction, is not the avoidance or minimization of taxes a "significant purpose" of seeking advice? N. Jerold Cohen, former Chief Counsel to the IRS and former chair of the American Bar Association Section of Taxation, recently stated that applying the significant purpose test literally would mean that all tax planning that he has done during his 40-year career would have met this test.<sup>1</sup>

<sup>1</sup> Comments of N. Jerold Cohen at the Tax Shelter Enforcement Conference, sponsored by BNA Tax Management, October 15, 2004.

The IRS and Treasury have recognized the difficulty of applying “significant purpose” as the sole test to identify a potentially abusive tax shelter transaction. When Treasury proposed using a stand-alone “significant purpose” test to define a “tax shelter” for purposes of Circular 230, practitioners decried the lack of specificity of this definition. Treasury ultimately abandoned “significant purpose” as a stand-alone test.

The proposed rule’s use of “significant purpose” as an imprecise stand-alone test would essentially require that a registered public accounting firm render no tax advice to an audit client at less than a “more likely than not” standard for the firm to have any assurance of maintaining independence. The rule would therefore have an impact far beyond the abusive transactions that might potentially impact a firm’s independence.

The proposed Rule also does not distinguish between advice rendered in tax planning or transactions initially recommended by the registered public accounting firm and those initially recommended by a third party. Consider a situation in which a client is approached by a third party tax advisor with a tax planning strategy. The third party tax advisor will deliver or will assist the client in obtaining a tax opinion concerning the transaction. In deciding whether to implement the strategy, the client asks its auditor, a registered public accounting firm, for an assessment of the merits of the strategy and whether the tax reporting of the transaction as proposed by the third party would raise financial reporting considerations. The proposed rule would prevent the registered public accounting firm from providing any advice at less than a “more likely than not” level of assurance concerning the merits of the transaction. Because of the cost of due diligence to reach that level of assurance (if in fact it can be reached), an audit client would be discouraged from seeking a “second opinion” from its registered public accounting firm.

In the case of third party advice, a registered firm’s independence is not likely to be impaired unless the registered firm both endorses the transaction and the client relies primarily on that endorsement (as opposed to the third party advice) in implementing the transaction. If a client ultimately relies on the third party advice (as opposed to the registered firm’s advice) in deciding whether to pursue a transaction, it should not be necessary for the registered firm to reach a conclusion of “more likely than not” to avoid independence issues.

To address the issues identified above, we believe that Rule 3522 (c) should be revised to read as follows:

**(c) Aggressive Tax Positions** –that was initially recommended by the registered public accounting firm or ~~another tax advisor~~ **its affiliates** and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws. **For purposes of this Rule, a transaction will not be deemed to have a significant purpose of tax avoidance if the audit client has a predominant non-tax business purpose for the transaction. The fact that an audit client would elect not to proceed with a transaction absent certain tax treatment or tax consequences will not be deemed a significant purpose of tax avoidance.**

### **Proposed Rule 3523**

As indicated in our general comments, we do not see any conceptual basis for limiting tax services to senior officers beyond the limitations that would apply to the audit client itself. In fact, if only those limitations were applied, we believe they should be extended to outside directors as well. However, if the final rule completely prohibits tax services for senior officers, we do not believe it would be either practical or necessary to extend a complete prohibition to outside directors.

The release makes it clear that the proposed rule would extend only to *officers in a financial reporting oversight role*, and not to outside directors. The term “officer” is not defined, however, and the release states, “Whether someone is an officer would depend on the person’s function rather than title or designation in the company’s bylaws.” Proposed rule 3501(f)(i) would define the term “financial reporting oversight role” in a manner that is consistent with the definition in Rule 2-01 of Regulation S-X. However, that term includes persons who would not normally be considered officers (e.g., controller, director of internal audit and director of financial reporting), and it is unclear whether such persons would be considered “officers” for purposes of this rule. In addition, the proposing release and the title of the proposed rule refer to *Senior Officers*, which implies that the Board intended to apply the restrictions to only certain officers rather than all officers (or persons) in a financial reporting oversight role.

Finally, we believe that certain transitional provisions are necessary to address situations in which clients of the auditor are promoted or hired into such a position, when an issuer first becomes an audit client, when an issuer first becomes subject to the rule (e.g., as a result of an IPO), and for certain follow-up services (e.g., assistance with an examination of tax returns) relating to tax services that were provided by the auditor before the effective date. Such transition provisions are particularly important if the complete prohibition on providing tax services to senior officers is retained in the final rule.

### **Proposed Rule 3524**

As indicated in our general comments, for permitted tax services, we do not believe it is either necessary or appropriate to specify audit committee preapproval requirements in excess of current requirements.

In addition, we are concerned with the implication in the proposing release that an audit client must employ a competent tax director in order for the auditor to independently provide permitted tax services. Most small and mid-sized issuers do not employ tax directors; however, the chief financial officer of the issuer is normally competent to oversee the tax services, make all decisions with respect to tax positions taken, and accept responsibility for the results of the services. Accordingly, there is no risk that the auditor would be placed in a position of making management decisions on behalf of the audit client.

We are concerned that the proposing release unreasonably elevates the extent of documentation that an audit committee would be required to consider in approving permitted tax services. For example, in some cases, it would not be practicable to completely and accurately specify in advance *each* type of return to be filed in *each* jurisdiction at the time of audit committee preapproval.

We are also confused by the implications of paragraph (a)(ii) of the proposed rule, which appears to imply that an auditor could promote, market or recommend a transaction or pay a commission in connection with such a transaction. We thought the purpose of proposed rule 3522 was to prohibit the auditor from having any involvement in such activities.

While paragraphs (b) and (c) of the proposed rule appear reasonable on the surface, those provisions in combination with the requirements of rule 3522, will result in significantly more involvement of tax professionals in much lengthier discussions with the audit committee, which will result in significant additional costs to the issuer. Overall, we believe the benefit to be derived from this rule does not justify its cost.

### **Closing Comments**

Because of the likelihood that State Legislatures and State Boards of Accountancy will consider extending these requirements beyond issuers subject to the rules of the SEC and PCAOB, we urge the Board to carefully consider the potential “trickle down” effect of its rulemaking activities on private companies and

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Page 6

their auditors. In most private companies, the interests of the company and management are aligned and the potential for conflicts of interest is virtually nonexistent. Accordingly, for private companies and their auditors, restrictions such as those included in the proposed rules are not necessary to protect the public interest.

Thank you for the opportunity to comment on this proposed standard. Questions concerning our comments should be directed to Leroy Dennis, Executive Partner – Assurance Services (952.921.7627) or Kimpa Moss, Executive Partner – Tax Services (952.921.7616).

Very truly yours,

A handwritten signature in black ink that reads "McGladrey & Pullen, LLP". The signature is written in a cursive, professional style.

---

**From:** robert mcintosh [robert@fuzzyfilms.com]  
**Sent:** Tuesday, January 18, 2005 7:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. robert mcintosh  
528 Stonewall St  
Memphis, TN 38112-4915

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**From:** Joshua McKain [jmckain@fisher.edu]  
**Sent:** Tuesday, January 18, 2005 2:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Joshua McKain  
15 Captain Pierce Rd  
Scituate, MA 02066-2621

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**From:** Judith McKay [moshok@juno.com]  
**Sent:** Tuesday, January 18, 2005 2:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

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Sincerely,

Judith McKay  
7544 Harlan Walk  
Saint Louis, MO 63123-2841

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**From:** Martin McLean [mclean@integra-seal.com]  
**Sent:** Tuesday, January 18, 2005 1:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

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Sincerely,

Mr. Martin McLean  
1605 Burgh Heath Dr  
Kingsport, TN 37660-5718

---

**From:** Katherine McMahon [kate@camelotcompany.com]  
**Sent:** Tuesday, January 18, 2005 2:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

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Sincerely,

Miss Katherine McMahon  
5330 N Laramie Ave  
Chicago, IL 60630-2204

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**From:** Jean McMeans [jmm43215@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

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Dear Accounting Oversight Board,

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Sincerely,

Ms. Jean McMeans  
518 E Town St Apt 506  
Columbus, OH 43215-4831

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**From:** Sharon McMenamin [saoirse9@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Sharon McMenamin  
7230 Kessel St  
Forest Hills, NY 11375-5934

---

**From:** Don McMillan [mcmillan44@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

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Sincerely,

Mr. Don McMillan  
535 N Michigan Ave  
Chicago, IL 60611-3814

---

**From:** Ronald McNeer [rlmcneer@hotmail.com]  
**Sent:** Saturday, January 22, 2005 7:10 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ronald McNeer  
6712 Forest Dr  
Quinton, VA 23141-1562

---

**From:** michael mctague [prosper1@gte.net]  
**Sent:** Tuesday, January 18, 2005 2:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. michael mctague  
2200 E 6th St Apt 4  
Long Beach, CA 90814-3648

---

**From:** George Mealer [jumpandlink@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

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Sincerely,

Mr. George Mealer  
968 Madison Ave Apt 1  
Albany, NY 12208-2604

---

**From:** June Meek [meakler@aol.com]  
**Sent:** Tuesday, January 18, 2005 7:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

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Sincerely,

Miss June Meek  
4716 E 88th St  
Garfield Hts, OH 44125-1336

---

**From:** Jim Meier [jp122m@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 7:58 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jim Meier  
122 W Main St  
Midland, MI 48640-5156

---

**From:** Linda Messner [linda\_messner@oxy.com]  
**Sent:** Tuesday, January 18, 2005 2:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. It is time for company executives to be held more accountable to their workers and their stock holders. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. Confidence that has faltered with all of the recent scandals and wrongdoing that has been prominently reported lately. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Linda Messner  
4156 Higuera St  
Culver City, CA 90232-2527

---

**From:** Ann Meyette [ann\_meyette@oxy.com]  
**Sent:** Tuesday, January 18, 2005 2:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Ann Meyette  
8650 Gulana Ave  
Playa Del Rey, CA 90293-8397

---

**From:** DON Milbocker [milbocker@email.com]  
**Sent:** Tuesday, January 18, 2005 7:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

DON Milbocker  
3324 Avenue J NW  
Winter Haven, FL 33881-2834

---

**From:** holly millar [hol2002@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

holly millar  
1740 Broadway Apt 701  
San Francisco, CA 94109-2414

---

**From:** Charles Miller [charlie.miller@trans.ge.com]  
**Sent:** Tuesday, January 18, 2005 2:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles Miller  
2536 Lilac Ct  
Erie, PA 16506-6434

---

**From:** Jacqueline Miller [jacquisine@earthlink.net]  
**Sent:** Thursday, January 20, 2005 3:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jacqueline Miller  
14023 Cashel Forest Dr  
Houston, TX 77069-3507

---

**From:** Kenneth E. Miller [bbandkem@peoplepc.com]  
**Sent:** Wednesday, January 19, 2005 11:40 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kenneth E. Miller  
5708 Fox Hollow Dr  
Richmond, VA 23237-3106

---

**From:** Patricia Miller [pattym55@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Patricia Miller  
143 Howe Rd  
Kent, OH 44240-7213

---

**From:** Robert Miller [bobnjudy@bestweb.net]  
**Sent:** Tuesday, January 18, 2005 6:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Robert Miller  
19 Suzanne Ln  
Chappaqua, NY 10514-1503

MILLER, HAMILTON, SNIDER & ODOM, L.L.C.

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February 14, 2005

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LESTER M. BRIDGEMAN  
CHRISTOPHER G. HUME, III  
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M. BRANDON MEADOWS  
JAMES E. MURRILL, JR.

GEORGE A. LEMAISTRE, Deceased  
(1911 - 1994)

LEWIS G. ODOM, JR., Retired

OF COUNSEL:  
BEVERLY P. HEAD, III

\*NOT ADMITTED IN ALABAMA  
ATTORNEYS ALSO ADMITTED IN ARKANSAS, DISTRICT OF COLUMBIA, FLORIDA,  
GEORGIA, ILLINOIS, LOUISIANA, NEW YORK AND VIRGINIA

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

Via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

RE: Rulemaking Docket Matter No. 017

Dear Board Members:

I am pleased to be provided the opportunity to comment on PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees." I believe that the vast majority of the proposed rules represent a significant step forward in securing the necessary independence of a public company's independent auditor. However, with respect to Rule 3523, it seems that the Public Company Accounting Oversight Board (the "Board" or "PCAOB") has confused the two important concepts of auditor selection (bias in favor of an auditor from the company's agents that select said auditor) and the auditor's pecuniary interests (bias in favor of a company from the auditor to protect a non-audit financial relationship). Rule 3523 currently states:

**Rule 3523. Tax Services for Senior Officers of Audit Client.**

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 term "financial reporting oversight role" is very important to this rule and is currently defined as follows:

254 STATE STREET  
MOBILE, ALABAMA 36603  
(251) 432-1414

1925 K STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20006  
(202) 429-9223

505 20TH STREET, N., SUITE 1200, FINANCIAL CENTER  
BIRMINGHAM, ALABAMA 35203  
(205) 226-5200

1175 PEACHTREE STREET, N.E., SUITE 1920  
ATLANTA, GEORGIA 30361  
(404) 602-3700

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Office of the Secretary

Public Company Accounting Oversight Board

February 14, 2005

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**Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules.****(f)(i) Financial Reporting Oversight Role**

The term “financial reporting oversight role” means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director or internal audit, director of financial reporting, treasurer, or any equivalent position.

At the outset, it is important to determine the stated purpose of these rules. The PCAOB release states that the “foremost [amongst the auditing profession’s] ethical standards is the mandate that the auditor must be independent of his or her audit client. The independence requirement serves two related, but distinct, public policy goals. One goal is to foster high quality audits by minimizing the possibility that any external factors will influence an auditor’s judgments... The other related goal is to promote investor confidence in the financial statements of public companies.”

The PCAOB’s release states that “Rule 3523 is narrowly tailored to include only those tax services that a registered public accounting firm provides to individuals in a position to play significant role in an audit client’s financial reporting. . . directors whose only role at an issuer is to serve on the board would not be covered by the rule.” If that is indeed the intent, then the definition should be revised to be exclusive rather than inclusive as it is currently worded. The plain meaning of the definition as currently drafted would include all the listed persons as well as any other person having a significant role in the audit client’s financial reporting.

There are two means in which the independence of an auditor might be threatened or perceived to be threatened (and it is these two methods that the board has unnecessarily intermingled). The first is that there might be some tainting of the auditor selection process. The Sarbanes-Oxley Act of 2002 (“SOX”) vested the sole authority to select a public company’s independent auditor with the audit committee (Section 301 of SOX). It is reasonable to assume that any other business relationship between the members of a public company’s audit committee and the independent auditor might be viewed as tainting the selection process. Thus it would be reasonable to disallow an independent auditor’s ability to provide tax or other accounting services to the members of an audit client’s audit committee. As no other entity or person has the authority to select the independent auditor for a public company, the current drafting of Rule 3523 is

**MILLER, HAMILTON, SNIDER & ODOM, L.L.C.**

Office of the Secretary

Public Company Accounting Oversight Board

February 14, 2005

Page 3

unnecessarily over-inclusive and unduly burdensome (from a compliance point of view) on accounting firms, public companies, their boards and executive officers.

The other way that the independence of an auditor may be threatened or perceived to be threatened is that the auditor may be asked to perform non-audit related services that are so financially advantageous to it, that it might be willing to adopt a more aggressive auditing position with respect to the preparation of a public company's financial statements than normal in order to satisfy the client. It is in this juxtaposition that the auditor's other relationships with the public company's executive officers that prepare the financial statements should be examined closely. However, it is unnecessary to assume that any non-audit relationship with an executive would taint the auditor's point of view. Relationships such as those reported in the situation where Sprint executives were said to have sold tax shelters by Sprint's independent auditor, and for which services, the auditor might have received as much as \$5.7 million in fees, compared to the \$2.5 million received by the auditor for the Sprint audit fees, are obviously egregious and could easily be perceived to taint the audit process for Sprint. However, for the PCAOB to use this situation as an example to justify Rule 3523 is clearly a case of "bad facts making bad law."

Relationships where the services sold to executives dwarf or are even a significant proportion of the total audit fees should clearly be the subject of scrutiny and should be deemed to impair an auditor's status as independent. However, the vast majority of accounting services provided to officers and directors are probably garden-variety tax return and estate planning services that would not result in fees that would be significant in comparison to the audit fees. In this situation, it is unreasonable, unnecessary and unduly burdensome (in terms of compliance) to completely forbid these relationships. Several means could be devised to prevent a public company's executives from entering into relationships with its independent auditor that would impair the auditor's actual or perceived independence while still allowing an executive to obtain immaterial tax compliance assistance. For example, (i) the public company could require that all such relationships be approved in advance by the company's audit committee, (ii) there could be a prohibition against tax shelters or similar non-conventional tax services to be provided to executives, (iii) or there could be some *de minimus* test. My preferred approach would be a combination of (i) and (iii).

While it cannot be denied that certain relationships with executives could taint or be perceived to taint the audit process, many, if not most, relationships are either benign or harmless. Rather than using a rule that places a comprehensive restriction on harmless activity and creates fairly serious compliance problems for both public companies and their auditors, it would seem preferable to craft an approach that would prevent relationships that might impair independence while still granting companies an appropriate amount of flexibility. It has already been pointed out that small companies

**MILLER, HAMILTON, SNIDER & ODOM, L.L.C.**

Office of the Secretary

Public Company Accounting Oversight Board

February 14, 2005

Page 4

have different needs and different approaches than large companies. Likewise, many public companies and their executives will be seeking services from accounting firms that would in no way threaten the independence of such company's independent auditors. The most logical body to place the responsibility for determining if an auditor's relationship with an executive is inappropriate is the audit committee. Executives who seek out tax services with their company's independent auditor could be required to disclose this fact to the audit committee, along with a summary of the services to be provided and an estimate of the fees that the auditor will receive for such services.

As acknowledged in the PCAOB's release, "the SEC made clear that it did not consider conventional tax compliance and planning to be a threat to auditor independence, it distinguished such traditional services from the marketing of novel, tax-driven financial products." With respect to executive officers, the rules could state 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 non-conventional tax service or tax shelter to an officer in a financial reporting oversight role at the audit client.

However, this would not be my preferred approach as it is ambiguous and is subject to too much interpretation that could prevent the rule from functioning correctly in some circumstances.

A more definitive approach would be the adoption of a "*de minimus*" standard. This standard would state that if tax or other services provided to an executive were in excess of five percent of the estimated fees that the independent auditor would receive in a given audit year, then the provision of such services would invalidate the public accounting firm's independence as to that audit client for that audit year.

In conclusion, I would consider redrafting rules 3523 and definition (f)(i) as follows:

**Rule 3523. Tax Services for Senior Officers of Audit Client.**

- (i) 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 a member of the audit client's audit committee; and
- (ii) 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

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Office of the Secretary

Public Company Accounting Oversight Board

February 14, 2005

Page 5

professional engagement period, provides any tax service to an officer in a financial reporting oversight role at the audit client, unless (a) such tax service has been disclosed in appropriate detail, including the anticipated fees expected to be earned by the registered public accounting firm for such tax services, (b) the provision of such services has been approved by the public company's audit committee, and (c) such anticipated fees are no more than five percent of the fees that such registered public accounting firm will receive in connection with its audit of the public company's financial statements and internal controls.

**(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, which may or may not include a person who is a member of the board of directors or similar management or governing body, the chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director or internal audit, director of financial reporting, treasurer, or any equivalent position.

By way of background, I am a corporate and securities attorney engaged in the representation of public companies. I have had an opportunity to work with many boards of directors and their committees, including their audit committees. I have seen firsthand how boards and their committees work, and I have seen their commitment to maximizing value while minimizing risk to their shareholders. Although I believe the views expressed in this letter would improve the PCAOB's proposed rules, they are solely my own and are not necessarily reflective of any other member of my firm or any client of my firm.

Once again, I appreciate being allowed the opportunity to comment on your proposed rules and appreciate the Board's consideration of my comments.

Very truly yours,



Hugh C. Nickson, III

**MILLER, HAMILTON, SNIDER & ODOM, L.L.C.**

Office of the Secretary

Public Company Accounting Oversight Board

February 14, 2005

Page 6

cc: Bella Rivshin, Assistant Chief Auditor ([rivshinb@pcaobus.org](mailto:rivshinb@pcaobus.org))  
Greg Scates, Associate Chief Auditor ([scatesg@pcaobus.org](mailto:scatesg@pcaobus.org))

---

**From:** Genie Mims [igottheblues\_2000@yahoo.com]  
**Sent:** Friday, January 21, 2005 12:46 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. Securities and Exchange Commission must continue the independence requirement to serve two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Genie Mims  
1349 Cheshire Ln  
Houston, TX 77018-3120

---

**From:** Loretta Minnick [lettyminnick988@msn.com]  
**Sent:** Wednesday, January 26, 2005 1:57 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Loretta Minnick  
612 Jay Rd  
Frostburg, MD 21532-4140

---

**From:** Alexandra Mitchell [alexandra.mitchell@lycos.com]  
**Sent:** Tuesday, January 18, 2005 8:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Miss Alexandra Mitchell  
14501 Montfort Dr  
Dallas, TX 75254-8546

---

**From:** James MitchellJr CPA [jmitchel@alumni.williams.edu]  
**Sent:** Tuesday, January 18, 2005 3:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James MitchellJr CPA  
213 Winding Pond Rd  
Londonderry, NH 03053-3378

---

**From:** David Modarelli [dam@chemistry.uakron.edu]  
**Sent:** Tuesday, January 18, 2005 1:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. David Modarelli  
3471 Whitburn Circle  
Richfield, OH 44286

---

**From:** jassim mohammad [jassim1229@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. jassim mohammad  
S668 Karau Ave  
Marshfield, WI 54449-9459

---

**From:** Ralph A Monello [rmone@frontiernet.net]  
**Sent:** Tuesday, January 18, 2005 2:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ralph A Monello  
75 Camberley Pl  
Penfield, NY 14526-2763

---

**From:** Candida Montalvo [candida\_montalvo@yahoo.es]  
**Sent:** Tuesday, January 18, 2005 9:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Candida Montalvo  
1063 36th St SW Apt 61  
Wyoming, MI 49509-3596

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**From:** Richard Montgomery [ridelmont@aol.com]  
**Sent:** Tuesday, January 18, 2005 7:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Montgomery  
10925 Hartle Dr  
Hagerstown, MD 21742-1225

---

**From:** Kathryn Moor [kbmoor@juno.com]  
**Sent:** Tuesday, January 18, 2005 2:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Kathryn Moor  
7506 Bogey Dr  
Mission, TX 78572-8378

---

**From:** Peter Moore [peteandy98@sbcglobal.net]  
**Sent:** Tuesday, January 18, 2005 2:39 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter Moore  
10335 Muir Ln  
Fishers, IN 46038-7950

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**From:** Robert Moran [remoran@digcns.com]  
**Sent:** Tuesday, January 18, 2005 3:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Moran  
759 N Park Ave  
Redding, CT 06896-3412

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**From:** Raymond Moreland [agape44@adelphia.net]  
**Sent:** Tuesday, January 18, 2005 9:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Raymond Moreland  
9731 Hall Rd  
Frederick, MD 21701-6736

---

**From:** Donna Mae Travis-Morgan [donnamae564@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Donna Mae Travis-Morgan  
1001 Fairlawn Cv  
Round Rock, TX 78664-6983

---

**From:** Andrew Morgen [acmorgan@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Andrew Morgen  
44325 Camino Lavanda  
La Quinta, CA 92253-3975

---

**From:** Andy Morris [lamorris@austin.rr.com]  
**Sent:** Tuesday, January 18, 2005 3:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. Frankly, I cannot believe we are even having to discuss this activity. It clearly violates every standard of ethical accountability and should not even require review. It is wrong. I support PCAOB's efforts and the overall proposal.

Sincerely,

Andy Morris  
204 Far Vela Ln  
Lakeway, TX 78734-6249

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**From:** Martha Morton [martymo@triad.rr.com]  
**Sent:** Tuesday, January 18, 2005 5:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Martha Morton  
2825 Causey Lake Rd Trlr 14  
Greensboro, NC 27406-8351

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**From:** Nancy Moynihan [naomi\_hanna@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 9:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nancy Moynihan  
10602 Barada St  
Houston, TX 77034-2950

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**From:** Lawrence E. Mueller, CPA [larry@smithjust.com]  
**Sent:** Tuesday, January 18, 2005 2:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. As a practicing CPA, I feel that it is absolutely imperative that the profession maintain both the appearance and actuality of independence. I think that the marketing of aggressive tax strategies by the profession in total undermines our integrity and fosters a sense of distrust for CPA's in general. If we wish to remain a primarily self-regulating profession, we need to regulate and discipline our members. These proposals are a much overdue step in that direction. I support PCAOB's efforts and the overall proposal.

Sincerely,

Lawrence E. Mueller, CPA  
Smith & Just, PS  
401 2nd Ave S Ste 505  
Seattle, WA 98104-3804

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**From:** HAROLD MUIR [hrmuir@netzero.net]  
**Sent:** Tuesday, January 18, 2005 7:06 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. HAROLD MUIR  
1774 Elm Dr  
Venice, FL 34293-2722

---

**From:** Delores Mulvihill [defaye@iowatelecom.net]  
**Sent:** Tuesday, January 18, 2005 8:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

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Sincerely,

Ms. Delores Mulvihill  
908 Elm St  
Grinnell, IA 50112-2035

---

**From:** Nori Muster [njm@steamboats.com]  
**Sent:** Tuesday, January 18, 2005 2:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nori Muster  
PO Box 41750  
Mesa, AZ 85274-1750

---

**From:** Kris Muto [tigerden6@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Kris Muto  
5 Carsdale Ct  
Wilmington, DE 19808-2141

---

**From:** Gary Myerson [gmyerson@san.rr.com]  
**Sent:** Tuesday, January 18, 2005 2:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. If you believe in high ethical standards, and if you believe that such standards promote good government, then it seems obvious what needs to be done. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gary Myerson  
18755 W Bernardo Dr Apt 1126  
San Diego, CA 92127-3037



National Association of State Boards of Accountancy  
150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417  
Tel 615/880-4200 Fax 615/880-4290 Web [www.nasba.org](http://www.nasba.org)

February 2, 2005

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

Via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Release No. 2004-015 December 14, 2004:  
PCOAB Rulemaking Docket Matter No. 17

Dear Board Members:

We appreciate the opportunity to offer comment to the Public Company Accounting Oversight Board (“Board”) on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (“Proposal”). The National Association of State Boards of Accountancy’s (NASBA’s) ongoing primary focus is to increase the effectiveness of US state boards of accountancy. Our Professional & Regulatory Response Committee (“Committee”) offers the following comments on the proposed rules:

In the Proposal, the Board invites comments about the perception of independence if a registered public accounting firm (Registered Firm) were to offer tax services to members of an audit committee or to other of the audit client’s board of directors. The Proposal’s Rule 3523 would permit such services to be performed unless a board member was also in the class of senior officer described in the proposed rule.

The Committee agrees that the exclusion of audit committee members and other board members from proposed Rule 3523 is appropriate. They believe audit committee members have significantly different responsibilities from those of the chief executive officer and other senior officers in financial reporting oversight roles, who have a direct role in the preparation of financial statements. Our suggestion is that the wording of Rule 3523 be changed from “an officer in a financial reporting oversight role” to state “the chief executive officer and other officers in a financial reporting oversight role.”

Audit committee members are (usually) independent of the company. Although they have significant interaction with the Registered Firm with regard to the audit, audit committee members do not have responsibility for either the oversight of the preparation or the preparation of financial statements. It is appropriate, therefore, to exclude members of the audit committee from proposed Rule 3523. Excluding other members of a board of directors who do not have the responsibility for the oversight of the preparation of financial statements is also appropriate.

The background information for proposed Rule 3522 states that [the rule] would, in effect, prohibit auditors from providing services, other than auditing services, related to planning or opining on the tax consequences of certain transactions that pose special challenges to an auditor’s independence<sup>1</sup>. The background material further states that [the rule] is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor’s independence if the auditor participates in the transaction in any capacity other than as auditor.<sup>2</sup>

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<sup>1</sup> See page 25 of the Proposal.

<sup>2</sup> See page 26 of the Proposal.

Office of the Secretary  
Public Company Accounting Oversight Board  
February 2, 2005  
Page 2 of 2

The Committee agrees that the Board's exclusion from Rule 3522 of Registered Firms acting solely in the capacity of auditors is the proper approach to take. Auditors are commonly (and should be) consulted by clients prior to the consummation of major transactions so that clients are made aware of the reporting effect of the transactions on the client's financial statements. Many discussions of the income tax consequences of a transaction take place in the planning stage of a transaction. The parties involved in the discussion may include third parties interested in the consummation of a transaction and their consultants, some of whom may be other tax advisors or another Registered Firm. (The proposed Rule does not prohibit Registered Firms from providing tax services to non-audit clients, including those services that would be prohibited if the tax services were to be provided to a client.)

In addressing the possible impact of tax transactions on financial statements, the auditor would normally consider the standards of the Financial Accounting Standards Board, particularly FAS 109 and FAS 5. The reasoning processes of the auditor about the tax transaction might very well parallel those of a tax consultant looking at the transaction from purely a tax standpoint, and their conclusions about the validity of the tax transaction could be the same. The auditor is not "planning" or issuing a "tax opinion" when the auditor expresses the auditor's view of the impact of a tax transaction on the financial statements of a client, even if the transaction is one that would be considered (or ultimately considered) to be "aggressive." If issues ultimately arise regarding a tax transaction reported in audited financial statements, the auditor might be held to have failed to exercise due professional care in the performance of professional services, but the auditor's independence would not be the issue.

The Committee believes that readers of the release would benefit from the Board's inclusion in the background information in the final release of a stand-alone statement(s) about the exclusion of auditing services from Rule 3522.

In the Proposal, the Board invites comments on whether a Registered Firm should be required to obtain a third-party tax opinion in support of the tax treatment if the potential effect of the treatment could have a material effect on the audit client's financial statements. There are countless tax transactions that may have a material effect on financial statements considering the relationship of income taxes to pre-tax earnings. The Committee believes that any such requirement would be prohibitively expensive and that the cost of such a requirement would far exceed any benefits.

We hope these comments will assist the Board in its work.

Very truly yours,



Michael D. Weatherwax, CPA  
NASBA Chair



David A. Costello, CPA  
President & CEO



LEWIS F. MALLORY, JR.  
CHAIRMAN OF THE BOARD  
AND CHIEF EXECUTIVE OFFICER

## CAPITAL CORPORATION

March 11, 2005

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. 017: Proposed Ethics and Independence Rules  
Concerning Independence, Tax Services and Contingent Fees

The Members and Staff of the Public Company Accounting Oversight Board:

During a recent meeting with the management and Audit Committee of our Company, our independent auditors reviewed the above referenced proposed rules issued by the PCAOB. Based upon discussions with our auditors and upon our understanding of the proposed rules, we have the following comments about certain sections for your consideration:

### *Tax Services for Senior Officers*

The PCAOB's proposal indicates that the independent audit firm is prohibited from providing tax services for Company officers who are in a financial reporting oversight role. Our Company objects to the proposal because we do not agree that the performance of **routine** tax services for senior officers threatens the independence of the auditing firm. Our auditing firm has provided routine tax services for several senior officers of the Company for many years, and we have never encountered a situation or circumstance that would have had an effect on the independence of the auditor. In our opinion, the current rules, specifically those involving Audit Committee oversight, mitigate any concerns that may arise due to the audit firm providing routine tax services to senior officers. We would not object to the audit firm disclosing to the Audit Committee tax services provided to senior officers with financial reporting oversight.

Office of the Secretary  
Public Company Accounting Oversight Board  
Page 2  
March 11, 2005

***Audit Committee Pre-Approval of Certain Tax Services***

We support the involvement of the Audit Committee in the approval of services provided by the independent audit firm. Our Company has made a strong effort to have an active Audit Committee. However, we believe the proposed rule places such restrictions on the ability of the audit firm to provide tax services that the Company may be placed in a position of not complying with applicable tax laws and reporting requirements. The proposed rules do not allow flexibility on the part of the audit firm or the Company, if situations are encountered during the performance of the financial statement audit or the performance of tax services. The proposed rule seems to require detailed approvals of all tax services to be provided by the audit firm. In a business with complex tax issues as ours, flexibility is a must and the requirement to provide the Audit Committee with overly detailed information about each tax service, each tax return, or each tax reporting issue seems to be overly burdensome. Often circumstances may require a timely response or action and this rule appears to limit the Company's ability to do so.

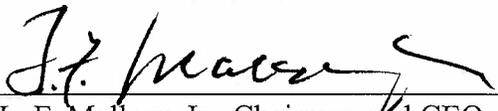
The rule also seems to indicate that a Company such as ours should employ a "tax director." We do not believe such a position for our Company would be a prudent decision, and we can not agree with this position on the part of the PCAOB. We believe that this section of the proposed rule is an example of the lack of consideration on the part of the PCAOB of the practicality of the requirement in a business situation such as ours.

In conclusion, we believe the PCAOB is placing such severe restrictions on or even elimination of the ability of the independent audit firm to provide tax services that the unintended consequences may be the exposure of the Company to tax reporting errors or even failure to accurately report taxable events. Further, elimination of the Auditors' knowledge of the Company and its activities through the performance of tax reporting services can result in harm to the Company and to its stockholders. We also believe that the financial statements audit is enhanced when the auditor has knowledge of financial transactions gained by providing tax services.

Our Company is committed to improving the audit quality and the quality of the financial reporting process and supports many of the actions taken by the PCAOB. However, we believe that the proposed rules contain provisions that do not contribute to this objective, in fact, they would likely be counterproductive. We appreciate the opportunity to comment on these proposals.

Sincerely,

NBC CAPITAL CORPORATION

By   
L. F. Mallory, Jr., Chairman and CEO

---

**From:** Joseph Newton [jnnewton@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Joseph Newton  
139 Altama Connector PMB 415  
Brunswick, GA 31525-1888

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**From:** Ronald Newton [newron35@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 9:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ronald Newton  
1604 Hardin Ave  
Jacksonville, IL 62650-3520

---

**From:** Dirk Neyhart [genetic@igc.org]  
**Sent:** Tuesday, March 01, 2005 4:12 PM  
**To:** INFO  
**Subject:** Tax Shelter Abuse

Dear PCOAB

I urge you to tighten rules on accountings firms giving tax shelter advice.

Dirk Neyhart  
[genetic@igc.org](mailto:genetic@igc.org)

---

**From:** Mai Nguyen [trangtrinh@hotmail.com]  
**Sent:** Sunday, January 30, 2005 5:49 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 30, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mai Nguyen  
2400 S Glebe Rd  
Arlington, VA 22206-2526

---

**From:** Julie Nicholson [julieni@comcast.net]  
**Sent:** Thursday, January 20, 2005 10:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of the audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Julie Nicholson  
825 Riesling Rd  
Petaluma, CA 94954-8511

---

**From:** James Nikora [jim@blue-note.com]  
**Sent:** Tuesday, January 18, 2005 3:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Nikora  
41 Rough Lee Ct  
Madison, WI 53705-1083

---

**From:** K. JOHN NISKI [kjohnniski@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 5:48 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

K. JOHN NISKI  
311 3rd Ave  
Saint James, NY 11780-2328



**Nordson Corporation**  
28601 Clemens Road  
Westlake, Ohio 44145-1119  
(440) 892-1580

**Edward P. Campbell**  
Chairman and  
Chief Executive Officer

February 3, 2005

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

Re: Rulemaking Docket Matter No. 017

Dear Board Members:

I am pleased to provide comments to the Board on the PCAOB Rulemaking Docket Matter No. 017, "Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees."

By way of background, I presently serve as the Audit Committee Chair of KeyCorp and as a member of the Audit Committee of OMNOVA Solutions, Inc. I am also Chairman of the Board of Directors and Chief Executive Officer of Nordson Corporation. The views in this letter, however, are solely mine and should not be attributed to these companies.

My comments are particularly directed at Proposed Rule 3524(a)(i) and the engagement process by audit committees of independent auditors to perform permitted non-audit services. I believe that audit committees take their responsibilities very seriously to review carefully any engagement of their outside accounting firm to perform non-audit services. There are many valid business reasons that benefit shareholders to have outside auditors perform these non-audit services. In the Sarbanes-Oxley Act (the Act), Congress recognized these reasons in permitting these services to be approved by independent audit committees.

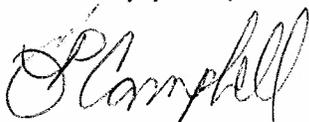
The importance of the role of audit committees has been greatly expanded by the Act and the ensuing regulations from the Securities and Exchange Commission (the SEC) and the Board. The number of audit committee meetings has expanded significantly as have the length and complexity of meeting agendas. Good work is being done on behalf of shareholders.

-2-

However, amidst the demands of increasingly long agendas and voluminous advance materials, all audit committees are faced with the challenge of preserving unstructured time to consider and debate matters of significance. After having worked through the audit committee process of implementing the changes required by the Act and its regulations, I believe that the SEC and the Board should consider carefully the impact on audit committees of any new regulations that could further burden the audit committee process. In particular, I believe that the provision under Proposed Rule 3524(a)(i) requiring that the public accounting firm supply engagement letters to the audit committee will result in significant additional review work for audit committee members of legal boiler plate with little, if any, benefit over the alternative of providing a summary description of the engagement letter. This is particularly true for very large corporations that may have a relatively large numbers of these engagement letters. If the full engagement letters are provided in addition to the summaries, these letters will be reviewed by the audit committee as a part of their preparation process. I believe that shareholders will benefit from both the SEC and the Board taking steps to ensure that relatively immaterial matters do not tend to crowd out the consideration by audit committees of issues that are of material importance. It is therefore my recommendation to the Board that Proposed Rule 3524(a)(i) be modified to require that only a summary of the engagement letter or other agreement be provided to the audit committee.

Thank you for considering this recommendation. Please let me know if you have any questions regarding comments in this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "E. Campbell", written in a cursive style.

Edward P. Campbell

---

**From:** Daniel Nornhold [dnornhold@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 2:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Daniel Nornhold  
5 Butternut Ln  
Mechanicsburg, PA 17050-7943

---

**From:** Linda Noruk [bobo1@chartermi.net]  
**Sent:** Wednesday, January 19, 2005 6:51 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Linda Noruk  
1405 101st Ave W  
Duluth, MN 55808-1618

---

**From:** Thaddius Novack [tnovak@metlife.com]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thaddius Novack  
104 Wayne St Apt 2R  
Jersey City, NJ 07302-3514

---

**From:** chester nowak [bnowak@fuse.net]  
**Sent:** Tuesday, January 18, 2005 3:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. chester nowak  
10755 Palestine Dr  
Union, KY 41091-9620

---

**From:** Mercedes Nunez [chibcha\_fan-activism@yahoo.com]  
**Sent:** Friday, January 21, 2005 12:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

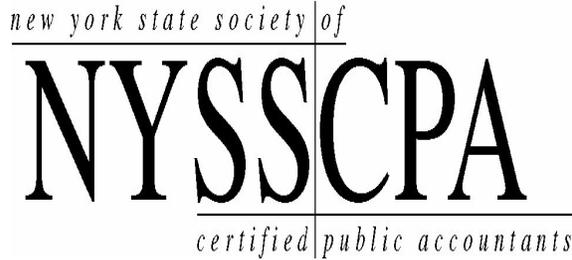
Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Mercedes Nunez  
4945 Outlook Ct  
Tallahassee, FL 32303-6860



*Home of the Trusted Professional*

3 park avenue, at 34th street, new york, ny 10016-5991  
212.719.8300 • fax 212.719.3364  
www.nysscpa.org

February 22, 2005

Office of the Secretary  
PCAOB  
1666 K Street, N.W.  
Washington, DC 20006-2803

By e-mail: [comments@pcaobus.org](mailto:comments@pcaobus.org)

In re: PCAOB Release No. 2004-015 – **Proposed Ethics and Independence Rules concerning Independence, Tax Services, and Contingent Fees**

To Whom It May Concern:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, is pleased to submit the attached comments on PCAOB Release 2004-015.

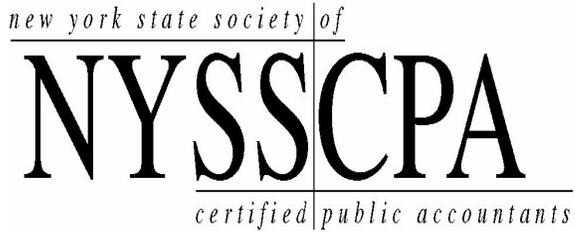
The NYSSCPA's Auditing Standards and Procedures Committee drafted the attached comments. If you would like additional discussion with us, please contact the committee chair, Mark Mycio at (212) 371-1421, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,



John J. Kearney  
President

Attachment



*Home of the Trusted Professional*

3 park avenue, at 34th street, new york, ny 10016-5991

212.719.8300 • fax 212.719.3364

www.nysscpa.org

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON PROPOSED PCAOB RULE**

**PCAOB RELEASE No. 2004-015**

**PROPOSED ETHICS AND INDEPENDENCE RULES CONCERNING  
INDEPENDENCE, TAX SERVICES, AND CONTINGENT FEES**

**February 22, 2005**

**Principal Drafter**

**Elliot A. Lesser**

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**NYSSCPA 2004 - 2005 Auditing Standards and Procedures Committee**

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Kyu Cho	Lawrence E. Nalitt	George I. Victor
Michael H. Ehrenpreis	Wayne Nast	William H. Walters
Philip Gaboury	Bruce H. Nearon	Robert N. Waxman
		Barry Wexler

**NYSSCPA Staff**

Robert H. Colson

**The New York State Society of Certified Public Accountants**  
**Auditing Standards and Procedures Committee**  
**Comments on PCAOB Release No. 2004-015**  
**Proposed Ethics and Independence Rules Concerning Independence, Tax Services,**  
**and Contingent Fees**  
**February 22, 2005**

**Proposed Ethics and Independence Rules and NYSSCPA Responses**

*Proposal:*

Rule 3521: Would treat registered public accounting firms as not independent of their audit clients if they enter into a contingent fee arrangement with those audit clients.

*Response:*

The NYSSCPA endorses proposed rule 3521 as consistent with existing independence principles.

*Proposal:*

Rule 3522(a) and (b): Would treat a registered public accounting firm as not independent from an audit client if the firm provides services related to planning or opining on the tax consequences of a transaction that is a listed or confidential transaction under treasury regulations. In addition, proposed Rule 3522(c) includes a provision that would treat a registered public accounting firm as not independent if the firm provides services related to planning or opining on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations.

*Response:*

The NYSSCPA endorses proposed rule 3522(a) and (b). Opinions and advice by audit firms to their public audit clients about tax matters related to the financial statements under audit would be an independence violation in those cases where the client has no independent means to evaluate the opinions and advice and where the client relies solely upon the audit firm's advice in making its decision(s). In such situations the audit firm is in the position of auditing its own work with respect to the audit client's financial statements.

The PCAOB commentary about proposed rule 3522(c) states that "tax avoidance" should be understood to include "acceleration of deductions into earlier taxable years and deferral of income inclusion to later taxable years." There are numerous acceptable tax methods in the U.S., including LIFO inventory, accelerated cost recovery, and installment sales recognition, however, which would fall under the commentary's characterization as "tax avoidance." To avoid confusion, the commentary could qualify its use of "tax avoidance" to those situations not allowed under applicable tax laws and regulations.

*Proposal:*

Rule 3523: Would set a new requirement to treat a registered public accounting firm as not independent if the firm provided tax services to officers in a financial reporting oversight role of an audit client.

*Response:* In some cases, “officers in a financial reporting oversight role” may not be easily and unambiguously identifiable; then, the audit committee will have to determine the officers subject to the proposed rule’s exclusion. When such choices occur, there also arises the potential that the PCAOB inspectors may disagree with the audit committee’s decisions in a subsequent year, thereby raising potential auditor independence problems in previous periods. In order to remove any ambiguity, it may be necessary to specify officers by title or to extend the prohibition to all officers or to all officers that are also board members; however, the proposed rule does not contemplate such extensions. Alternatively, because the audit committee has to pre-approve all such services in any case, it may be preferable to charge the audit committee with determining the extent and scope of tax services to officers.

Regardless of audit committee pre-approval, tax services rendered by the audit firm to a member of the audit or compensation committees, to the board chair, or to any independent board member would call into question the appearance of the audit firm’s independence.

*Proposal:*

Rule 3524: Would require a registered public accounting firm that seeks pre-approval to provide tax services to supply the audit committee with certain information, discuss with audit committee the potential effects of the services on the firm’s independence, and to document the substance of the discussion.

*Response:*

Although the proposed rule provides an excellent foundation for the audit committee to assess an audit firm’s independence, the presumption expressed in proposed rule 3524(b) that compliance services by the auditor which make up for the lack of an “internal tax department” would likely have “a detrimental effect on the firm’s independence” could pose difficulties for non-accelerated filers.

*Proposal:*

Rules 3502 and 3520: Would codify in rule 3502 the principle that persons associated with a registered public accounting should not cause the firm to violate laws, rules, and professional standards due to an act or omission the person knew or should have known would contribute to such violations. Rule 3520 would include a general obligation requiring registered public accounting firms to be independent of their audit clients throughout the audit and professional engagement period.

*Response:*

The NYSSCPA generally endorses proposed rules 3502 and 3520.

Proposed rule 3502 poses the question, "...in a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a proposed Rule 3502 violation by an associated person who negligently contributed to the violation?" In response, unintentional acts by individuals, including negligence, should not result in automatic 3502 violations.

Proposed rule 3520 does not address potentially prohibited services performed by the audit firm during the year under audit but before the "audit and professional engagement period." Continuing auditors would not be affected by this omission, but newly appointed auditors should be covered in proposed rule 3520 by referring to potentially prohibited services performed at any time during the year being audited.

Regarding to international assignment tax services (page 16), the proposal does not permit "bookkeeping services related to such tax work." Does the PCAOB intend that "bookkeeping services" extend to the routine data compilation done for any personal income tax return? Clarification of "bookkeeping services" in this context would be helpful.

---

**From:** Kathryn O'Connor [kathryn\_oconnor@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kathryn O'Connor  
3551 85th St Apt 9M  
Jackson Heights, NY 11372-5548

---

**From:** Thomas O'Donoghue [tbscod@adelphia.net]  
**Sent:** Wednesday, January 26, 2005 7:34 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thomas O'Donoghue  
1 Powder House Ln Apt 4  
Manchester, MA 01944-1320

---

**From:** Michael O'Donovan [res6k6d1@verizon.net]  
**Sent:** Monday, February 14, 2005 7:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 14, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael O'Donovan  
587 NW Fairhaven Dr  
Oak Harbor, WA 98277-4480



## Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) [www.opers.org](http://www.opers.org)

Sent via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

February 1, 2005

Office of the Secretary  
PCAOB  
1666 K Street, N.W.  
Washington, DC 20006

Re: PCAOB Rulemaking Docket Matter No. 017, Proposed Ethics and Independence Rules  
Concerning Independence, Tax Service, and Contingent Fees

Dear PCAOB Board Members:

The Ohio Public Employees Retirement System (“OPERS”) is a \$64.5 billion fund serving three quarters of a million Ohioans, making the system the 10<sup>th</sup> largest state pension fund in the U.S. We applaud your efforts and are writing in support of the PCAOB proposed rules to strengthen the auditor ethics and independence rules regarding independence, tax services, and contingent fees.

Despite the significant progress that has been made regarding auditor independence since the passage of the Sarbanes-Oxley Act in 2002 (“Sarbanes-Oxley”), including the eight types of prohibited non-audit consulting services contained in Section 201(a) of Sarbanes-Oxley, some significant trouble spots remain as evidenced by the continuing large-scale corporate accounting scandals and financial restatements that have occurred since Enron and WorldCom.

For example, the Securities and Exchange Commission (“SEC”) recently imposed a six-month ban on new clients at Ernst & Young because the firm violated auditor independence rules when it formed a joint-venture expatriate tax software business with PeopleSoft, its audit client from 1994 through 1999. Ernst & Young and PeopleSoft entered into mutually beneficial arrangements designed to lead to cross-selling other Ernst & Young services and PeopleSoft software, including a Licensing Agreement that provided the greater the sale of the software for PeopleSoft, the higher the royalties that Ernst & Young paid to PeopleSoft. Given the recent accounting problems at Sprint where Ernst & Young served as its auditor, it is also interesting to note that Sprint was Ernst & Young’s largest software implementation client and also a major client of PeopleSoft.

PCAOB  
February 1, 2005  
Page 2

In order to further strengthen the auditor ethics rules, we also strongly urge the PCAOB to incorporate the four principles contained in the Preliminary Note to the Securities and Exchange Commission's ("SEC") auditor independence requirements, Rule 2-01(b), into the PCAOB proposed auditing standard. OPERS believes that these principles should also apply throughout the entire audit engagement. These four principles state that auditor independence may be impaired if the relationship with its audit client:

1. Creates a mutual or conflicting interest between the accountant and the audit client;
2. Places the accountant in the position of auditing his or her own work;
3. Results in the accountant acting as management or an employee of the audit client; or
4. Places the accountant in a position of being an advocate for the audit client.

Accordingly, auditors have traditionally served as gatekeepers to the public securities markets, which is crucial for capital formation in the U.S. Auditor independence is an integral part of the auditor's public watchdog function and serves two very important objectives. The first objective is to foster high quality audits by minimizing the possibility that external factors will influence an auditor's judgment and the second objective is to promote investor confidence in the reliability and accuracy of the financial statements of public companies. Public confidence in the reliability and accuracy of a company's financial statements is of critical importance and depends, in large part, on public perception of the outside auditor as an independent professional, which requires both independence in fact and independence in appearance. In the absence of rigorous examination of public company financial statements by objective auditors, public confidence is eroded and investors become less willing to invest in the securities of publicly traded companies.

OPERS and other investors believe that Sarbanes-Oxley did not go far enough to ensure auditor independence when this federal legislation failed to prohibit the auditor from selling certain tax strategy services to audit clients such as high-risk tax shelter products, a financially lucrative and growing industry that Sarbanes-Oxley left to the discretion of the audit committee. As documented in a July 2003 GAO report on Public Accounting Firms conducted for the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services on Public Accounting Firms, in 2002 the Big 4 accounting firms had revenues ranging from \$979 million to \$1.7 billion from tax services the accounting firms provided to U.S. clients.

Although there is presently no uniform standard as to what constitutes a tax shelter, the Internal Revenue Service ("IRS") describes them as very complicated, confidential transactions, often composed of many pieces located in several parts of a complex tax return, that sophisticated tax professionals promote to corporations and wealthy individuals to reap large unintended tax benefits. As of August 2003, the IRS has listed 27 types of abusive tax shelter transactions.

PCAOB  
February 1, 2005  
Page 3

Since the enactment of Sarbanes-Oxley in 2002, abuse in the tax area that involves the auditor continues as illustrated in 2003 when investors learned that Sprint's auditor, Ernst & Young, recommended tax shelters to the company's then-Chairman and CEO, William Esrey, and President, Ronald LeMay (also a Sprint Board Member) that permitted the executives to avoid paying taxes on more than \$100 million each in stock-option gains, which has now been challenged by the IRS. Current examples of continuing abuse in the tax area are illustrated by Qwest and WorldCom where the auditor, KPMG, served in the dual capacity of both auditor and tax shelter consultant at both companies, which is still under investigation.

Although it may be appropriate to continue to permit the auditor to perform certain limited, routine tax preparation services related to the audit, when auditors are either permitted to audit their own work or the circumstances create the appearance of a mutual interest, significant conflict-of-interest issues arise that increase the likelihood of financial harm to investors.

Moreover, OPERS believes that the PCAOB should consider going even further than the proposed rules to not only prohibit the auditor from providing tax services to the executives that oversee the preparation of financial statements, but also prohibit the auditor from providing these types of tax services to individual corporate directors serving on the audit committee, which is responsible for hiring, and when necessary, firing, the external auditor. We also recommend that the PCAOB consider a final rule that incorporates a standard that covers any senior officer or director who has "significant influence" over the financial statements. Under a "significant influence" standard, given the fact that one of the main reasons for financial restatements continues to be improper revenue recognition, it may also be appropriate to include the Vice President of Sales as someone who is in an oversight role and has "significant influence" over the financial statements. Such a standard would be consistent with the PCAOB proposed definition of affiliate of the audit client, which also includes a "significant influence" component.

Finally, we fully endorse the PCAOB's proposed definition of an affiliate of the accounting firm and we support the PCAOB's proposal to eliminate the tax matters exception to the SEC's general prohibition against contingent fee arrangements between an auditor and its audit client. The SEC has deemed that such contingent fee arrangements impair the auditor's independence. For example, in July 2002 the SEC found that PricewaterhouseCoopers ("PwC") violated the auditor independence rules over a five-year period from 1996 to 2001 when the firm used prohibited contingent fee arrangements with 14 different audit clients who also received investment services from the firm's broker dealer affiliate, PricewaterhouseCoopers Securities, and for PwC's participation with two other audit clients in the improper accounting of costs that included PwC's own consulting fees. The SEC indicated that this case was a good example of the heightened risk of audit failure created when an accounting firm assists in and approves the accounting treatment of its own consulting fees.

PCAOB  
February 1, 2005  
Page 4

Investors are aware that contingent fee arrangements are being used with increased frequency in the tax consulting area where the fees may be tied to the “success” of the tax avoidance advice. As the PCAOB points out, this narrow exception may have recently been misinterpreted by the AICPA and OPERS fully supports the PCAOB’s efforts to clarify and enhance the auditor independence auditing standards as it relates to contingent fee arrangements. In addition, in order to ensure that the audit committee of a public company remains fully informed about the existence of any contingent fee arrangements between the auditor and the audit client, OPERS believes that the auditor should be required to provide the audit committee with an actual copy of the audit engagement letter and any side letters or other related agreements.

We applaud the PCAOB for addressing these important issues. Should you need any additional information, please feel free to contact Cynthia Richson, OPERS Corporate Governance Officer and a member of the PCAOB Standing Advisory Group, at 614/222-0398.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Fiori Hacking".

Laurie Fiori Hacking  
Executive Director

# Ohio Retirement Systems

Damon Asbury  
*Executive Director*  
 State Teachers Retirement  
 System of Ohio  
 275 East Broad Street  
 Columbus, Ohio 43215  
 Telephone: (614) 227-4090

Richard Curtis  
*Executive Director*  
 Highway Patrol Retirement  
 System  
 6161 Busch Blvd., Suite 119  
 Columbus, Ohio 43229  
 Telephone: (614) 431-0781

William Estabrook  
*Executive Director*  
 Ohio Police and Fire Pension  
 Fund  
 140 East Town Street  
 Columbus, Ohio 43215  
 Telephone: (614) 228-2975

Laurie Hacking  
*Executive Director*  
 Ohio Public Employees  
 Retirement System  
 277 East Town Street  
 Columbus, Ohio 43215  
 Telephone: (614) 222-0011

James R. Winfree  
*Executive Director*  
 School Employees  
 Retirement System of Ohio  
 300 East Broad Street  
 Suite 100  
 Columbus, Ohio 43215  
 Telephone: (614) 222-5853

Keith Overly  
*Executive Director*  
 Ohio Public Employees  
 Deferred Compensation  
 250 Civic Center Drive  
 Columbus, Ohio 43215  
 Telephone: (614) 466-7245

Sent via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

February 3, 2005

Office of the Secretary  
 Public Company Accounting Oversight Board  
 1666 K Street, N.W.  
 Washington, DC 20006

Re: Public Company Accounting Oversight Board (“PCAOB”)  
 Rulemaking Docket Matter No. 017, Proposed Ethics and  
 Independence Rules Concerning Independence, Tax Service, and  
 Contingent Fees

Dear PCAOB Board Members:

The Ohio Retirement Systems (ORS) collectively manage \$142 billion in assets and serve 1.5 million Ohioans. We applaud your efforts and are writing in support of the PCAOB proposed rules to strengthen the auditor ethics and independence rules regarding independence, tax services, and contingent fees.

Despite the significant progress that has been made regarding auditor independence since the passage of the Sarbanes-Oxley Act in 2002 (“Sarbanes-Oxley”), including the eight types of prohibited non-audit consulting services contained in Section 201(a) of Sarbanes-Oxley, some significant trouble spots remain as evidenced by the continuing large-scale corporate accounting scandals and financial restatements that have occurred since Enron and WorldCom.

For example, the Securities and Exchange Commission (“SEC”) recently imposed a six-month ban on new clients at Ernst & Young because the firm violated auditor independence rules when it formed a joint-venture expatriate tax software business with PeopleSoft, its audit client from 1994 through 1999. Ernst & Young and PeopleSoft entered into mutually beneficial arrangements designed to lead to cross-selling other Ernst & Young services and PeopleSoft software, including a Licensing Agreement that provided the greater the sale of the software for PeopleSoft, the higher the royalties that Ernst & Young paid to PeopleSoft. Given the recent accounting problems at Sprint where Ernst & Young served as its auditor, it is also interesting to note that Sprint was Ernst & Young’s largest software implementation client and also a major client of PeopleSoft.

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Page 2

In order to further strengthen the auditor ethics rules, we also strongly urge the PCAOB to incorporate the four principles contained in the Preliminary Note to the Securities and Exchange Commission's ("SEC") auditor independence requirements, Rule 2-01(b), into the PCAOB proposed auditing standard. ORS believes that these principles should also apply throughout the entire audit engagement. These four principles state that auditor independence may be impaired if the relationship with its audit client:

1. Creates a mutual or conflicting interest between the accountant and the audit client;
2. Places the accountant in the position of auditing his or her own work;
3. Results in the accountant acting as management or an employee of the audit client; or
4. Places the accountant in a position of being an advocate for the audit client.

Accordingly, auditors have traditionally served as gatekeepers to the public securities markets, which is crucial for capital formation in the U.S. Auditor independence is an integral part of the auditor's public watchdog function and serves two very important objectives. The first objective is to foster high quality audits by minimizing the possibility that external factors will influence an auditor's judgment and the second objective is to promote investor confidence in the reliability and accuracy of the financial statements of public companies. Public confidence in the reliability and accuracy of a company's financial statements is of critical importance and depends, in large part, on public perception of the outside auditor as an independent professional, which requires both independence in fact and independence in appearance. In the absence of rigorous examination of public company financial statements by objective auditors, public confidence is eroded and investors become less willing to invest in the securities of publicly traded companies.

ORS and other investors believe that Sarbanes-Oxley did not go far enough to ensure auditor independence when this federal legislation failed to prohibit the auditor from selling certain tax strategy services to audit clients such as high-risk tax shelter products, a financially lucrative and growing industry that Sarbanes-Oxley left to the discretion of the audit committee. As documented in a July 2003 GAO report on Public Accounting Firms conducted for the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services on Public Accounting Firms, in 2002 the Big 4 accounting firms had revenues ranging from \$979 million to \$1.7 billion from tax services the accounting firms provided to U.S. clients.

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PCAOB  
February 3, 2005  
Page 3

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Although it may be appropriate to continue to permit the auditor to perform certain limited, routine tax preparation services related to the audit, when auditors are either permitted to audit their own work or the circumstances create the appearance of a mutual interest, significant conflict-of-interest issues arise that increase the likelihood of financial harm to investors.

Moreover, ORS believes that the PCAOB should consider going even further than the proposed rules to not only prohibit the auditor from providing tax services to the executives that oversee the preparation of financial statements, but also prohibit the auditor from providing these types of tax services to individual corporate directors serving on the audit committee, which is responsible for hiring, and when necessary, firing, the external auditor. We also recommend that the PCAOB consider a final rule that incorporates a standard that covers any senior officer or director who has "significant influence" over the financial statements. Under a "significant influence" standard, given the fact that one of the main reasons for financial restatements continues to be improper revenue recognition, it may also be appropriate to include the Vice President of Sales as someone who is in an oversight role and has "significant influence" over the financial statements. Such a standard would be consistent with the PCAOB proposed definition of affiliate of the audit client, which also includes a "significant influence" component.

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PCAOB  
 February 3, 2005  
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Investors are aware that contingent fee arrangements are being used with increased frequency in the tax consulting area where the fees may be tied to the "success" of the tax avoidance advice. As the PCAOB points out, this narrow exception may have recently been misinterpreted by the AICPA and ORS fully supports the PCAOB's efforts to clarify and enhance the auditor independence auditing standards as it relates to contingent fee arrangements. In addition, in order to ensure that the audit committee of a public company remains fully informed about the existence of any contingent fee arrangements between the auditor and the audit client, ORS believes that the auditor should be required to provide the audit committee with an actual copy of the audit engagement letter and any side letters or other related agreements.

We applaud the PCAOB for addressing these important issues. Should you need any additional information, please feel free to contact Cynthia Richson, Corporate Governance Officer for the Ohio Public Employees Retirement System and a member of the PCAOB Standing Advisory Group, at 614/222-0398.

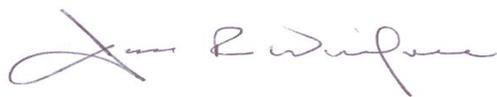
Sincerely,



Richard Curtis  
 Executive Director  
 Highway Patrol Retirement System



Laurie Hacking  
 Executive Director  
 Ohio Public Employees Retirement System



James R. Winfree  
 Executive Director  
 School Employees Retirement System of Ohio



William Estabrook  
 Executive Director  
 Ohio Police and Fire Pension Fund



Damon Asbury  
 Executive Director  
 State Teachers Retirement System of Ohio



Keith Overly  
 Executive Director  
 Ohio Public Employees Deferred Compensation

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**From:** Derek Ohlms [ohlmsdl@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Derek Ohlms  
14172 Cross Trails Dr  
Chesterfield, MO 63017-3309

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**From:** Margy Ohring [margy1@erols.com]  
**Sent:** Tuesday, January 18, 2005 4:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Margy Ohring  
35454 Cherry Grove Ln  
Round Hill, VA 20141-2332

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**From:** Carol O. Olsen [olsenkc@msn.com]  
**Sent:** Thursday, January 20, 2005 8:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that it is important to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement should minimize potential conflicts of interest and promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Carol O. Olsen  
1109 Pipestem Place  
Rockville, MO 20854

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**From:** Pamela Olson [nicholassw@aol.com]  
**Sent:** Tuesday, January 18, 2005 3:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Pamela Olson  
1357 Goodrich Ave  
Saint Paul, MN 55105-2306

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**From:** Elizabeth O'Nan [pace@mcdowell.main.nc.us]  
**Sent:** Tuesday, January 18, 2005 3:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Elizabeth O'Nan  
396 Sugar Cove Rd  
Marion, NC 28752-6228

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**From:** Juanita One [jone@choosemaryland.org]  
**Sent:** Tuesday, January 18, 2005 3:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Juanita One  
611 W 33rd St  
Baltimore, MD 21211-2702

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**From:** IRA OPENDEN [marketman12241@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

IRA OPENDEN  
1 Laurel St  
Jericho, NY 11753-2225

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**From:** Gary Orendorff [gorendorff@cinci.rr.com]  
**Sent:** Tuesday, January 18, 2005 3:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Gary Orendorff  
PO Box 245  
Butler, KY 41006-0245

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**From:** Joseph Ortiz [joe\_delarosa@hotmail.com]  
**Sent:** Friday, January 21, 2005 2:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Joseph Ortiz  
12 Deer Run Dr  
High Bridge, NJ 08829-1621

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**From:** chris pallas [cgptti@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. chris pallas  
70410 Cobb Rd  
Rancho Mirage, CA 92270-2414

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**From:** Robert Pancner [rpancn@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 5:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Pancner  
7936 Redondo Ct  
Darien, IL 60561-1633

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**From:** rene paradis [renelori@hotmail.com]  
**Sent:** Friday, January 21, 2005 4:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

rene paradis  
191 Seaglass Dr  
Melbourne Beach, FL 32951-3276

---

**From:** Marina Parowski [vicmar@wideopenwest.com]  
**Sent:** Tuesday, January 18, 2005 3:03 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

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Sincerely,

Mrs. Marina Parowski  
19775 Nicke St  
Clinton Township, MI 48035-4810

---

**From:** Carlos Pascual [shakari@planetout.com]  
**Sent:** Thursday, January 20, 2005 3:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Carlos Pascual  
202 Patricia Pl  
Byron, GA 31008-3644

---

**From:** Patrick (Time 4 TRUE [ptrue@ipmts.ucsc.edu])  
**Sent:** Tuesday, January 18, 2005 2:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

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Sincerely,

Mr. Patrick (Time 4 TRUE  
113 Madeline Dr  
Aptos, CA 95003-3644

---

**From:** David Paul [dpaul57764@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Paul  
3931 S Spruce St  
Denver, CO 80237-2152

---

**From:** Binu Paulose [bpaulose@gmail.com]  
**Sent:** Thursday, January 20, 2005 10:38 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Binu Paulose  
21A Embassy Sq Apt 4  
Tonawanda, NY 14150-6935

---

**From:** Peri Payn [perip@napanet.net]  
**Sent:** Wednesday, January 19, 2005 2:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. As the staff member who exercises our proxies for our clients, I routinely vote against all auditor approvals because of the potential conflict of interest. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Peri Payn  
1001 2nd St Ste 325  
Napa, CA 94559-3030

---

**From:** Howard Pellett [cpellett@cablerocket.ocm]  
**Sent:** Sunday, January 23, 2005 6:33 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. We need to bring back the trust in public accounting firms by prohibiting them from selling tax shelters and performing corporate audits at the same time. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Howard Pellett  
5293 Guemes Island Rd  
Anacortes, WA 98221-9041

**Pennsylvania Institute of Certified Public Accountants**

1650 Arch Street  
17<sup>th</sup> Floor  
Philadelphia, PA  
19103-2099  
(215) 496-9272

February 14, 2005

Public Company Accounting Oversight Board  
Office of the Secretary  
1666 K Street, NW  
Washington, DC 20006-2803

**Rulemaking Docket Matter No. 017, Release No. 2004-015: Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees**

Dear Board Members:

The Pennsylvania Institute of CPAs (PICPA), representing approximately 20,000 CPAs, appreciates the opportunity to comment on the proposed rule entitled “Strengthening the Commission’s Requirements Regarding Auditor Independence.” This response represents a consensus of a number of PICPA members who are PCAOB registrants.

General Comment

PICPA recognizes the PCAOB’s authority to propose and promulgate rules for registered public accounting firms that audit and review financial statements of U.S. public companies. We encourage the Board to recognize and consider:

- The differences between large and small CPA firms registered with the PCAOB, and
- The economic cost vs. benefit between large and small U.S. public companies.

Proposed Rules 3521 and 3522

We agree the receipt of a contingent fee or commission from an audit client impairs an auditor’s independence. We also agree an auditor would lack independence if the firm provides tax planning involving abusive tax transactions. However, the effect of the wording under section 3522 (c), “unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax

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laws,” is unclear and does not indicate how the standard would be applied or who would make the determination. We pose the following questions to illustrate our concerns:

- Who will determine whether a tax return position is potentially abusive?
- If a tax position, made in good faith, is subsequently disallowed, who will determine whether it met the “at least more likely than not” requirements?
- What is the ramification of this determination? Will the audit need to be re-performed?
- Will materiality be considered? Can independence be restored?

The release indicates the Board would not “treat an auditor as not independent if the law changed after the service was provided or if the tax treatment simply turned out to be not allowed”. However, it does not indicate how the standard would be applied. Also, while the release references 26CFR §1.6664-4(f), the rule does not.

#### Proposed Rule 3523

We do not agree providing tax services to audit client executives involved in financial oversight, impairs a CPA firm’s independence. In many cases, preparing senior management’s and directors’ tax returns enhances the auditor’s understanding of the client’s business, exposes additional fraud risk factors and reveals additional audit evidence, especially regarding related party transactions.

The proposed prohibition on such services ignores the practical realities of small public entities. The cost could be excessively burdensome for small entities having to engage separate tax practitioners for such tax work. The audit firm is in the best position to assist the client and client management with tax services. We request the PCAOB limit the applicability of the rule to firm’s with greater than 100 PCAOB audits or to large public entities (e.g. public entities with a market capitalization of greater than \$500 million). Any potential conflict can be effectively removed by requiring audit committee approval for the services and disclosure to the audit committee of any tax return positions taken by senior management in conflict with any corporate positions.

The Release on pg 37 requests comments regarding offering tax services to members of an audit client’s audit committee. We do not believe there is a conflict. Tax services allowable and prohibited for audit committees should be consistent with services allowable and prohibited for officers and the audited company. For companies, officers and audit committees, tax compliance services

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should be allowed and disclosed to the audit committee. Aggressive tax advice and receipt of contingent fees should not be allowed.

#### Proposed Rule 3524 (a) (i)

The proposed requirements are onerous and unnecessary. The preapproval requirements detailed in Section 202 of the Sarbanes Oxley Act of 2002 (“SAO”) and audit committee responsibilities outlined in Section 301 of the SOA are adequate. There is a general concern that audit committee members are being inundated with too much minutiae.

#### Impact on Non-public Entities

The applicability of the proposed rules to a registered firm’s non-public clients is not clearly defined. As currently written, the proposed rule applies to all audit clients of a PCAOB registered firm. It would be anti-competitive to force PCAOB registrants to apply more restrictive rules to their non-public company client’s than a competing non-PCAOB registrant firm. This could further reduce the number of PCAOB registrants, increase audit fees and raise the overall cost of capital.

The impact of the rules on non-public entity filing an initial public offering is not clear. Would audits performed prior to the IPO need to be re-performed if the auditor prepared the tax returns for the directors?

#### Trickle Down Impact

Finally, we are very concerned about the impact the PCAOB standards have on the non-registered entities. This “trickle down” has the effect of setting de facto standards for non-public and not-for-profit entities that rely on the professional advice of boards of directors, lawyers, accountants, and auditors. A specific example is the white paper prepared by the U.S. Senate Committee on Finance calling for major reforms and new regulations of not-for-profit entities, especially as they apply to governance and board duties. Many of the provisions suggested in the white paper are directly related to provisions designed for public companies and will have an adverse effect if they are applied to not-for-profit organizations. The white paper can be viewed at:

<http://www.senate.gov/%7Efinance/hearings/testimony/2004test/062204stfdis.pdf>

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February 4, 2005  
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We appreciate your consideration of our comments. We are available to discuss any of these comments with the commission or its technical staff at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Susan E. Howe". The signature is written in a cursive style with a large, stylized 'S' and 'H'.

Susan E. Howe, CPA  
PICPA President

---

**From:** casey pera [cpera@burlingame.org]  
**Sent:** Tuesday, January 18, 2005 4:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. casey pera  
4678 Almond Dr  
Templeton, CA 93465-8476

---

**From:** Suzanne Perlman [sperlman@snet.net]  
**Sent:** Wednesday, January 19, 2005 9:30 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Suzanne Perlman  
30 Bettswood Rd  
Norwalk, CT 06851-5124

---

**From:** JoAnn Perryman [joannp@sfsu.edu]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. I support PCAOB's efforts and the overall proposal.

Sincerely,

JoAnn Perryman  
95 Clifton Dr  
Daly City, CA 94015-3436

---

**From:** Kristin Perugino [ummagumma13@rcn.com]  
**Sent:** Thursday, January 20, 2005 11:43 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Kristin Perugino  
400 Swarthmore Ave  
Folsom, PA 19033-1714

---

**From:** Vanessa Pesec [vpesec@adelphia.net]  
**Sent:** Wednesday, January 19, 2005 11:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Vanessa Pesec  
11705 Cali Ct  
Painesville, OH 44077-9251

---

**From:** Mr. and Mrs. Gene and Doris Peters [petersgene@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. and Mrs. Gene and Doris Peters  
111 Rainbow Dr # 1118  
Livingston, TX 77399-1011

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**From:** Robert B Phillips [robphil@starstream.net]  
**Sent:** Tuesday, January 18, 2005 2:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. As a CPA myself, I believe the integrity objective must take precedent over the CPA firm's profit objective. Any activity that compromises the integrity objective is not desirable and is to be avoided. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Robert B Phillips  
2411 Churchill Ct  
Rocklin, CA 95765-5076

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**From:** James Piani [fri1339@mail.burgoyne.com]  
**Sent:** Tuesday, January 18, 2005 5:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Piani  
9485 Pinedale Cir  
Sandy, UT 84092-3280

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**From:** Theresa Pickel [tlpickel@charter.com]  
**Sent:** Tuesday, January 18, 2005 6:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Theresa Pickel  
405 N Road 35  
Pasco, WA 99301-3122

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**From:** Kathryn Pierquet [chattykat@ameritech.net]  
**Sent:** Tuesday, January 18, 2005 9:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kathryn Pierquet  
S77W18401 Kelly Dr  
Muskego, WI 53150-9146

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**From:** Scott Plantier [stp479@aol.com]  
**Sent:** Tuesday, January 18, 2005 5:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Scott Plantier  
23 Clinton Ave  
Pittsfield, MA 01201-6720

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**From:** Brian Pope [brian.pope@fox.com]  
**Sent:** Tuesday, January 18, 2005 2:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brian Pope  
128 S Hayworth Ave Apt 5  
Los Angeles, CA 90048-3620

---

**From:** cippy port [cippy2@aol.com]  
**Sent:** Saturday, January 22, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. cippy port  
1563 SW 178th Ave  
Aloha, OR 97006-3775

---

**From:** Duncan Porter [duporter@vt.edu]  
**Sent:** Wednesday, January 19, 2005 1:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Duncan Porter  
1002 Roanoke St E  
Blacksburg, VA 24060-5048

---

**From:** GEORGE PORTER [georgepor3@comcast.net]  
**Sent:** Tuesday, January 18, 2005 3:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. GEORGE PORTER  
121 Stevenson Ln  
Baltimore, MD 21212-1402

---

**From:** Carl Poske [c.poske@comcast.net]  
**Sent:** Tuesday, January 18, 2005 9:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Carl Poske  
92 Rio Dr  
Ponte Vedra Beach, FL 32082-2442

---

**From:** Charles Post [cipost2@aol.com]  
**Sent:** Wednesday, January 19, 2005 3:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles Post  
7615 4th Ave W  
Bradenton, FL 34209-3247

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**From:** Elena Powers [elenapowers@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Elena Powers  
22 Lebeaux Dr  
Shrewsbury, MA 01545-3300

---

**From:** William Prentice [billprentice@cox.net]  
**Sent:** Wednesday, January 19, 2005 12:28 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Prentice  
13 Bluecoat  
Irvine, CA 92620-2607



1301 K Street, NW  
Suite 800W  
Washington, DC 20005  
202-414-1000

February 14, 2005

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, NW, 9<sup>th</sup> Floor  
Washington, DC 20006

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

Dear Mr. Secretary,

PricewaterhouseCoopers<sup>1</sup> is pleased to submit our comments on the Board's proposed rulemaking with respect to independence, tax services and contingent fees. We are fully supportive of the Board's decision to engage in rulemaking with respect to these important topics. We have reviewed the proposed rules and have a number of observations and proposals that we believe will help support the overall objectives of the Board. We agree with the Board that auditor independence is a cornerstone of investor confidence in the accounting profession's role with respect to financial reporting. We also agree that a clear understanding of the rules and properly applied sanctions surrounding auditor independence are a necessary part of this process.

We are pleased that the Board has recognized that an auditor's healthy and robust tax practice is integral to enhanced audit quality – by definition, audits of financial statements require often complicated analyses of tax related issues and audit firms must develop and retain the resources and expertise to be able to properly address these issues. We also agree that the provision of certain tax services by an auditor to its audit clients, such as routine tax planning and compliance work, also contributes to enhanced audit quality and, equally important, is not likely to impair an auditor's independence. The Board's detailed commentary on acceptable auditor provided tax services provides clarity to audit committees considering whether to engage their auditors for those services.

We agree with the Board's decision to restrict auditor provided tax services with respect to aggressive tax positions and the provision of tax services to officers in a financial reporting oversight role. We believe that greater clarity around definitions and implementation matters with respect to these rules will provide the guidance required by

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<sup>1</sup> "PricewaterhouseCoopers" refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. PricewaterhouseCoopers LLP refers to the member firm conducting business in the United States.

issuers and auditors alike. Accordingly, our comments are directed toward those matters and their possible resolution.

A number of our comments, particularly in connection with the rule relating to aggressive tax positions, are of a technical nature and are designed to assist the Board in clarifying the application of the rules.

We believe, however, that the Board's proposal with respect to audit committee pre-approval may increase the administrative burden on audit committees. Accordingly, we urge the Board to consider the impact its prescriptive approach has on the ability of audit committees to determine the form and content of their pre-approval policies, particularly in light of the fact that the pre-approval requirements are relatively new and should be given a chance to work.

Finally, with respect to the Board's proposed rule surrounding an associated person's responsibilities not to cause violations, we believe that the Board should fully consider the potential consequences of the proposed standard and in light of those potential consequences, as well as the Board's ability to achieve its objectives through the inspection process, whether negligence is the appropriate standard for secondary liability of associated persons.

Should you have questions regarding our comments or require any other information, please contact Richard Kilgust at 646-471-6110, Samuel Burke at 201-521-4460 or Carl Duyck at 202-414-4402.

Very truly yours,

A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP". The signature is written in a cursive, flowing style.

PricewaterhouseCoopers

***PROPOSED ETHICS AND INDEPENDENCE RULES CONCERNING  
INDEPENDENCE, TAX SERVICES, AND CONTINGENT FEES***

***PCAOB Release No. 2004-015, December 14, 2004;  
PCAOB Rulemaking Docket No. 017***

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**I. THE AUDITOR'S INVOLVEMENT WITH THE AUDIT COMMITTEE –  
Proposed Rule 3524**

**A. The Board Should Take Additional Time to Consider the Pre-Approval Requirements that Go Beyond the Statutory Mandate.**

Proposed Rule 3524 would require an audit firm to provide to audit committees engagement letters or other agreements relating to each proposed tax service and would further require that the accounting firm discuss with the audit committee the potential effects of each service on the firm's independence. We support the Board's goal of ensuring that audit committees are in a position to make reasoned and informed judgments on an auditor's independence. We also agree with the Board's statements that the rule should eschew any rigid, mechanical approach and that audit committees should be given wide discretion to make these determinations. Finally, we agree with the Board's conclusion that a viable tax practice within audit firms is important to the retention of highly qualified individuals who, in addition to providing tax services, are integral to supporting the audit process.

Audit committees are taking the pre-approval requirements seriously. The Board has the opportunity through its inspection process to review how the process is operating for itself. In light of the additional burdens that the rule will place on audit committees and in the absence of an identified systemic problem, we would suggest that the proposed requirements should be deferred and only introduced to the extent that systemic issues which need to be dealt with are identified.

However, if the Board decides to move forward with this rule now, we believe that the proposed rule should be modified to afford audit committees greater flexibility to determine the specific nature of the documentation and discussions required for the individual service under consideration.

***1. The Potential Effect of the Additional Pre-Approval Requirements on Audit Quality is Unclear.***

Since enactment of the Securities and Exchange Commission's rules implementing the pre-approval requirements of the Sarbanes-Oxley Act, it has been apparent that audit committees are taking the pre-approval requirement seriously and that the statutory intent behind the requirement is being met under the current rules. Therefore, while we welcome additional guidance from the Board to ensure that audit committees are fully informed of the nature of the tax services to be provided by the auditor, we believe that care should be taken to ensure that any such additional requirements achieve the desired results.<sup>1</sup>

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<sup>1</sup> In the proposing release, the Board states that, "...the Board's rules do not yet include general auditor requirements relating to the Act's and SEC's new pre-approval requirements." This statement is footnoted (No. 29) with a reference to the pre-approval requirements included in Auditing Standard No. 2 which are described as requiring specific pre-approval by the audit committee for each engagement. The release goes

Audit committees directly oversee the auditor relationship including understanding the services that are being provided by the auditor. Where an auditor provides tax services that are subject to audit committee oversight, the audit committee is likely to have a better understanding of the financial statement impact of tax matters affecting the company than it might if another provider is providing the service. From a policy perspective, as with the effect of tax services on audit quality, the audit committee's continued involvement in the tax process is in the interest of investors.

Requiring that specific documents or materials such as engagement letters be provided to the audit committee will impact the behaviour of those subject to the requirement. It is unclear what effect these specific documentation requirements will have on audit committee effectiveness and it may have the unintended consequence of impacting the provision of tax services more broadly. Notwithstanding the Board's desire to permit auditors to provide tax services in order to enhance the quality of audits, in some situations audit committees may choose to engage another service provider simply to avoid the administrative burden that would result from a requirement to review each engagement letter. This may cause an unintended reduction in transparency in this area.

The Board has at its disposal a number of tools that can be used to ensure that auditors are providing audit committees with sufficient information related to tax engagements. For example, through its inspection process, which often includes interviews with audit committee members, and the documentation of discussions with the audit committee, the Board is able to evaluate the nature of discussions that have taken place. In the event that the Board identifies systemic issues of concern, the Board should undertake remedial measures in those situations where concerns exist. We believe that – for now – the Board should defer the proposed requirements due to the likelihood of increased burdens on audit committees and the potential for unintended consequences.

***2. The Mandatory Requirement to Provide Engagement Letters and Other Documentation May Not be Consistent with Congressional and Commission Intent to Provide Flexibility to Audit Committees.***

As the Board has stated, the pre-approval process should be flexible enough to encourage audit committees to develop systems tailored to the needs and attributes of the issuer. This supports the need for a clear and effective, but also flexible, rule which focuses on the nature of services provided, the manner in which fees for services are determined, and the impact those services may have on auditor independence. Such a rule should set a rational basis by which audit committees can most effectively and efficiently distinguish between those services requiring greater attention and those of a

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on to say that “[T]he proposed rule would implement these requirements...” We believe that the Board should clarify the potential inconsistency.

more routine nature.<sup>2</sup> We agree, without question, that audit committees should fully understand the nature and scope of the services that are to be provided by the auditor, based on the needs and expectations of each audit committee and issuer.

In devising the pre-approval requirement, Congress recognized that audit committees possess varying levels of expertise and experience and, consequently, did not prescribe specific procedures applicable to the pre-approval process. During its rulemaking process, the Commission specifically considered whether fewer aspects of the pre-approval process should be left to the discretion of an audit committee and whether the Commission should mandate specific matters to be communicated to or considered by an audit committee. Consistent with Congress' intent, the Commission concluded that a prescriptive approach would not enhance the pre-approval regime and that a high level of audit committee discretion was appropriate to account for the particular circumstances of the issuer and its relationship with its auditor (*see also, Application of the January 2003 Rules on Auditor Independence FAQs, Audit Committee Pre-Approval, Answer No. 24, August 13, 2003, where the SEC Staff noted that "if a cover sheet describing the non-audit service is provided to the audit committee it must include documentation that fully describes the proposed services being offered"*).

***3. The Proposed Rule Should Not Specify Particular Documents for Audit Committee Review and Should be Modified to Focus on the Specific Nature of Individual Non-Audit Services.***

We are concerned that the proposed requirement to provide engagement letters and other materials for each individual service, without allowing audit committees to consider their own individual needs, would place a significant burden on audit committees. Audit firms may issue numerous engagement letters to a client, making it impractical for audit committees to review each agreement while still focusing on the substantive issues relating to auditor independence. We recognize that in some circumstances, audit committees may feel it appropriate to review all engagement letters for tax services and we fully support that option. All of an audit firm's engagement letters with an audit client are as a matter of course available to audit committees for review upon request. However, to impose the requirement on all audit committees, allowing for no individual determination, is an inflexible and burdensome solution to a problem that has not been demonstrated to exist.

Large multinational corporations, for example, may issue engagement letters with great frequency in dozens of jurisdictions. These multinational corporations are composed of a multitude of entities which engage in transactions and operations requiring the provision of a broad range of permissible routine tax services and more complex tax advice. These services vary substantially both in scale and frequency, depending on the particular business need. We believe that in certain instances the number of individual tax engagements and resulting engagement letters could exceed 100 engagements per

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<sup>2</sup> Indeed, the U.S. capital markets are built on a free enterprise system that allows companies flexibility to design their operations to achieve their business goals. Care should be taken not to regulate the process that audit committees must undertake prior to making decisions that fall under their fiduciary mandate.

year. This may include many engagement letters that cover multiple individual engagements on a recurring basis, over a long period, and in different languages that cover many legal systems (*e.g.*, compliance tax services are generally provided under separate individual contracts because of the country specific legal, risk management and service requirements). These services vary substantially both in scale and frequency, depending on the particular business need.

The burden on the audit committee resulting from the amount of paperwork generated by all of these engagements in the aggregate may well outweigh any benefit provided by the review – such determination should be left to the audit committee. Mandating such a process, without allowing audit committee discretion, may not, in an audit committee’s judgment, contribute to its assessment regarding independence.

Further, a significant amount of tax compliance and planning advice is of a recurring nature or involves engagements that are substantially similar to engagements that have been previously pre-approved. Therefore, such services may be understood by the audit committee without review of individual documents specific to each engagement. Indeed it is possible that an engagement letter will cover multiple engagements of a similar kind (*e.g.*, routine tax advisory or planning services) over a prolonged period, without necessarily providing further detail on the specific services which are ultimately delivered subject to the terms of that engagement letter. Our proposal allows audit committees the flexibility to determine a process for pre-approval based on the relevant facts and circumstances for each issuer.<sup>3</sup>

As stated in the commentary to the Rule the purpose of the Rule is to provide audit committees with a “robust foundation of information upon which to determine whether to pre-approve proposed tax services” (*Rulemaking Release* at Page 40). We fully support achieving that objective so that audit committees can independently evaluate non-audit service offerings and their impact on independence. Implicit in any service offering that an audit firm takes to an audit committee for pre-approval is the audit firm’s conclusion that the service does not impair independence. We support the requirement that the auditor should discuss with the audit committee the independence implications of services and provide support for its analysis during the discussion with the audit committee. We do not believe, however, that such analysis should be the sole basis on which the audit committee makes its determinations. We are concerned that the proposed requirements could result in audit committees relying on the analysis provided by their auditors as the key determining factor in its evaluations of the independence implications of tax service offerings. The audit committee’s conclusion regarding independence is equally important. We believe that the nature of the discussions with the

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<sup>3</sup> Audit committees must fully understand the services that are to be provided by the auditor. It is also important to recognize that the role of the audit committee does not, in practice, stop with the initial approval. Rather periodic discussions and updates (*i.e.*, during quarterly audit committee meetings) are becoming increasingly customary and are valuable in making sure that audit committees are informed of the status of engagements and have access to subject matter experts.

audit firm and the audit committee's own conclusions, which are reflected in the audit committee's minutes are essential elements of the pre-approval process.

**Proposal:**

- The Board should assess the efficacy of the pre-approval process in the future and adopt changes to the process as needs dictate.
- Audit committees should have the flexibility to pre-approve routine and recurring services at their regularly scheduled meetings, or on an annual basis, after fully understanding the services that are to be provided and discussing with their auditor any independence implications.
- Audit committees should have the flexibility to pre-approve any other permissible services not envisioned or discussed at the scheduled meetings after fully understanding the services that are to be provided and discussing with their auditor any independence implications.
- Audit committees should in all circumstances have the discretion to determine the nature of the documents and discussions required for a fully-informed, well-reasoned decision on whether to pre-approve a tax service.

**B. The Proposed Rule Should be Clarified to Indicate that it Applies Only to Services Pre-Approved On or After the Effective Date of the Rule.**

The rulemaking release proposes an effective date for the rules of October 20, 2005, or 10 days after Commission approval of the rules. As a result, non-audit services already pre-approved under existing rules but not completed until after the effective date would become subject to a new pre-approval regime. We believe that potential retroactive application of the rule to those services already pre-approved under existing requirements would lead to administrative difficulties and additional costs.

**Proposal:**

- We recommend that the proposed rule be clarified to apply only to pre-approval of services entered into on or after the effective date and that services pre-approved prior to the effective date may continue to be provided without being subject to the new requirements.

**C. For the Sake of Clarity, the Board Should Adopt the Commission's Definition of those Entities that are Subject to Pre-Approval.**

The proposed rule defines the term "audit client" to include any affiliates of the audit client and, therefore, in connection with the auditor seeking audit committee pre-approval to perform for an audit client any permissible tax service, the term audit client includes, by definition, the audit client's affiliates. In 2003, the Commission considered

carefully those entities whose engagements would be subject to pre-approval by the issuer's audit committee. We believe this included an evaluation of the legal limitations that may exist for some audit clients in relation to their affiliates. In response to the comments raised, the Commission concluded that pre-approval was required by only those entities who were issuers (as defined in the Sarbanes-Oxley Act) and their consolidated subsidiaries as opposed to each of the affiliates that are subject to the independence rules by virtue of the application of the definitions included in Rule 2-01 of Regulation S-X. In addition, the Commission's pre-approval requirements for those entities in an investment company complex recognized the complexities and relationships specific to investment companies.

**Proposal:**

- We recommend that the Board make clear that, to the extent that the Board's pre-approval requirements differ from the Commission's requirements, the entities subject to pre-approval are the same as those which are subject to the Commission's rules. Specifically, we recommend that the term "audit client" be removed from pre-approval requirement and replaced with definitions that are the same as those contained in Rule 2-01(c)(7) of Regulation S-X.

## **II. TAX TRANSACTIONS – Proposed Rule 3522**

### **A. The Board Should Adopt Proposed Rule 3522 with Limited Technical Modification to Ensure Clarity, Enhance Audit Quality and Facilitate Appropriate Extra-Territorial Application.**

We agree with the Board's conclusion that there is a need for rules to limit an auditor's involvement in tax shelters and aggressive tax positions and support the Board's proposal. We believe neither an audit firm nor its affiliates should bring a tax shelter or other aggressive tax position transaction to an audit client and should not assist an audit client's undertaking of such transactions or their implementation.

We provide comments and observations to the Board below, a number of them technical points relating to the provision of tax services, to help the Board achieve the objectives of this rule as well as formulate the rule in a way to maximize audit quality. Due to the nature of certain tax transactions and the fact that their official status can change over time, we have suggested certain clarifications that would allow an audit firm to exit an engagement that had been permitted at inception, but due to unanticipated factors outside of the audit firm's control, changed the status of the engagement for ongoing services. Our comments also seek to achieve clarity in the rule, which is of particular importance to audit committees, audit clients and audit firms.

We strongly believe that audit quality and overall transparency is enhanced if the audit firm is able to advise the client and the client's audit committee that the client is undertaking a transaction the auditor views as a tax shelter or other aggressive tax position transaction, the basis for this view, and the tax and financial statement consequences of such an undertaking. Permitting the auditor to function in this way serves the public interest because the auditor would have a better understanding of the transaction and the appropriateness of its treatment in the audit client's financial statements.

We believe that the three-pronged test articulated in Proposed Rule 3522(c), with modifications described in more detail below, adequately defines aggressive tax transactions. In view of the public interest served by allowing the audit firm to advise audit clients and their audit committees on aggressive tax positions, the Board should clarify the definitions and standards set forth in Proposed Rule 3522(c) to further the Board's dual goals of ensuring auditor independence while continuing to permit auditor-provided tax services, both of which contribute to enhanced audit quality.

Below we first provide comments and observations that generally apply to the rule as proposed and then provide suggestions relating to each type of transaction enumerated in the proposed rule. Our comments assume that any non-audit service provided to an audit client is pre-approved by the audit committee.

**B. Certain Proposed Clarifications Apply to All Aspects of the Rule.**

The following are comments that we believe have general application to each of the three types of transaction covered by Proposed Rule 3522 (*i.e.*, listed and confidential transactions as well as aggressive tax positions).

***1. The Board should clarify that audit firms need to be able to advise on transactions not promoted by them in order to enhance audit quality.***

Proposed Rule 3522 provides that an auditor is not independent of its audit client if it provides non-audit services to the client “related to planning or opining on the tax treatment” of three enumerated types of transactions. We believe that auditor independence generally would not be called into question when an audit firm advises its client on matters pertaining to a transaction that the audit firm had no role, directly or indirectly, in bringing to the client’s attention. To the contrary, allowing an audit firm to advise the client on such transactions permits it to obtain a better understanding of the relevant facts and legal principles related to the transaction, thereby enhancing the quality of the overall audit.

Tax planning is a dynamic process that may involve a variety of stages. A client may consult with its advisors to engage in brainstorming sessions to discuss specific goals with respect to future transactions generally or with respect to transactions currently contemplated or in progress. During these sessions (which can span many months), the strengths and weaknesses of various options for structuring a proposed transaction are analyzed in depth. Similarly, a client may engage in the planning process with a single advisor. At some point in the planning process, the structure of the transaction becomes more concrete and the client decides the tax position that it prefers to pursue.

The auditor is required to consider the impact of such transactions in performing the audit and plan its work accordingly. In that light, the audit client, before it enters into a potential transaction, frequently asks the auditor to review the potential transaction in advance and determine whether it would achieve their objectives. This practice should be encouraged, as it will contribute to a higher quality audit and it naturally follows that any comments made by the auditor will be in the nature of tax planning and compliance advice and should be permitted.

Proposed Rule 3522 does not permit such advice in the case of any listed or confidential transaction (as those terms are defined in Proposed Rule 3522(a) and (b)) or, in the case of an aggressive tax position as defined in Proposed Rule 3522(c), unless the transaction was not initially recommended by any outside advisor. We believe that the Board should clarify the scope of this prohibition so that auditors can properly advise their clients.

We further suggest certain safeguards to accompany these proposed modifications. First, audit firms should not be able to provide the prohibited services to

audit clients indirectly through an alliance with a promoter or other alliance partner. We propose, therefore that the words “directly or indirectly” and a description of what “indirectly” encompasses be added to the rule in order to prohibit this behavior. Second, the Board should (i) require that audit firms advise the audit committee when the audit firm becomes aware that a client decided to undertake a tax shelter or an aggressive tax position and (ii) clarify which services can be rendered by the auditor with regard to the transaction.

**Proposals:**

- An auditor should not be permitted to bring, directly or indirectly, to an audit client a tax shelter or other aggressive tax position transaction described in Proposed Rule 3522.
- Indirect activities should encompass situations in which an affiliate of the audit firm or other advisor, with which the audit firm has a business relationship relating to the promotion of such transaction, brings the transaction to the audit client.
- An auditor should be permitted to advise on the tax aspects of a transaction, if the audit firm did not, directly or indirectly, bring the transaction to the client (including a transaction proposed by the audit firm that is executed in a different form). Should the audit client decide to pursue a tax shelter or aggressive tax position transaction described in Proposed Rule 3522, the primary role of the audit firm thereafter should be to advise the client and the client’s audit committee that the client is undertaking a transaction the auditor views as a tax shelter or other aggressive tax position transaction, the basis for this view, and the tax and financial statement consequences of such an undertaking. The audit firm should prepare contemporaneous documentation of its conclusion and cessation of further advice regarding the implementation of the transaction. In addition, the audit firm should be permitted to advise on tax law disclosure associated with the transaction and penalties for not complying with the disclosure requirements, to prepare tax returns impacted by such transaction provided that the transaction is properly disclosed on any such return, and to represent the client in connection with the examination of any such tax returns (such representation would cease when the audit client files a petition, claim, or similar legal filing to commence a court proceeding with respect to the issue). Any advice provided before the audit client decides to pursue a tax shelter or aggressive tax position would not retroactively compromise auditor independence.

***2. The Board should clarify that the reference to “planning” and “opining” in Proposed Rule 3522 should not include routine tax planning and compliance services.***

As the Board stated, routine tax planning services provided by an audit firm generally would not compromise auditor independence. In fact, these services serve to promote audit quality because the auditor will have a better understanding of the client's tax position. Tax return preparation services including development of ancillary return information, *e.g.*, research and experimentation credit tax studies, cost segregation studies, depreciation studies, etc. are clearly part of the tax compliance process. Similarly, advising on tax return positions lacking clarity is an essential component of tax return compliance services. However, the broad scope of Proposed Rule 3522 could be interpreted to prohibit certain routine tax-related services that do not call into question an auditor's independence and which should be allowed to continue. As such, we believe that the final rule should be clarified to expressly permit these auditor-provided tax services.

**Proposal:**

- Proposed Rule 3522 should expressly provide that tax return advice and preparation, including advice pertaining to any required disclosures contained in an audit client's tax returns, do not constitute "planning" or "opining" for purposes of the rule.
- 3. *For the sake of clarity, "opining" should be specifically defined in the context of Proposed Rule 3522.***

Proposed Rule 3522 prohibits an auditor from "opining" on the tax treatment of three types of enumerated transactions. Although we agree that an audit firm should not provide tax opinions relating to tax shelters or aggressive tax positions described in Proposed Rule 3522, we believe that the Board should provide a definition of "opining" in order to provide greater clarity. We suggest that the definition specify that it applies to written opinions used for the purposes of avoiding penalties and mass marketed opinions.

**Proposal:**

- "Opining" should be defined as (i) the issuance of any written advice provided by an audit firm that is intended to be used by the audit client for the purposes of avoiding penalties for U.S. tax purposes or (ii) the issuance of any written advice by the audit firm to its audit client that might become provided in substantially the same form and substance to persons other than the audit client for the purpose of promoting, marketing or recommending a particular tax strategy for U.S. tax benefits.
- C. The Board Should Clarify That The Rules Regarding Listed And Confidential Transactions Should Only Apply To The Tax Treatment Of Transactions Which Will Be Reported In U.S. Tax Returns.**

Proposed Rule 3522 incorporates Treasury Regulations pertaining to disclosure requirements for U.S. federal income tax returns.<sup>4</sup> In particular, an auditor would not be considered independent if it provides non-audit services related to planning or opining on the tax treatment of a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2) or a “confidential transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(3) (without regard to the minimum fee requirement set forth therein). In addition to specific suggestions relating to each of these types of transactions, described below, we are concerned that the application of U.S. tax law outside the United States may be unworkable.

We believe the three-prong test for aggressive tax positions in Proposed Rule 3522(c) adequately defines aggressive tax positions for auditor independence issues associated with foreign transactions, therefore providing a sufficient safeguard for excluding foreign transactions from these requirements.

The Treasury rule pertaining to listed transactions is designed to be applied to transactions for which the Internal Revenue Service (IRS) has publicly questioned the appropriateness of the U.S. tax benefits sought. There are a significant number of listed transactions and the contents of the IRS list changes frequently. A determination that a transaction is substantially similar to a listed transaction is a time consuming task requiring the exercise of considerable judgment because the terminology generally is highly technical and difficult to understand. Understanding of these rules by practitioners outside of the United States who do not practice in the area of U.S. tax is limited. Consequently, foreign issuers, audit committees and advisors would encounter great difficulty applying these rules, thus calling into question their utility in this context.

Similarly, the definition of a confidential transaction contained in Treasury Regulation Section 1.6011-4(b) (3) uses concepts that may be difficult to translate into legal systems outside the United States. Use of this tax definition with respect to transactions outside the United States raises questions of interpretation and application among foreign issuers, auditors and advisors.

**Proposal:**

- Listed and confidential transactions should impact auditor independence rules only with respect to the tax treatment of transactions which will be reported in U.S. tax returns.

**D. Specific Comments Relating to Listed Transactions.**

In addition to our comments of general application outlined above, we have specific suggestions relating to the portion of the rule relating to listed transactions. The

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<sup>4</sup> It should be noted that the Treasury Regulations referenced by the Board in Proposed Rule 3522 only apply with respect to transactions where U.S. federal income tax benefits are being sought. See Treas. Reg. § 1.6011-4(c)(5) (defining “tax” for purposes of the Section 1.6011-4 regulations as limited to federal income tax).

proposed rules should be clarified further to address situations where tax planning evolves into a transaction that is viewed as listed or substantially similar to a listed transaction or is subsequently listed by the IRS.

***1. Due to complexity, changing and iterative nature of listed transactions, the Board should clarify that the services provided by an audit firm before a transaction becomes listed do not compromise auditor independence.***

The Board's release accompanying Proposed Rule 3522 seeks comment on situations in which a transaction planned or opined on by an audit firm becomes listed after the transaction is executed by the audit client. This question reflects the timing issue that arises due to the fact that the IRS can make determinations to list a transaction months or years after a tax advisor provides services in connection with the transaction. It also reflects a circumstance that is beyond the audit firm's control.

We believe that Proposed Rule 3522 should be clarified to provide expressly that auditor independence is not impaired in such a situation, assuming, of course, that the transaction initially passed the aggressive tax transaction test set out in Proposed Rule 3522(c). The subsequent listing of a transaction should not impact the independence of tax planning services that the audit firm provided before the listing. Moreover, we believe that any potential impact on future non-auditing services will be dependent on the facts of a particular matter. Matters of auditor independence in connection with any services provided after a transaction is listed (i.e., for a transaction that is in fact listed or is substantially similar to a listed transaction) should be referred to the audit committee in order for the committee to assess any auditor independence issues with respect to subsequent services.

**Proposal:**

- Proposed Rule 3522 should be clarified to provide that the rule relating to listed transactions applies at the time the auditor knows or reasonably should have known that a transaction was a listed transaction or substantially similar to a listed transaction. The subsequent listing of the transaction by the IRS should not impact the auditor's independence with respect to any services previously performed by it. The auditor must, upon the subsequent listing of the transaction, notify the audit committee in order to allow it to assess any auditor independence issues associated with the provision of any additional services with respect to the transaction.

**E. Specific Comments Relating To Confidential Transactions.**

We agree that an audit firm should not impose, directly or indirectly, conditions of confidentiality on advice to an audit client with respect to the U.S. tax treatment of a transaction.

1. *To avoid instances in which the audit firm is unaware that the audit client or a third party has imposed a condition of confidentiality, the Board should allow the audit firm to rely on a written representation of the audit client.*

There may be valid business reasons for an audit client or an independent third party to impose confidentiality requirements on a transaction, especially in connection with a merger or acquisition. In addition, a client or an independent third party advisor may impose conditions of confidentiality on the audit client after the audit firm provides advice with respect to the transaction. To avoid instances in which the audit firm would have no reason to know about the confidentiality requirement, we believe the audit firm should be able to rely upon a written representation of the audit client's CFO or tax director that neither the audit client nor any other advisor has imposed conditions of confidentiality on the client with respect to the U.S. tax treatment of the transaction.

This approach would be consistent with the meaning of confidential transaction under Treasury Regulations. Under those regulations, taxpayers (i.e., the audit client) would be required to disclose a transaction with respect to which any advisor that had received the minimum fees requested confidentiality. However, if multiple advisors are involved, the advisor demanding confidentiality is the only advisor that would be required to file an information return or maintain an investor list.

**Proposal:**

- The Board should allow an audit firm to rely upon a written representation of the client's CFO or tax director that neither the audit client nor another advisor has imposed conditions of confidentiality on the audit client to keep the U.S. tax treatment of the transaction confidential.

**F. Aggressive Tax Positions.**

We believe that the three-prong test articulated in Proposed Rule 3522(c) relating to aggressive tax positions is a helpful framework for distinguishing between permissible tax planning that does not give rise to auditor independence issues and aggressive tax planning that does present auditor independence concerns. We believe that further clarification of the three-prong test will better define this line. Below are clarifications we believe would improve the aggressive tax position test proposed by the Board.

1. *The Board should adopt a bright line test for determining when an auditor must stop providing services because continuing such services would be in furtherance of an aggressive tax position.*

We believe that concerns about an audit firm's independence should be focused on two areas: (i) the audit firm bringing an aggressive tax position to an audit client, and (ii) the audit firm assisting an audit client in designing and implementing an aggressive transaction after determining (in light of a thorough analysis of tax law and the facts) that the audit firm would not issue an opinion concluding that the proposed tax treatment

would be at least “more likely than not” allowable under applicable tax laws. As previously noted, during the course of planning, the transaction may be further developed and the assessment may change. If the tax position shifts to less than “more likely than not”, the audit firm should not continue to assist with the implementation of the transaction and independence should not be compromised at that point.

As such, we believe Proposed Rule 3522(c) should clearly define the point at which the audit firm may not provide services in furtherance of the planning or implementation of an aggressive tax position.

**Proposal:**

- Services in furtherance of the adoption or implementation of an aggressive tax position should be prohibited when the audit client has decided to pursue an aggressive tax position transaction and the audit firm has concluded after a thorough analysis of tax law and facts that it would not issue an opinion at a “more likely than not” comfort level. Services thereafter would be limited to those set out in Section II B.1, above.
- 2. *The rules related to aggressive tax positions should permit auditors to discuss the objective application of the tax laws to the client’s circumstances in connection with routine tax advice and tax return preparation.***

Tax advisors in the United States are currently subject to standards of responsibility when advising clients as to matters of U.S. federal income tax law. For example, existing rules set forth a standard of “best practices” to which tax advisors should adhere when representing clients with respect to providing tax advice and preparing submissions to the IRS. Tax advisors routinely discuss with clients tax positions that could be taken by the client on their tax returns, but which may have varying degrees of certainty. The application of the tax laws to transactions, particularly complex transactions, is often unclear and entails varying degrees of risk, so that tax advisors are routinely called upon to assess various return positions, including those with less than a “more likely than not” level of comfort. Applicable rules relating to positions that are permitted to be taken on tax returns recognize this fact. For example, depending on the level of disclosure provided for in the return, taxpayers are permitted to take positions that are supported only by a “reasonable basis” or “substantial authority,” both of which are levels of comfort less than “more likely than not”.<sup>5</sup>

In connection with tax return preparation, audit firms should continue to be able to advise clients as to levels of comfort associated with potential tax return filing positions even when the comfort is less than the “more likely than not” standard. We

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<sup>5</sup> See, e.g., Treas. Reg. § 1.6662-4(d) (1) (providing that substantial authority is ordinarily sufficient to avoid the substantial understatement penalty); Treas. Reg. § 1.6662-4(e) (providing that the substantial understatement penalty does not apply in certain circumstances if a position is adequately disclosed and has a reasonable basis).

believe that auditor independence is not compromised in these situations and that a finalized Proposed Rule 3522 should expressly so provide.

**Proposal:**

- An auditor should be able to advise an audit client on positions to be taken on the client’s tax return regardless of the level of comfort reached by the auditor, provided that the position is properly disclosed on the client’s tax returns if disclosure is required and provided that the position is not with respect to a transaction that was initially recommended by the audit firm.

**3. For the sake of clarity, the “more likely than not” standard should be defined.**

Although the “more likely than not” standard is set forth in Treasury Regulations, the definition of this standard could change over time. For clarity, particularly outside the United States, the Board should provide a specific definition in the final rules, rather than relying on Treasury Regulations that may change.

**Proposal:**

- “More likely than not” should be defined in Proposed Rule 3522(c) in order to provide maximum clarity and to avoid the possibility of the definition changing over time as U.S. tax rules change. The proposed tax treatment of a transaction should be considered to be at least “more likely than not” to be allowable under applicable law when, in the auditor’s professional opinion, there is a greater than 50% likelihood that the final court of competent jurisdiction, in full possession of all the relevant facts and by reference exclusively to the legal merits of the case, would find in favor of the taxpayer if the tax treatment of the subject transaction were disputed between the taxpayer and the taxing authority.

**G. Miscellaneous Issues.**

***1. Proposed Rule 3522 should apply to transactions involving U.S. federal, state and local income, franchise, sales, use, withholding and value added taxes.***

Auditors provide tax-related services to their audit clients with respect to many different types of taxes assessable in various U.S. jurisdictions. Although income taxes tend to have the most significance to a client’s financial statements, other types of taxes impact financial statements as well. As such, taxes should be defined to include these other types of taxes.

**Proposal:**

- Proposed Rule 3522 should provide that U.S. federal, state and local income, franchise, sales, use, withholding and value added taxes are taxes covered by the auditor independence rules.

***2. Changes in the U.S. tax shelter rules should not affect the Board's rulemaking.***

As discussed above, there are several instances where the Board adopts standards set forth in U.S. Treasury Regulations in determining whether an auditor is in violation of the independence rules relating to tax transactions. To the extent possible, we believe that the Board should objectively define these standards in the text of its rules such that the Board's standards will not change over time as Treasury Regulations change. This will produce clarity today and avoid the need to reconsider these rules over time.

**Proposal:**

- For the sake of clarity, the Board should define standards that are currently defined in U.S. Treasury Regulations in a manner consistent with the current definition of such terms.

***3. Terms should be used consistently in the final rules.***

Proposed Rule 3522 bans non-audit services related to planning or opining on the tax "treatment" of the three enumerated categories of transactions. The release accompanying the proposed rules references a ban on services related to planning or opining on the tax "consequences" (as opposed to "treatment") of the three enumerated categories of transactions. The final rules should clarify what services are prohibited by using consistent terminology.

**Proposal:**

- The ban on non-audit services should be confirmed to be on planning or opining on the tax "treatment" of the enumerated types of transactions.

### **III. TAX SERVICES FOR SENIOR OFFICERS OF AUDIT CLIENT – Proposed Rule 3523**

#### **A. The Board Should Adopt Proposed Rule 3523 With Certain Enhancements and Clarifications to Better Achieve The Board’s Objectives.**

We agree with the Board that services should not be provided by an audit firm to an officer in a financial reporting oversight role of an issuer and we support the objectives of proposed Rule 3523. The provision of services to these individuals can create the appearance of a conflict and we agree with the Board that they should not be permitted.

We would suggest that the Board expand the rule beyond a ban on tax services in furtherance of its objective. The Proposed Rule should prohibit all *non-audit* services to these individuals, not simply tax services, because provision of other non-audit services may similarly be perceived as creating a conflict. We also propose that the Board expand the rule to include close family members of covered officers for the same reason.

In addition to these proposed expansions of the rule, we offer a number of observations and comments to assist the Board in clarifying the rule to ensure consistent and appropriate application.

##### ***1. The rule should apply to all non-audit services provided by an auditor to individuals covered by the rule, not only tax services.***

The purpose of the proposed rule is to address the perception of a mutuality of interest between auditors and certain senior members of management of an audit client who receive individual services from the auditor. We believe that this perception applies not only to tax services, but also to other non-audit services, such as those involving investment and personal financial planning. Moreover, if the proposed rule were to apply only to tax services, there may be doubt on the part of individuals covered by the rule as to the propriety of continuing to receive these other financial services from the audit firm. In order to address concerns over the appearance of a conflict, we recommend that the rule cover all non-audit services to affected individuals.

We do not believe, however, that the prohibition on non-audit services extends to services provided to companies in certain types of engagements (*e.g.*, advice to the corporate sponsor of a benefit plan), where a covered officer is merely one member of a group of employees impacted by the engagement. Such services may also include the provision of generic advice for all employees (*e.g.*, employee handbooks, tax planning seminars for groups of employees and the like). Clarification on this point would provide beneficial guidance to audit committees so that they better understand the scope of Proposed Rule 3523.

**Proposal:**

- The rule should specify that a registered public accounting firm would not be independent if, during the audit engagement period, it provides any non-audit services directly to an individual covered by the rule.
  - The rules should confirm that services provided to an issuer with respect to groups of employees that may include an officer in a financial reporting oversight role are not prohibited.
- 2. *The rule should specify whether attribution rules would prohibit services to certain family members of officers in a financial reporting oversight role.***

The proposed rule does not address whether the prohibition on services would apply only to the individual officers in a financial reporting oversight role, or whether it extends to those officers' relatives. We believe that the rule should be expanded to include certain family members in order to provide clarity and better achieve the objectives of the rule.

**Proposal:**

- The prohibition should apply to covered officers' spouses or spousal equivalents and their natural or adopted children under 21 years of age residing with the officer.
- 3. *Auditors should not be prohibited from providing services to non-executive directors or audit committee members.***

The rulemaking release invites comment on whether an audit firm's independence would be perceived to be impaired if it offered tax services to members of an audit client's audit committee or to other members of the board of directors. We believe that provision of services to non-executive directors, including audit committee members, does not impair independence.<sup>6</sup> The involvement of directors, and more particularly audit committee members, in the financial reporting process is in an oversight capacity only rather than day-to-day supervision, as opposed to officers in a financial reporting oversight role. Further, directors' standards of behaviour are defined in the context of their statutory, regulatory and fiduciary obligations to the company they govern and its shareholders. As such, the provision of services by the

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<sup>6</sup> We also note that the discussion in the portion of the release related to international assignment services suggest that in addition to the service limitations imposed on the company, employees should consider the extent of services which are provided directly to them by the firm. Therefore, we recommend that the reference to employees be modified to include only those employees who are not in a financial reporting oversight role.

auditor to non-executive directors does not create a conflict and should not create the appearance of one.

We recognize that generally audit committee members have a closer relationship with auditors than do general directors. Therefore, the question related to services to audit committee members should be considered separately. We believe that allowing an audit firm to provide services to audit committee members does not undermine the objectives of the proposed Rule. Audit committees, like boards of directors, by their nature, act and make decisions as a group. Because audit committees act collectively, the fact that one member has retained the company's auditor to perform non-audit services is not likely to influence the decisions of the group.

Further, the Sarbanes-Oxley Act and Commission rules define clearly the responsibilities of the audit committee. These legal responsibilities are stringent, which reduces the likelihood that the performance of tax or other non-audit services for that audit committee member would impact their ability to perform their duties with respect to the auditor or the company. Finally, the risk of impairing independence must be weighed against the potential practical effect that a ban on services to audit committees -- some members sitting on multiple audit committees could face difficulty in receiving tax services from the firm of their choice, and as a result be less likely to accept audit committee service. We believe that, in light of the inherent protections against possible independence impairment, audit committee members should be allowed to use the services provider of their choice

Finally, we note that the form of corporate organization may differ in certain jurisdictions outside of the United States, where many companies have a tiered structure to their governing boards. These are generally split between non-executive and executive directors. We believe the same principles should apply regardless of the structure of a company's governing bodies, so that individuals functioning as non-executive directors, regardless of their title, would be exempt from the proposed rule.

**Proposal:**

- The rule should clarify that no independence violation occurs if a registered public accounting firm provides services to directors, including audit committee members, who do not otherwise serve in the management capacity as an officer in a financial reporting oversight role.
- The rule should clarify that no independence violation occurs if a registered public accounting firm provides services to directors serving in a supervisory only capacity in the context of a tiered board found in many foreign jurisdictions.

**4. *The rule should be clarified to apply to officers of an "issuer."***

The Board has written the rule to apply to officers of an "audit client." We understand that those in a financial reporting oversight role of an issuer are generally

in a position to exercise influence over the content of the consolidated financial statements and over those who prepare them. We believe that to more appropriately reflect an individual's role in connection with the consolidated financial statements, the Board should change the definition to apply to those persons who are in a financial reporting oversight role at the issuer. As the SEC has indicated, in determining whether an individual is in a financial reporting oversight role with the issuer, the analysis would include looking at the role the individual is playing, his or her involvement in the financial reporting process of the issuer, and the impact of his or her role on the consolidated financial statements. (*See SEC FAQ "Application of the Commission's Rules on Auditor Independence,"* December 13, 2004)

**Proposal:**

- Proposed Rule 3523 should be modified to apply to officers in a financial reporting oversight role at an "issuer."

**5. *The rule should not apply to senior officers of affiliates of the audit client where the affiliate has a different auditor.***

The proposed rule does not directly address the application of the prohibition in the context of investment company complexes and non-audit affiliates where the auditor providing the executive services does not audit the company employing the individual in question, but does audit an affiliate of that company or another entity in the same investment company complex. We believe that the rule should not apply to officers of an affiliate of the audited entity when that affiliate has a separate auditor. Such an affiliate would not be included in the consolidated financial statements of the company being audited by the firm and, therefore, an individual at that affiliate could not be in a position to influence those financial statements.

**Proposal:**

- The rule should specify that no independence violation occurs if a registered public accounting firm provides services to an officer of a separately audited entity which is affiliated with (or part of the same investment company complex as) the entity for which the registered public accounting firm serves as auditor.

**B. The Board Should Give Further Consideration To Certain Transition Issues.**

**1. *The rule should allow for the provision of tax services up to the effective date, as well as completion of tax returns and dealing with subsequent inquiries for all tax years ended before the effective date.***

The rulemaking release indicates that there will be no independence violation for services provided to covered individuals in connection with original returns filed no later than the effective date. Covered officers may face uncertainty and potential transition hardships without further clarification by the Board and we suggest below a

number of possible solutions for the Board's consideration. Such clarifications will also assist audit committees and audit firms in complying with the rule.

First, in a number of foreign jurisdictions, taxable years do not correspond with the U.S. taxable years, with the result that tax returns in those jurisdictions for years ending during the course of 2005 may not be required to be filed with the appropriate taxation authority until after the proposed effective date of the rule. For instance, in the United Kingdom, the taxable year ends April 5, 2005, and returns are not due until January 31, 2006.<sup>7</sup> Under the proposed effective date, a covered officer residing in such a jurisdiction would not be permitted to continue to employ the audit firm as advisor for tax returns covering the most recently ended taxable year. This appears inconsistent with the Board's decision to choose an effective date falling after the latest date that an individual in the United States can file an extended return for income earned in the previous taxable year. We propose, therefore, that the effective date be extended so that services can continue to be provided with respect to all fiscal years ending prior to the effective date.

Second, because the effective date was chosen based on the extended return date for filing tax returns, it is unclear whether services to covered individuals would be permitted up to the effective date or only up to the filing of the tax return for the most recent fiscal year. It is also uncertain whether only services with respect to current or prior returns may be provided up through the effective date, or whether firms could continue providing services through the effective date related to later periods. Finally, the release may create uncertainty as to whether only tax preparation services, and not other tax services, may be provided up until the effective date.

Third, the rule does not address the situation in which a taxing authority opens for examination a prior year's tax return of a covered individual after the effective date of the rule. As a matter of fairness, we believe that the rule should permit covered individuals to continue to employ the same firm that provided original services relating to the re-opened return to assist in the resolution of the examination. Being forced to hire a different firm would prejudice the individual, since that new firm may have insufficient background and knowledge of the circumstances in existence at the time of the original filing.

### **Proposals:**

- Firms should be permitted to complete tax services for covered individuals for all fiscal years ending prior to the effective date.
- All services, not just those related to return preparation, to individuals covered by the rule should be permitted until the effective date.

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<sup>7</sup> A number of other Commonwealth countries have similar types of dates.

- If a firm prepared tax filings that are selected for examination by a taxing authority after the effective date, the covered individual should be permitted to engage the firm to assist with the response and resolution of the examination (not including any court proceedings) in order to prevent undue hardship to the affected individual.
- 2. *The rule should provide for a transition period for officers who come into a position that is a financial reporting oversight role after the effective date.***

The proposed rule and rulemaking release are silent as to when the rule would come into effect with respect to an individual who is promoted or hired into a position as an officer in a financial reporting oversight role, or achieves such a position by way of merger or consolidation activity, after the effective date of the rule. We believe that it would cause undue hardship to require an individual in such a situation to switch immediately to a non-audit firm provider of services. We believe that there should be a transition period to allow an individual sufficient time to hire a new advisor and, in the meantime, to continue to receive services from the individual's original advisor for an appropriate period. This concept is consistent with the Board's stated intent behind choosing an effective date for the rule that would allow individuals to continue receiving services through the latest possible filing of their 2004 returns.

**Proposal:**

- The rule should permit an individual who comes into a position as an officer in a financial reporting oversight role subsequent to the effective date, and who was receiving tax services from the audit firm, to retain the audit firm as his or her advisor through the filing of the tax return for the year in which the individual becomes subject to the rule. For purposes of full disclosure, the audit committee of the registrant should be informed of the existing relationship upon the individuals' accession to a covered position.

**C. The Board Should Consider Additional Rule Clarifications.**

We believe that there are a number of additional clarifications that will allow audit committees, covered officers, and audit firms to apply the rule consistently and appropriately. These clarifications are discussed below.

**1. *An audit firm should be permitted to provide services to trusts, other pass-through entities and charitable organizations in appropriate situations.***

The proposed rule does not address whether a registered public accounting firm would be permitted to provide tax services to a trust or pass-through entity (which include partnerships, limited liability companies, S corporations and other disregarded entities that generally pay no taxes because items of income, loss, deduction, etc. flow through directly to the tax returns of their owners) in situations in

which an officer in a financial reporting oversight role at an audit client of the firm is a beneficiary, executive officer, partner or shareholder of such an entity. As a general matter, we believe that the rule should not impact the ability of the audit firm to provide services to these entities, so long as the covered officer of the audit client does not have a controlling interest in the entity. If the covered officer does have the potential to exercise control over the entity, we understand that there could be an appearance of an improper relationship between the auditor and the officer, as it could be perceived to result in a relationship similar to that which would exist if the audit firm was providing services directly to that individual. However, if the officer does not have the potential to control the entity, we do not believe that there is any potential conflict because the audit firm by definition is not performing services for that covered officer; the auditor's relationship is with a third party.

Similarly, we do not believe there would be any appearance of impropriety in situations where an officer of an audit client covered by the rule establishes a charitable organization to which the audit firm provides services. The control and governance of those organizations are heavily regulated and monitored by various agencies, including tax authorities. We believe that this level of government oversight and scrutiny dispels any appearance of conflict between the officer and the audit firm.

In the case of a trust, we believe that a registered public accounting firm should not be permitted to provide tax services to the trust if an officer in a financial reporting oversight role at an audit client of the firm is the trustee.

**Proposal:**

- An audit firm should be permitted to provide tax services to a pass-through entity of which a partner or shareholder is also a officer in a financial reporting oversight role at an audit client, so long as the officer does not have a controlling interest in the entity.
- An audit firm should be permitted to provide tax services to a charitable organization established by an officer in a financial reporting oversight role at an audit client. A firm also should be permitted to provide tax services to those organizations where the officer serves as a trustee or director of the charity.
- An audit firm should not be permitted to provide tax services to a trust if an officer in a financial reporting oversight role at an audit client is the trustee.

#### **IV. RESPONSIBILITY NOT TO CAUSE VIOLATIONS – PROPOSED RULE 3502.**

Proposed Rule 3502 would regulate the conduct of persons associated with a registered public accounting firm by prohibiting such persons from causing the firm to violate certain statutes, rules and professional standards due to an act or omission that the person knew or should have known would contribute to such violation. We support the Board's efforts to adopt meaningful and effective professional standards designed to hold the partners and staff of public accounting firms to a high standard of professionalism and ethical conduct. As we have stated many times, we share with the Board the goals of restoring investor confidence and public trust in our profession. While we believe that our partners and staff possess integrity, ethics and professionalism, as well as a collective commitment to audit quality, we support efforts by the Board to create greater trust and accountability in the profession as a whole.

We are concerned, however, that as drafted, the proposed rule is overly broad in scope and will lead to a number of potential unintended consequences adversely affecting public perception of the accounting profession and the quality of public company audits. Our primary concern is the Board's adoption of a standard of simple negligence for secondary liability. This would be in contrast to existing standards of secondary liability and create disharmony in regulating the conduct of accountants, thus leading to inevitable conflicts. We therefore urge the Board to consider carefully the appropriateness and potential implications of introducing a negligence standard for secondary liability.

We are also concerned by the potential application of the proposed rule to any person involved in any way, however remotely, with a firm violation. By failing to place any limitation on the establishment of causation by an individual of a firm violation, we believe the rule could be used in a manner that would not appropriately match conduct with sanction. We therefore further urge the Board to apply whatever rule is finally adopted only to those who directly and substantially cause a firm violation, rather than to anyone who could be seen to have been involved in any way in the chain of events leading to the violation.

Finally, if despite the concerns raised, the Board concludes that a negligence standard is an appropriate use of its authority, we recommend in the alternative that the Board take certain measures, outlined in Part C, below, that would limit the scope of the proposed rule to circumscribe its potentially far-reaching and unintended consequences.

##### **A. Adoption of a Negligence Standard Would Have Significant Regulatory and Other Consequences.**

Rather than advancing the Board's ultimate goal of enhancing audit quality, imposition of a negligence standard for secondary liability would instead lead to an expansion of authority granted by Congress confusion over the proper application of the

rule and disputes over the scope of the rule. It will also have a disproportionate effect on individuals subject to the rule and will lead to increased investigatory and sanctioning activity at the state level.

The Commission acknowledged important policy concerns when it declined to impose a negligence standard under Rule of Practice 102(e), the rule that enables the Commission to discipline accountants who engage in “improper professional conduct.”<sup>8</sup> The Commission specifically rejected imposing a negligence standard because, among other things, it was concerned about the unintended consequences of creating such a rule, including the creation of an “undue fear” on the part of accountants that isolated errors in judgment would result in disciplinary action.<sup>9</sup> By doing so, the Commission did not condone negligence, but rather recognized that “a single error in judgment, even if unreasonable when made, may not indicate a lack of competence to practice,” and it had other mechanisms to address and deter errors (*i.e.*, Section 21C of the Securities Exchange Act of 1934). We encourage the Board similarly to consider the potential unintended consequences of imposing a negligence standard for secondary liability especially since, in light of such unintended consequences, the Board can accomplish its objectives through other means, in particular through the inspection process, as discussed below.

***1. The proposed rule’s expansion of the scope of liability could indirectly expand the Commission’s authority beyond that intended by Congress.***

As the Board notes in its rulemaking release, Congress also has established effective standards for establishing secondary liability for individuals who cause a primary violation of the federal securities laws and rules.<sup>10</sup> The scope of that liability, ultimately subject to the control and wisdom of the United States Congress, has been ruled upon by the federal courts, including the United States Supreme Court.<sup>11</sup>

Under the proposed rule, the Board would be using its rulemaking authority to modify and expand the scope of secondary liability under the federal securities laws.<sup>12</sup> Among other things, such a rule could lead to division among the federal courts as to the appropriate scope of an accountant’s potential liability under the federal securities laws and resulting confusion in enforcement of the rule. In addition, while the Commission was granted explicit Congressional authority under Section 20(f) of the Securities

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<sup>8</sup> The SEC revised Rule 102(e) to clarify the standard in the wake of judicial and public concern over the application of divergent standards by the Commission in its application of Rule 102(e). *See Checkosky v. SEC*, 23 F.3d 452, 462 (D.C. Cir. 1994); *Checkosky v. SEC*, 139 F.3d 221, 225 (D.C. Cir. 1998).

<sup>9</sup> See Amendment to Rule 102(e) of the Commission’s Rule of Practice, 1998 WL 729201 (S.E.C. Release No. 33-7593).

<sup>10</sup> *See, e.g.*, Section 20 of the Exchange Act (Liability of Controlling Persons and Persons Who Aid and Abett Violations) and Section 21C of the Exchange Act (Cease-and-Desist Proceedings).

<sup>11</sup> *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 177 (1994) (finding nothing in the plain language of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder creating, and therefore no Congressional intent to create, aiding and abetting liability in that context).

<sup>12</sup> *Cf. Checkosky v. SEC*, 139 F.3d 221 at 225 (the adoption of a negligence standard “might be viewed as a back-door expansion of [the SEC’s] regulatory oversight powers).

Exchange Act of 1934 to bring aiding and abetting claims, Congress was careful to circumscribe such claims to those based on knowing conduct. Since the Commission has the authority under Section 21(d) of the Exchange Act to enforce the rules of the Board, the proposed rule would have the effect of indirectly expanding the Commission's authority beyond that provided by Congress, allowing it to bring aiding and abetting claims based on simple negligence.

***2. Reliance on Section 21C of the Exchange Act as the basis for a negligence standard fails to recognize the practical differences between the two provisions.***

The Board suggests in a footnote to the rulemaking release that Section 21C of the Exchange Act and case law interpreting that provision serve as authority for adopting a negligence standard under the proposed rule. Section 21C confers on the Commission the ability to enter cease and desist orders against persons, including accountants, who cause violations of the securities laws due to acts or omissions that the person knew or should have known would contribute to the violation.<sup>13</sup> By employing identical phraseology (*i.e.*, “knew or should have known would contribute”) in establishing secondary liability under the proposed rule, the Board claims justification for a negligence standard, ignoring the practical differences in the scope and purposes of the two provisions. Unlike the Board's proposed rule, Section 21C does not provide for individual sanctions or penalties. Rather, it provides only for cease and desist orders designed to prevent continuing or future violations. As such, there is no statutory or judicial basis for concluding that the same standards of conduct should apply to these two, separate provisions. There is, however, an established body of law to suggest that imposition of secondary liability is generally appropriate only when there is a showing that the individual's conduct alone was sufficient to cause a violation or that the individual actually knew that the actions of the primary violator constituted a violation.

***3. Adoption of a negligence standard is not necessary to further the Board's ability to perform its supervisory function.***

In establishing a program of continuing inspections of registered public accounting firms through Section 104 of the Sarbanes-Oxley Act of 2002 (the “Act”), Congress endowed the Board with a supervisory role to monitor compliance by firms and associated persons with relevant statutes, rules and standards. This was intended to be separate from the disciplinary function granted to the Board by Section 105 of the Act, which sets forth the sanctioning authority under the proposed rule. Based on the Board's December 14, 2004 open meeting, we understand that the proposed negligence standard is intended to aid in the fulfilment of the Board's supervisory function.<sup>14</sup> The inspection

<sup>13</sup> See *KPMG LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002).

<sup>14</sup> The rule “recognizes that the Board has not only disciplinary functions, but supervisory functions. And that, as a supervisor, we think it's appropriate for the Board to require that associated persons of a registered firm not merely refrain from knowing conduct that causes a violation, but also act with sufficient care to avoid negligently causing the violation. So, it's a recognition of a supervisory role as well as a purely

process already provides a sufficient and appropriate forum for the Board not only to monitor compliance with laws, rules and standards intended to promote audit quality, but also to discover and remedy potential non-compliance on a real-time basis. It is unclear as to how the adoption of a negligence standard can be viewed as assisting the significant effort that the Board has made in the inspection area.

**4. *The proposed rule is premised on an overstated distinction between the severity of available sanctions.***

The Board notes in the rulemaking release that, while the rule is indeed intended to apply a standard of negligence, certain of the sanctions available to the Board under Section 105 of the Act can be imposed only for conduct that rises to a higher level of culpability. While this is a correct statement as a matter of law, it fails to recognize that *any* sanction imposed by the Board could have an extremely negative impact on an individual's career and would, therefore, lack proportionality to the ultimate level of culpability. Even those individuals whose conduct merited only the most "minor" sanctions under the rule would be faced with attendant consequences disproportionate to a negligence finding. Many audit clients might well be unwilling to accept an accountant whose record reflects a Board sanction, no matter how "minor." Further, certain states are contemplating adopting provisions that would require reporting to the state licensing boards any Board disciplinary proceedings.<sup>15</sup> The Board would also be required to report to state boards the commencement of Board disciplinary action, and in many cases, state licensing boards would be required to open an investigation, no matter how minor the violation. In deliberating the appropriateness of the negligence standard for secondary liability, the Board should recognize its potential practical consequences.

For all of the foregoing reasons, we believe that the Board should not impose a negligence standard for secondary liability on the associated persons of accounting firms, but should rather require that such persons act knowingly.

**Proposal:**

- The Board should modify the rule by deleting the phrase "should have known."

**B. The Proposed Rule Should Apply Only to Individuals Whose Acts or Omissions Directly and Substantially Cause a Firm Violation.**

The proposed rule provides that an individual shall not cause a firm violation through any act or omission that the person knew or should have known would "contribute to" the violation. The phrase "contribute to" does not afford a clear

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disciplinary role." *See Comments of Douglas Carmichael*, Transcript of the Public Company Accounting Oversight Board Open Meeting, Tuesday, December 14, 2004.

<sup>15</sup>Recent model rules established by the National Association of State Boards of Accountancy, for example, would require accountants to report to state boards the commencement of any PCAOB disciplinary action. Upon such notification, the state board would be obligated to open an investigation into whether the activity amounted to a violation of state rules. See, UNIF. ACCOUNTANCY RULES § 11-2(a)(5) (July, 2004).

understanding of the type of acts or omissions that may be held to cause a violation. We are concerned, therefore, that the rule could extend liability to any individual who was in any way involved in the chain of events leading to the violation. Much of the work in the accounting profession is performed on a collaborative basis, with numerous individuals participating in collective decisions involving a high level of professional judgment. Each such individual, however, may have a different role in the process and some will bear greater responsibility for the position ultimately taken by the firm. If the rule were interpreted broadly, each individual involved, however remotely, in the formulation of a decision or other action that ultimately leads to a violation by the firm could be held liable for causing the violation.

We do not believe it is the Board's intention to impose liability on all individuals in the chain of events at issue, no matter how remote, and, therefore, believe that the phrase "contribute to" should be clarified to apply only to individuals who directly and substantially caused the violation. This would enable the Board to continue to ensure that individuals are properly held responsible for actions of the firm, but would avoid a situation in which sanctions are imposed for a single violation on multiple individuals whose actions could only be considered a cause of the ultimate firm violation in a minor or attenuated sense. This would also appear to be consistent with the Congressional intent underlying Section 105(c)(6) of the Act, which recognizes that there are circumstances in which it would be inappropriate to impose liability on supervisory personnel who reasonably discharge their duties.

**Proposal:**

- The Board should amend the final clause of the proposed rule to read: “, due to an act or omission the person knew or should have known would *directly and substantially* contribute to such violation.” (Emphasis added.)

**C. If the Board Insists on Adopting a Negligence Standard it Should Adopt Measures to Limit the Scope of the Rule to Avoid Potential Unintended Consequences.**

Although we strongly believe that a negligence standard is inappropriate in the context of the proposed rule, if the Board introduces such a standard, it should at a minimum modify the rule as suggested below to mitigate the potential for unintended effects of its enforcement.

***1. The Board should not apply a negligence standard for secondary liability when the primary violation requires scienter.***

The rulemaking release seeks comment on whether it would be appropriate to apply a negligence standard to an individual who contributes to a violation that would require that the firm knowingly or recklessly engaged in the misconduct. We strongly believe that this would be an improper and unwarranted application of the rule. The Board should not be in a position to sanction individual professional conduct that itself

would not rise to a violation of the underlying rule or professional standard and we fail to see any justification for holding an individual to a higher standard of conduct than that applied to the firm itself. Moreover, when an individual acts without scienter, it would appear incongruous to claim that that individual's conduct could be the cause of a violation that required at least knowledge or recklessness to prove. We therefore recommend that if the Board insists on imposing a negligence standard under the rule, it do so only in cases in which the primary violation could similarly be established by negligence. This represents a logical approach that is consistent not only with existing federal standards, but also with the common law application of aiding and abetting liability.

**Proposal:**

- The Board should specify that it will apply a negligence standard to individual conduct only when the violation by the firm caused by that individual's conduct does not require scienter.

**2. *The proposed rule should apply only to the Board's own rules and professional standards.***

The rule proposal establishes liability for individuals who cause a primary violation by the firm not only of its own rules and of professional standards applicable to the accounting profession, but also to certain federal securities laws and rules promulgated thereunder. As we have noted above, there are already standards in place for establishing liability for individuals who cause a primary violation of these laws and the extension of the proposed negligence based rule would create a direct conflict with these standards and may also serve to expand the Commission's authority in this area in the absence of specific Congressional intent. To avoid this conflict and the inevitable costs that will arise in adjudicating resulting disputes, and to align the rule more closely with the Board's Congressional mandate to establish rules promoting quality control and ethics standards, the proposed rule should be limited to apply only to the Board's own rules and professional standards.

**Proposal:**

- The rule should be revised to refer only to violations of the Board's own rules (other than those adopting federal securities laws and rules) or professional standards.

**PricewaterhouseCoopers Comment Letter Dated February 14, 2005**

***PROPOSED ETHICS AND INDEPENDENCE RULES CONCERNING  
INDEPENDENCE, TAX SERVICES, AND CONTINGENT FEES***

***PCAOB Release No. 2004-15, December 14, 2004;  
PCAOB Rulemaking Docket No. 017***

***Appendix***

**Proposed Rule 3524 – Audit Committee Pre-Approval of Certain Tax Services**

**Release No.  
2004-015**

**Pg. 42**      **Question #1:** Should additional information or documentation that is not described in Proposed Rule 3524 be provided to audit committees in the pre-approval process?

**Answer:** No. As stated in Section I. Subparagraph A. of our response, we believe audit committees should have the discretion to tailor their information and discussion requirements to the individual services at issue and should not be subject to requirements mandating that they review particular types of documents.

**Pg. 43**      **Question #2:** In addition to the communications required by Proposed Rule 3524, should auditors be required to have additional communications with the audit committee with regard to the tax advice that has been provided to the audit client?

**Answer:** No. As stated in Section I. Subparagraph A. of our response, periodic discussions and updates are becoming increasingly customary and are valuable in making sure the audit committees are informed of the status of engagements and have access to subject matter experts. We do not, however, believe there is any need to prescribe this with additional rules.

## Proposed Rule 3522 – Tax Transactions

Release No.  
2004-015

**Pg. 29**      **Question #3:** Should Proposed Rule 3522 address the possible impairment of an auditor’s independence in situations where a transaction planned, or opined on by the auditor becomes listed after it is executed?

**Answer:** Yes. As stated in our response in Section II. Subparagraph D.1. – we believe that the subsequent listing of a transaction should not impair the independence of prior tax planning services and that Proposed Rule 3522 should be clarified to expressly state so in such a situation.

**Pg. 29**      **Question #4:** Does Proposed Rule 3522(a) adequately describe a class of transactions that carry an unacceptable risk of impairing an auditor’s independence?

**Answer:** Yes. However, as stated in our response in Section II. Subparagraph C, we believe that Proposed Rule 3522(a) should be applied only where United States federal, state or local tax benefits are expected from the transaction.

**Pg. 31**      **Question #5:** Should confidential transactions be treated as *per se* impairments of a registered public accounting firm’s independence from an audit client?

**Answer:** No. As stated in our response in Section II. Subparagraph E, we believe the rule should be limited to those conditions of confidentiality that are related to the tax treatment of a transaction reported on a U.S. tax return and the audit firm should be able to rely on a representation of the client CFO or tax director that there are no conditions of confidentiality.

**Pg. 31**      **Question #6:** Should other provisions of the Treasury’s regulation on reportable transactions, other than the provisions of listed and confidential transactions, be incorporated by reference in the Board’s rules on tax-oriented transactions that impair independence?

**Answer:** No. We believe other provisions of the Treasury’s regulation on reportable transactions should not be incorporated in the Board’s rules on tax-oriented transactions that impair independence. These regulations are intentionally broad and are not intended to apply only to aggressive tax transactions because their purpose is to facilitate the goal of a robust disclosure regime.

**Pg. 35**      **Question #7:** Is the term “initially recommended by the registered public accounting firm or another tax advisor” sufficiently clear?

**Answer:** Yes.

**Pg. 35**      **Question #8:** Is there a better way to describe aggressive tax transactions, strategies, and products that a registered public accounting firm ought not to sell to an audit client?

**Answer:** Yes. As stated in our response in Section II. Subparagraph F.I., we believe the three-prong test articulated in Proposed Rule 3522(c) is a helpful framework for distinguishing between permissible tax planning and aggressive tax planning. The framework should be clarified to improve the application of the test by adopting a bright line test for determining when an audit firm must stop providing services.

**Pg. 35**      **Question #9:** Does the “more likely than not” standard draw the right line between aggressive tax strategies and products that a registered public accounting firm ought not to plan, or opine on the tax treatment of, for an audit client and routine tax planning and advice?

**Answer:** Yes. As stated in our response in Section II. Subparagraph F, we believe that services should be prohibited when the auditor has concluded, after a thorough analysis of tax law and facts, that it would not issue an opinion at a “more likely than not” comfort level. However, we believe that an auditor should be able to advise the audit client on tax return filing positions that may not meet that level of comfort.

**Pg. 35**      **Question #10:** Should the Board require a registered public accounting firm to obtain a third-party tax opinion in support of the tax treatment, if the potential effect of the treatment could have a material effect on the audit client’s financial statements?

**Answer:** No. Proposed Rule 3522 sets forth an appropriate framework for auditor independence with respect to tax shelter and aggressive tax positions. Requiring a third-party opinion does not assure auditor independence and would not absolve the auditor of independence concerns associated with tax shelters and aggressive tax positions.

**Proposed Rule 3523 – Tax Services for Senior Officers in a Financial Reporting Oversight Role**

**Release No.  
2004-015**

**Pg. 37**      **Question #11:** Are there other classes of employees to whom an accounting firm should not offer tax services?

**Answer:** No.

**Pg. 37**      **Question #12:** Would a registered public accounting firm’s independence be perceived to be impaired if it offered tax services to members of an audit client’s audit committee, or to other members of the audit client’s Board of Directors?

**Answer:** No. As indicated in our response in Section III. Subparagraph A.3, we believe that the provision of services to non-executive directors, including audit committee members, does not impair independence.

**Proposed Rule 3502 – Responsibility Not To Cause Violations**

**Release No.  
2004-015**

**Pg. 19**      **Question #13:** Are there categories of circumstances encompassed by the rule as proposed that should not be encompassed by the rule for some reason?

**Answer:** Yes. While we believe that a negligence standard is not the appropriate standard to discipline associated persons, if the Board decides to adopt the negligence standard, we believe that there are certain categories of circumstances that should be excluded. The proposed rule should apply only to individuals whose acts or omissions directly and substantially cause a firm violation. Further, the proposed rule should apply only to the Board's own rules and professional standards.

**Pg. 19**      **Question # 14:** In a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a Rule 3502 violation by an associated person who negligently contributed to the violation?

**Answer:** No. We believe that this would be an improper and unwarranted application of the rule. The Board should not sanction individual professional conduct that itself would not rise to a violation of the underlying rule or professional standard.

**PCAOB Release No. 2004-15 Section I**

**Release No.  
2004-015**

**Pg. 17**      **Question #15:** Are there any independence concerns for the types of services discussed in the Section I. of Release No. 2004-15 that the Board has not identified?

**Answer:** No. Based on what's happening in the market place as well as analyses of recent corporate scandals, the rule addresses the problematic services.

**Pg. 17**      **Question #16:** Are there other types of services that could appropriately be included in the discussion in Section I. of Release No. 2004-15?

**Answer:** Yes. We believe services previously considered by the Commission should be set out in the Release. This will facilitate audit committee reference and use when the services are discussed in a single guidance document. Other services that could appropriately be included in the Release include assisting the audit client with the obtaining of a revenue ruling, private letter ruling or similar administrative guidance from the IRS or other competent tax authority. These services should not implicate the auditor independence rules, regardless of the nature of the transaction for which a ruling is sought. Many of these matters we would regard as routine tax compliance, *e.g.*, a foreign company that requires advance clearance to make payments with deduction of withholding taxes, and some we would regard as a normal part of general tax planning work on business transactions, *e.g.*, in the United Kingdom obtaining routine clearances when companies are acquired on a share-for-share basis. We do not consider that the obtaining of such rulings or advance clearances should pose any independence concerns and should fall within the ambit of acceptable tax services discussed by the Board. In addition, securing such rulings establishes appropriate comfort with respect to the transaction, thereby eliminating any auditor independence issues.

**Proposed Rule 3520 – Auditor Independence**

**Release No.**  
**2004-015**

**Pg. 20**

**Question #17:** Would the scope of the ethical obligation described impose any practical difficulties?

**Answer:** Yes. The way the rule is currently written, it would subsume the independence rules enforcement of territories outside the United States, in effect, placing the PCAOB in a position of enforcing IFAC and other rules. The Board should restrict the obligation to conduct with respect to registrant and United States rules.

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**From:** Lisa Printz [lisaprintz@hotmail.com]  
**Sent:** Thursday, January 20, 2005 3:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Lisa Printz  
917 Bell St  
Reno, NV 89503-2831

---

**From:** Christine Puelle [cpuelle@earthlink.net]  
**Sent:** Monday, January 24, 2005 1:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 24, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Christine Puelle  
9201 Shore Rd Apt C512  
Brooklyn, NY 11209-6562

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**From:** Gerryl E. Puelle [gerrypuelle@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 4:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Gerryl E. Puelle  
540 E 20th St Apt 9B  
New York, NY 10009-1334

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**From:** Roslyn Pulitzer [images-rkp@comcast.net]  
**Sent:** Tuesday, January 18, 2005 5:06 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Roslyn Pulitzer  
2742 La Silla Dorada  
Santa Fe, NM 87505-6703

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**From:** Robert Puls [robpuls@hutchtel.net]  
**Sent:** Tuesday, January 18, 2005 2:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Puls  
133 3rd Ave SW Apt 616  
Hutchinson, MN 55350-2471

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**From:** Dorli T Rainey [dorlir@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 1:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Dorli T Rainey  
320 W Roy St Apt 213  
Seattle, WA 98119-4464

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**From:** Robert Ramming [r.ramming@att.net]  
**Sent:** Wednesday, January 19, 2005 12:01 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Ramming  
4182 Fm 1002 N  
Winnsboro, TX 75494-8218

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**From:** Riaz Rana [rrana@erols.com]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Riaz Rana  
6301 Trotter Rd  
Clarksville, MD 21029-1207

---

**From:** Fred RATIO [ratio66@msn.com]  
**Sent:** Tuesday, January 18, 2005 1:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Fred RATIO  
2134 Root St  
Crest Hill, IL 60435-1742

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**From:** Marilyn Raupe [babegolf@aol.com]  
**Sent:** Wednesday, February 09, 2005 10:24 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 9, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Marilyn Raupe  
2312 S 119th Plz  
Omaha, NE 68144-2933

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**From:** Linda Rawlings [llpr@juno.com]  
**Sent:** Tuesday, January 18, 2005 9:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Linda Rawlings  
232 E 2nd St # 2-B  
Frederick, MD 21701-3801

---

**From:** Terry Reckmo [terryreckmo@aol.com]  
**Sent:** Tuesday, January 18, 2005 5:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Terry Reckmo  
21775-T  
Fayette, OH 43521

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**From:** MARYELLEN REDISH [mredish@aol.com]  
**Sent:** Friday, January 21, 2005 2:37 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. MARYELLEN REDISH  
147 S Doheny Dr # 1  
Los Angeles, CA 90048-2963

---

**From:** John Reichel [jreichel@conceptgroup.com]  
**Sent:** Tuesday, January 18, 2005 2:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Reichel  
5616 Humboldt Ave S  
Minneapolis, MN 55419-1632

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**From:** Peter C. Reilly [reilly@usa.net]  
**Sent:** Tuesday, January 18, 2005 3:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter C. Reilly  
318 Jackson St  
Berea, KY 40403-1720



Reznick Group, P.C.  
 7700 Old Georgetown Road  
 Suite 400  
 Bethesda, MD 20814-6224

Tel: (301) 652-9100  
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Office of the Secretary  
 Public Company Accounting Oversight Board  
 1666 K Street, N.W.  
 Washington, D.C. 20006

Delivered via email to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Rulemaking Docket Matter No. 017

*Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees*

We appreciate the opportunity to comment on the above referenced "Proposed Rule." As always, we are supportive of any rule making that further demonstrates the profession's resolve in its commitment to independence and objectivity.

Much of our practice is focused on the Real Estate industry, specifically tax credit favored properties. The industry is structured primarily to derive benefit from tax credit eligible properties and the related amortization and depreciation for tax purposes. We, as do many others who practice in this industry, provide non-attest tax services to the clients for which we provide audit, review and attest services. Those services include tax compliance as well as tax planning.

We believe the guidance provided in the Proposed Rule will greatly limit the extent to which we can serve our clients. Not because of our involvement in "listed" or "confidential" transactions or due to tax services to certain executives, but rather because clients will have a difficult time justifying the services from a Firm that cannot provide services beyond simply "checking the box" for fear that it may become involved in an "aggressive transaction." Additionally, many of our clients are not Issuers, however we believe this type of rule making will influence other regulatory bodies to adopt similar rules and thereby inhibit our ability to serve those clients as well. This industry, and most likely many others, is highly efficient in delivery of tax compliance reporting as well as financial reporting due to the knowledge that a single service provider possesses. We believe the Proposed Rule related to tax services will cause clients to turn from the attest service provider due to the complications of the restrictions and the limitation on behalf of the tax professional to be able to first identify, then evaluate and then eliminate "aggressive" transactions. We believe the cost of complying with this rule, as proposed, in terms of the diminished quality of services or the inefficiency in delivery far outweighs the perceived benefit. Our recommendations and other observations are discussed more fully below.

#### **Rule 3522 - Aggressive Tax Positions**

We believe "listed" and "confidential transactions" are well understood as to their attributes and that association with such transactions should be prohibited in order to maintain independence. We believe such guidance is sufficient to address the public's concern as to the integrity of the



practitioner serving the audit client. However, should the final Rule retain a prohibition against other aggressive tax positions as it is currently proposed, we believe that guidance is problematic. Our observations follow.

The criteria of “any service related to the planning, or opining on the tax” is too broadly stated. This could be construed as any component of the routine tax procedures which are specifically permitted under this Proposed Rule. We believe this restriction should be confined to services provided specifically for the implementation of the “aggressive transaction” itself.

We believe the criterion that “the transaction was initially recommended by the registered public accounting firm or another tax advisor” is also too broadly defined and virtually impossible to monitor. Absent a client that is willing to represent that the idea was initiated by them, the default assumption as to the facts would be that the idea was initiated from a third party. We believe this prohibition of being associated with such “aggressive” tax positions would greatly limit the services the practitioner is willing to provide. Additionally, without exploring all reasonably possible options related to a given transaction, the client and its tax professional may not adequately comply with IRS regulations. We believe the cost to the client of its tax practitioner ‘not thinking’ for fear of violating this ruling and thereby losing its independence would be prohibitive. The consequences would be to significantly increase the cost and clearly decrease the quality of the compliance services delivered to a client. The additional cost of that to the IRS in terms of the quality of compliance due to lower quality services should be apparent.

We believe the second criteria “a significant purpose of the transaction is tax avoidance,” again, is much too broadly worded. Words such as primary or principal purpose would more adequately capture the types of abusive transactions that call into question the integrity of the practitioner.

The final criteria, “the proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable laws” may be objectively applied after the fact but will have unintended consequences. We believe this criterion limits the practitioner from creatively evaluating transactions to reach a conclusion of the most appropriate treatment under the Code. We believe this prohibition causes delivery of substandard services to the client. As a result, if the intended consequence of this rule was to allow routine tax services to be provided, then the quality of those services will surely diminish.

#### **Rule 3523 - Tax Services for Senior Officers in a Financial Reporting Oversight Role**

We believe that if the Proposed Rule has substance that it certainly should be applied to members of the Audit Committee and the Board. The Audit Committee relationship to the auditor is clearly identified and there is no question that the Audit Committee plays a key role in financial oversight. Additionally the members of the Board are also in a position to significantly influence the financial reporting process.



However, we believe the restriction should be placed upon the same services that we believe should be prohibited for the Company itself; the "listed" and "confidential" transactions addressed in Rule 3522(a) and (b). That is, we believe that providing tax services to any of the members of management does not draw into question the independence of the firm, provided those services do not include the prohibited services of Rule 3522 (a) and (b).

#### **Approval for Non-Prohibited Tax Services**

We appreciate the emphasis placed in the Proposed Rule on the four principles set forth in the preliminary note to the SEC's Rule 2-01. As we continue through this significant transition of the accounting profession, we believe identifying principles that are then coupled with examples of reasoned application of those principles to specific circumstances should provide adequate guidance for making a rational decision. Additional rules quite often raise further concerns and questions, requiring further interpretation and, of course, more rules.

#### **Other Matters**

We noted in the transcript of the Roundtable held by the Board in July of 2004 that comments were made to the effect that all tax planning has an impact on the audited financial statements. Specifically Ms. Walters put it quite succinctly, "Every tax strategy, every tax decision, has a financial-reporting effect." While we agree that every tax strategy and every tax decision has an economic effect, that impact is not always reflected in the financial statements. As is common practice in the Real Estate industry, many of the entities are pass through structures for tax purposes. The most commonly recognized publicly traded structure is that of a Real Estate Investment Trust ("REIT"). Those entities do not reflect the tax consequences on their financial statements because they are not obligations of the entity but rather obligations of the individual investors. It is the tax attributes of transactions along with the individual investor's tax profile that determines the actual economic results of a given transaction. Other than the specific tax attributes, the impact that those transactions have to an individual investor is not known to the Issuer, the tax advisor or to the auditor. Finally, as the tax consequences are not reflected in the financials of these pass through entities, the audit services may be provided at a significantly different point in time relative to when the tax services for the same entity are provided. This becomes problematic when assessing the criteria under Rule 3522(c) – Aggressive Tax Positions. We believe consideration should be given to the uniqueness of the bifurcation of the tax consequences and financial reporting of transactions for these pass through entities.

We would be pleased to discuss our comments. Please contact Kurtis Wolff at (404) 250-4148 or Mark Einstein at (301) 652-3777.

*Reznick Group, P.C.*

Bethesda, Maryland  
February 14, 2005

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**From:** Bonnie Richardson [supervixenjohnfan@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Bonnie Richardson  
1447 W Touhy Ave Apt 405  
Chicago, IL 60626-2604

---

**From:** Emily Rieber [emilyrieber@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Emily Rieber  
2791 McBride Ln Apt 181  
Santa Rosa, CA 95403-2754

---

**From:** Linda Riling [victorian462000@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Linda Riling  
1131 14oth pl  
knoxville, IA 50138

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**From:** Kenneth Roach [kroach@slco.org]  
**Sent:** Wednesday, January 19, 2005 3:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kenneth Roach  
1131 Loch Lomond Way  
Salt Lake City, UT 84117-4974

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**From:** robert f robbins [robert.donna@verizon.net]  
**Sent:** Tuesday, January 18, 2005 2:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

robert f robbins  
2252 Orangeside Rd  
Palm Harbor, FL 34683-3344

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**From:** Melissa Roberts [seattlepa@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 12:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Melissa Roberts  
276 Prospect PI  
Brooklyn, NY 11238-3901

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**From:** Robert Roberts [rroberts91@cox.net]  
**Sent:** Tuesday, January 18, 2005 8:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Robert Roberts  
2704 S Taylor St  
Pittsburg, KS 66762-6555

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**From:** Peter Roche [sunmtnsft@aol.com]  
**Sent:** Tuesday, January 18, 2005 1:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Peter Roche  
2916 Avenida Alamosa Apt C  
Santa Fe, NM 87507-1596

---

**From:** David Rockefeller [drockef1@nycap.rr.com]  
**Sent:** Wednesday, January 19, 2005 11:14 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Rockefeller  
32 Brookstone Dr  
Greenfield Center, NY 12833-1836

---

**From:** Luis Rodriguez [ljrx2@theriver.com]  
**Sent:** Tuesday, January 18, 2005 10:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Luis Rodriguez  
1257 E Montecito Dr  
Globe, AZ 85501-2093

---

**From:** Robert Rose [rgrose@bellatlantic.net]  
**Sent:** Wednesday, January 19, 2005 12:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Rose  
3 Molly Stark Dr  
Morristown, NJ 07960-5140

---

**From:** Wolfgang Rosenberg [wolfgang@cruzio.com]  
**Sent:** Tuesday, January 18, 2005 1:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Wolfgang Rosenberg  
413 Western Dr Apt 6  
Santa Cruz, CA 95060-3076

---

**From:** Bill Rosenthal [brosent@hunter.cuny.edu]  
**Sent:** Tuesday, January 18, 2005 2:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Bill Rosenthal  
15303 Plantation Oaks Dr Apt 2  
Tampa, FL 33647-2147

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**From:** Norm Ross [normwross@netscape.net]  
**Sent:** Wednesday, January 19, 2005 10:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Norm Ross  
24921 Muirlands Blvd Spc 34  
Lake Forest, CA 92630-4828

---

**From:** Morris Roth [mroth941@aol.com]  
**Sent:** Tuesday, January 18, 2005 9:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Morris Roth  
283 Washington St  
Fairview, NJ 07022-1020

---

**From:** Frank Rowan [frowan248@charter.net]  
**Sent:** Tuesday, January 18, 2005 1:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Frank Rowan  
248 Luneta Dr  
San Luis Obispo, CA 93405-1520

---

**From:** Thomas J Rowan [tomad\_51@lycos.com]  
**Sent:** Wednesday, January 19, 2005 8:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thomas J Rowan  
766 Brady Ave Apt 635  
Bronx, NY 10462-2725

---

**From:** Don Rowinsky [danny275@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Don Rowinsky  
602 Caledonia St  
Youngstown, OH 44502-2128

---

**From:** Lee Rubenstein [lee@leerubenstein.com]  
**Sent:** Tuesday, January 18, 2005 4:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Lee Rubenstein  
4048 US Highway 209  
Stone Ridge, NY 12484-5605

---

**From:** Ken Rugg [kento@cybermesa.com]  
**Sent:** Wednesday, January 26, 2005 12:42 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ken Rugg  
7567 Old Santa Fe Trl  
Santa Fe, NM 87505-9361

---

**From:** Lorraine Rumore [lors@cfl.rr.com]  
**Sent:** Tuesday, January 18, 2005 3:43 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Lorraine Rumore  
141 Mallard Ln  
Daytona Beach, FL 32119-8748

---

**From:** Brian Ruppert [bdr54@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 10:21 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Brian Ruppert  
2090A Flb  
707 S Mathews Ave  
Urbana, IL 61801-3625

---

**From:** Charlene Rush [charlierush@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 5:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Charlene Rush  
100 Anderson St Apt 541  
Pittsburgh, PA 15212-5842

---

**From:** Sam Russo [samr188@aol.com]  
**Sent:** Tuesday, January 18, 2005 8:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Sam Russo  
188 David Ave  
Rochester, NY 14620-3106

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**From:** Robert Rutkowski [r\_e\_rutkowski@hotmail.com]  
**Sent:** Tuesday, March 01, 2005 9:54 AM  
**To:** INFO  
**Cc:** president@whitehouse.gov; sf.nancy@mail.house.gov  
**Subject:** Limit the ability of accounting firms to sell tax shelters

William J. McDonough- Chairman  
Public Company Accounting Oversight Board  
Washington Office  
1666 K Street, NW  
Washington, DC 20006-2803  
info@pcaobus.org

Dear Chairman:

One of the significant findings of the GAO report, entitled Challenges Remain in Combating Abusive Tax Shelters, was that many of the tax shelters were sold to companies by the same accounting firm that did the company audit. According to the GAO, between 1998 and 2003, 61 of the nation's 500 largest corporations used tax shelter services from accounting firms they hired to provide a supposed independent audit the companies' financial statements. Additionally, executives or directors at 17 Fortune 500 companies also purchased personal tax shelters.

The PCAOB is proposing to limit the ability of accounting firms to sell tax shelters to the companies that they are auditing. But they will likely be pressured by greedy accounting firms to back down.

I support the decision.

I also support the suggestions made by Sen. Carl Levin (D-Mich.) in a letter. Levin's letter recommends, for example, amending the proposed auditor independence rule to require auditors to avoid the appearance of a conflict of interest as well as actual conflicts. The letter also recommends allowing accounting firms to promote to public companies only those tax products which would be very likely to be upheld in court, rather than tax products with a lesser probability of being upheld in court.

Levin's letter:  
<http://levin.senate.gov/newsroom/supporting/2005/LevinItrauditors.022405.pdf>

GAO study: <http://www.gao.gov/new.items/d05171.pdf>

Thank you for the opportunity to bring these remarks to your attention at this critical time.

Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,  
Robert E. Rutkowski

cc:  
Nancy Pelosi  
George Bush

2527 Faxon Court  
Topeka, Kansas 66605-2086  
P/F: 1 785 379-9671

r\_e\_rutkowski@myrealbox.com

---

**From:** J. Leo Sadauskas [jleo71@ix.netcom.com]  
**Sent:** Wednesday, January 19, 2005 11:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. J. Leo Sadauskas  
2955 Leisure Ct  
Dunedin, FL 34698-9651

---

**From:** Ana Salinas [a.salinas@mail.utexas.edu]  
**Sent:** Thursday, January 20, 2005 8:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The trust of the American people on public accounting firms is at the lowest point ever. There is no confidence in any financial statements that auditors are providing the public. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Ana Salinas  
10309 Wildwood Hills Ln  
Austin, TX 78737-9202

---

**From:** Richard Sam Salmon [lasam@itol.com]  
**Sent:** Tuesday, January 18, 2005 4:44 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Sam Salmon  
1331 Bellevue St Lot G  
Green Bay, WI 54302-2122

---

**From:** Michael Sanders [bud5289@comcast.net]  
**Sent:** Wednesday, January 19, 2005 10:17 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Michael Sanders  
5289 Coors St  
Arvada, CO 80002-1640

---

**From:** Rex Sanders [rexwsanders@juno.com]  
**Sent:** Tuesday, January 18, 2005 8:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Rex Sanders  
2628 Boykin Pl  
Montgomery, AL 36117-4660

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**From:** Dan [drs@coscpas.com]  
**Sent:** Thursday, January 06, 2005 12:11 PM  
**To:** Comments  
**Subject:** Proposed Ethics (release 2004-015)

To Whom It May Concern:

I am an audit partner in a small CPA firm (no clients as SEC registrants) but began my career with Arthur Andersen . I recently had opportunity to read over the proposed rules regarding tax services and have following comment:

On page 15, the third sentence of first full paragraph makes a statement that tax return preparers do not act as an advocate for the client. Actually, according to TS 100.04 of AICPA's SSTS', it is both a right and a responsibility of a practitioner / member to be an advocate for the taxpayer. I would suggest that the existence of this conflicting professional responsibility be acknowledged in the final rule together with sufficient safeguards put in place by the CPA firm to address this clear advocacy role played by tax preparers. And in terms of the safeguards, notwithstanding the reference to the general standard of pre-approval, I would suggest that no one associated with the audit engagement be involved in the tax return preparation process (e.g., the tax partner or manager should not serve as a member of the audit engagement team, with the latter applying sufficiently robust professional skepticism on all tax matters affecting the audited financial statements regardless of who prepares the proposed tax entries or supporting schedules). Thank you.

Dan Sandstrom

IMPORTANT: THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING US COLLECT AT 301-421-1330 AND DELETING IT FROM YOUR COMPUTER. THANK YOU.

---

**From:** Ajit Sanghvi [mnas77@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ajit Sanghvi  
2466 Five Shillings Rd  
Frederick, MD 21701-9326

**RALPH S. SAUL**

3030 ONE LOGAN SQUARE  
18TH & CHERRY STREETS  
P.O. BOX 7716  
PHILADELPHIA, PA 19192

215 523-5051

FAX 215 523-5055

July 21, 2005

Office of the Secretary  
PCAOB  
1666 K Street NW  
Washington, DC 2006-2803

RE: PCAOB Ruling Making Docket Matter #017

Dear Sir:

These comments are not addressed to the substance of the Board's Proposed Ethics and Independence Rules concerning Independence, Tax, Services and Contingent Fees released last December. My comments address the broader question of who should make independence determinations and how the Commission and the Board should relate to one another in deciding these issues.

The Sarbanes/Oxley Act expressly authorized the Board to establish such independence rules "as may be necessary or appropriate in the public interest or for the protection of investors". The Act backed up this grant of authority by giving the Board the power to inspect and enforce its standards with respect to public accounting firms. It is clear that the Board has the initial authority to establish independence rules and interpret them, all subject to Commission oversight and review.

At the same time, the Commission has maintained in place its Rule 2-01 under Regulation S-X despite the fact that this rule was adopted prior to the passage of the Sarbanes/Oxley Act and the explicit delegation to the Board to establish independence standards. In the Board's Release 2004-015, the Board seeks to reconcile its proposed independence requirements with the Commission's Rule 2-01. It does so by stating that "the Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately to lock in place any aspect of those requirements". The Board seeks to clarify the confusion that may result from two sets of independence requirements by stating

that a public accounting firm must comply with not only the Commission's rule but also with those requirements specifically established by the Board.

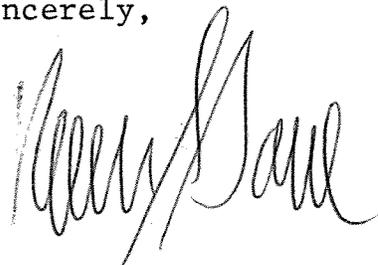
The Commission's Rule 2-01 represented a compromise and, as such, it was hurriedly drafted to deal with the non-audit service issue. The appearance based standard is not in the rule but in a preliminary note to the rule which would appear to give it less authority. Also, the appearance based standard with its "reasonable investor" test to determine whether a non-audit service compromises an audit contains a major flaw. The proxy statement disclosures do not reveal the complex facts that would explain why a client contracted with an auditor to provide a non-audit service. It is unreasonable to expect an investor - no matter how diligent - to obtain and analyze such facts. A reasonable investor can judge the overall quality of financial reporting but such an investor cannot be expected to make judgments about the business decisions that enter into retaining the auditor for a non-audit service. It is the responsibility of the Audit Committee, acting on behalf of investors, to make those judgments. In its Release, the Board acknowledges that applying Rule 2-01 is "a complex task" and "it is one that may change over time" signaling its problems with Rule 2-01.

Having two sets of independence requirements - one of which is flawed - cannot help but confuse the profession. As the Board's release indicates, there is already confusion between the Commission and the Board on the contingent fee issue and it is probable that further confusion will ensue as long as the Commission does not delegate exclusive authority to the Board to establish independence standards.

In my view, the Commission should abrogate Rule 2-01 and explicitly state that, with the Sarbanes/Oxley Act, the Board now has the authority to adopt independence standards, subject to Commission oversight and review. Such a step would demonstrate that the Commission can eliminate a rule when, in light of subsequent events, it is no longer appropriate to maintain it in place.

I would hope that the Board and the Commission, if they have not already done so, will work towards the resolution of an issue that now only creates duplication and confusion.

Sincerely,



cc: William J. McDonough

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**From:** Susan Savarise [theladyisatramp@cox.net]  
**Sent:** Tuesday, January 18, 2005 3:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Susan Savarise  
2001 S 11th St  
Las Vegas, NV 89104-3117

---

**From:** Beverly Scaff [beverlyscaff@comcast.net]  
**Sent:** Tuesday, January 18, 2005 2:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Beverly Scaff  
2449 Pine Knoll Dr Apt 2  
Walnut Creek, CA 94595-2192

---

**From:** Jeffrey Schade [jeff.schade@experian.com]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jeffrey Schade  
123 Crest Wood Ct Apt 4  
Schaumburg, IL 60195-3371

---

**From:** Alice Scheller [wgadschell@aol.com]  
**Sent:** Tuesday, January 18, 2005 6:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Alice Scheller  
181 Richmond Ave  
Paterson, NJ 07502-1639

---

**From:** James Schiffman [jschiff6@comcast.net]  
**Sent:** Tuesday, January 18, 2005 4:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Schiffman  
3820 Amapola Ln  
Sarasota, FL 34238-4571

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**From:** robert schlagal [chanssu@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 11:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. robert schlagal  
365 Highland Ave  
Boone, NC 28607-4611

---

**From:** Richard Schloss [dragonminder@mail2rich.com]  
**Sent:** Tuesday, January 18, 2005 10:38 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Richard Schloss  
9 Medford Ln  
East Northport, NY 11731-5229

---

**From:** Cindy Schnackel [cschnackel@fourteen.net]  
**Sent:** Thursday, January 20, 2005 1:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Cindy Schnackel  
1808 NW 172nd St  
Edmond, OK 73003-7054

---

**From:** Phyllis Schoen [fpschoen@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Phyllis Schoen  
919 Westchester Pl  
Los Angeles, CA 90019-2005

---

**From:** Roberta Schonemann [schonem@purdue.edu]  
**Sent:** Sunday, January 23, 2005 9:48 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Roberta Schonemann  
4515 Erwin Rd  
West Lafayette, IN 47906-9274

---

**From:** Robert Schuessler [rjjs@adelphia.net]  
**Sent:** Wednesday, January 19, 2005 10:08 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Schuessler  
Grayton Rd  
Tonawanda, NY 14150-9008

---

**From:** Melvyn B. Schupack,Md [melschupack@aya.yale.edu]  
**Sent:** Wednesday, January 19, 2005 9:39 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Melvyn B. Schupack,Md  
PO Box 546  
33 Webster Ln  
Walpole, NH 03608-0546

---

**From:** edith schutz [eas100@msn.com]  
**Sent:** Tuesday, January 18, 2005 3:03 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. edith schutz  
2435 Arapaho Way  
Thousand Oaks, CA 91362-3214

---

**From:** Robert Schwalb [rmsroberts@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Schwalb  
2625 N Clark St  
Chicago, IL 60614-1852

---

**From:** Jeff Schwartz [jefas64@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 2:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jeff Schwartz  
485 6th Ave Apt 3R  
Brooklyn, NY 11215-4036

---

**From:** Martin Schwartz [roomn8@optonline.net]  
**Sent:** Thursday, February 03, 2005 10:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 3, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Martin Schwartz  
1228 Curtis Pl  
North Baldwin, NY 11510-1223

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**From:** Karen R. Searle [ksearle@comcast.net]  
**Sent:** Tuesday, January 18, 2005 10:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Karen R. Searle  
22 Windsor Way  
Berkeley Heights, NJ 07922-1857

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**From:** Star Seastone [starstone@juno.com]  
**Sent:** Wednesday, January 19, 2005 11:34 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Star Seastone  
1121 La Porte Ave # 2  
Fort Collins, CO 80521-2421

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**From:** Karen Keating-Secular [katwoman521@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 4:08 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Karen Keating-Secular  
6361 99th St  
Rego Park, NY 11374-2449

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**From:** James Seeley [jimmybill13s@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 10:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Seeley  
1532 Hawthorn Dr  
Mogadore, OH 44260-1565

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**From:** Robert Segal [stravon@prodigy.net]  
**Sent:** Tuesday, January 18, 2005 3:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. The auditing profession must reinforce its own ethical standards by helping ensure that auditor and audit client remain independent of each other. Auditors compromise this independence when they sell tax shelters and tax advice to clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the SEC that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Segal  
4465 Douglas Ave  
Bronx, NY 10471-3513

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**From:** Arnold Seligman [alselig@bellsouth.net]  
**Sent:** Tuesday, January 18, 2005 5:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Arnold Seligman  
2278 Brookwood PI  
Cantonment, FL 32533-5702

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**From:** Lucy Sells [ilucy@aol.com]  
**Sent:** Tuesday, January 18, 2005 5:19 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Lucy Sells  
1194 Cragmont Ave  
Berkeley, CA 94708-1613

---

**From:** Brent Seltzer [mc\_media@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 3:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brent Seltzer  
11076 Fruitland Dr  
Studio City, CA 91604-3541

---

**From:** James Sepenzis [jsepenzis@stifel.com]  
**Sent:** Tuesday, January 18, 2005 2:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Sepenzis  
1195 E Tufts Ave  
Cherry Hills Village, CO 80113-5930

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**From:** Gary Shade [delphos24111@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 5:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gary Shade  
301 N Whisman Rd  
Mountain View, CA 94043-3969

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**From:** Davira Shain [auntydavi@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 9:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Davira Shain  
C/O Sayles  
444 Lunalilo Home Rd Apt 119  
Honolulu, HI 96825-1707

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**From:** SWtstephen Shamroth [sjses@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

SWtstephen Shamroth  
35 Arlen Way  
West Hartford, CT 06117-1104

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**From:** Edwin Shannon [pansyed@rcn.com]  
**Sent:** Tuesday, January 18, 2005 4:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edwin Shannon  
233 Christmas Ave  
Bath, PA 18014-1603

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**From:** c. Joseph Sharrer [sharrershields@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. c. Joseph Sharrer  
1398 Cumberland Dr  
Harrisonburg, VA 22801-8677

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**From:** Paul Sheridan [sheridanpa@earthlink.net]  
**Sent:** Wednesday, January 19, 2005 9:55 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Paul Sheridan  
560 Dean St Apt 3L  
Brooklyn, NY 11217-2192

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**From:** BILL SHERMAN [williebb41@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 12:15 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. BILL SHERMAN  
2230 Berry Ave  
Groves, TX 77619-3331

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**From:** Gregory Shernell [colddk@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 6:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gregory Shernell  
10050 Kumquat St NW  
Coon Rapids, MN 55433-5111

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**From:** Paul Sherr [paulsherr@bigfoot.com]  
**Sent:** Thursday, January 20, 2005 9:26 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Paul Sherr  
1202 Newning Ave Apt 213  
Austin, TX 78704-1856

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**From:** William Shortencarrier [10146@pennswoods.net]  
**Sent:** Tuesday, January 18, 2005 9:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Shortencarrier  
223 Edgewood Dr  
Hastings, PA 16646-5504

---

**From:** David Sierra [daens84320@yahoo.com]  
**Sent:** Tuesday, January 25, 2005 4:20 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Sierra  
65 Rosalie Ave  
Clifton, NJ 07011-1837

---

**From:** Lee Silverman [lsilverpa@aol.com]  
**Sent:** Thursday, January 20, 2005 10:50 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Lee Silverman  
2235 Harmain Rd  
Pittsburgh, PA 15235-4938

---

**From:** Ransom Simmons [asimmons@tampabay.rr.com]  
**Sent:** Wednesday, January 19, 2005 3:34 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Ransom Simmons  
7222 Odoniel Loop E  
Lakeland, FL 33809-2324

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**From:** Henry SIMMS [bighinvegas@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 8:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Henry SIMMS  
9944 Coral Sands Dr  
Las Vegas, NV 89117-3639

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**From:** Leslie Simons [simonl01@med.nyu.edu]  
**Sent:** Tuesday, January 18, 2005 2:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Leslie Simons  
53 Pleasant Hill Road  
Mountainville, NY 10953

---

**From:** Nadia Sindi [nadiasindi@msn.com]  
**Sent:** Tuesday, January 18, 2005 1:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nadia Sindi  
3950 Goodpasture Loop Apt J111  
Eugene, OR 97401-1428

---

**From:** Sara Skinner [narnia@velvet.net]  
**Sent:** Thursday, January 27, 2005 1:02 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 27, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Sara Skinner  
29 S Bedford St  
Burlington, MA 01803-4512

---

**From:** William Slattery [billslatt5@netzero.net]  
**Sent:** Wednesday, January 19, 2005 9:55 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Slattery  
12101 W County Road 52  
Midland, TX 79707-8966

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**From:** Rita Sloan [rwrksloan@hotmail.com]  
**Sent:** Sunday, January 23, 2005 9:07 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Rita Sloan  
5340 Wildwood Dr  
Reno, NV 89511-8065

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**From:** Bonnie Faith-Smith [whiteowl1@comcast.net]  
**Sent:** Wednesday, January 26, 2005 10:22 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 26, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Bonnie Faith-Smith  
290A Washington St  
Cambridge, MA 02139-3506

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**From:** brian smith [b\_smith37@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 10:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. brian smith  
12 Standish Rd  
Ellington, CT 06029-3636

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**From:** John Smith [jsmithld40@aol.com]  
**Sent:** Wednesday, January 19, 2005 8:38 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Smith  
3410 Luttrell Rd  
Annandale, VA 22003-1269

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**From:** Kenneth Smith [attysmith@netscape.net]  
**Sent:** Tuesday, January 18, 2005 3:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Kenneth Smith  
11411 Weathering Oaks Dr  
Houston, TX 77066-5137

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**From:** Kris Smith [ursus101@aol.com]  
**Sent:** Tuesday, January 18, 2005 9:27 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Kris Smith  
260 Rockingham St  
Rochester, NY 14620-2410

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**From:** Shirley Smith [greshan60@aol.com]  
**Sent:** Wednesday, January 19, 2005 3:02 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Shirley Smith  
PO Box 6723  
Longview, TX 75608-6723

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**From:** William Smith [ibsmit@verizon.net]  
**Sent:** Tuesday, January 18, 2005 9:39 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Smith  
10021 Williamsville Rd  
Mechanicsville, VA 23116-5445

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**From:** Bruce Snyder [brucensnyder@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Bruce Snyder  
3131 N Druid Hills Rd Apt 3209  
Decatur, GA 30033-2647

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**From:** Arlen Dean Snyder [arlen@snarlin.com]  
**Sent:** Tuesday, January 18, 2005 4:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Arlen Dean Snyder  
4580 Broadway  
Studio 4-F  
New York, NY 10040-2105

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**From:** frederique n sol [fredieq@yahoo.com]  
**Sent:** Sunday, January 23, 2005 7:14 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Miss frederique n sol  
44A Lispenard Ave  
New Rochelle, NY 10801-4477

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**From:** William Sowa [wsowa@usa.net]  
**Sent:** Tuesday, January 18, 2005 2:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Sowa  
13817 S Hickory Ln  
Plainfield, IL 60544-6445

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**From:** John Spear [jspear@pdq.net]  
**Sent:** Tuesday, January 18, 2005 2:33 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. John Spear  
622 Peddie St  
Houston, TX 77008-4550

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**From:** Marlene T Spitz [mtspitz@webtv.net]  
**Sent:** Tuesday, January 18, 2005 1:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Marlene T Spitz  
1525 S Cape Verde Pl  
Tucson, AZ 85748-7618

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**From:** paul spivey III [paulspivey@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 9:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. paul spivey III  
305 Williamsburg Rd  
Anderson, SC 29621-1543

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**From:** Thomas Spradley [tomspradley@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I'm disgusted with the cozy relationships that have existed between auditor and audited that ends up providing me, the small investor, with bad and often untrue investment information. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Thomas Spradley  
5336 Finsbury Ave  
Sacramento, CA 95841-3817

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**From:** Arthur Springer [beckart@triad.rr.com]  
**Sent:** Tuesday, January 18, 2005 4:06 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Arthur Springer  
1516 Greenwood Ter  
Burlington, NC 27215-2038

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**From:** Joe St.Clair [joej1@charter.net]  
**Sent:** Saturday, January 22, 2005 7:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joe St.Clair  
676 N 12th St Apt 11  
Grover Beach, CA 93433-1430

---

**From:** Jon Staid [jon.staid@verizon.net]  
**Sent:** Tuesday, January 18, 2005 4:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jon Staid  
243 Prospect St  
Lawrence, MA 01841-2831

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**From:** Karen Stamm [karen\_stamm@mindspring.com]  
**Sent:** Sunday, January 23, 2005 9:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 23, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Karen Stamm  
366 Broadway  
New York, NY 10013-3909

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**From:** Bill & Susan Stanaway [bsstanaway@msn.com]  
**Sent:** Wednesday, January 19, 2005 12:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bill & Susan Stanaway  
4319 S Orlando Ct  
Spokane, WA 99223-6145

---

**From:** Thoams Stanley [stannie\_12514@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thoams Stanley  
102 Fancor Rd  
Clinton Corners, NY 12514-2521

---

**From:** Brad & Jennifer Stanton [bljwstanton@aol.com]  
**Sent:** Thursday, January 20, 2005 5:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Brad & Jennifer Stanton  
6301 W Hampden Ave  
Denver, CO 80227-5408

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**From:** Dawn Stanzione [dawnvegetarian@aol.com]  
**Sent:** Thursday, February 10, 2005 8:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 10, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Dawn Stanzione  
55 Greene Ave  
Barrington, RI 02806-1352

---

**From:** Dustin Starbuck [dustin.starbuck@us.army.mil]  
**Sent:** Tuesday, January 18, 2005 1:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dustin Starbuck  
5646 Governors Pond Cir  
Alexandria, VA 22310-2348

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**From:** Valerie Starr [vastarr27@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Valerie Starr  
15210 NE 26th St  
Vancouver, WA 98684-7882

---

**From:** William Stavisky [wstavis@stic.net]  
**Sent:** Wednesday, January 19, 2005 9:38 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Stavisky  
8422 Cactus Crk  
San Antonio, TX 78251-1826

---

**From:** Stanley Stefancic [srsmh@att.net]  
**Sent:** Wednesday, January 19, 2005 12:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Stanley Stefancic  
409 Forbes Ave  
San Rafael, CA 94901-1748

---

**From:** Edward Stein [ehstein@usa.net]  
**Sent:** Tuesday, January 18, 2005 2:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Edward Stein  
2400 S Trask St  
Tampa, FL 33629-5551

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**From:** Paul Stein [pls47@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 9:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Paul Stein  
532 Laguardia PI # 224  
New York, NY 10012-1428

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**From:** Mike Stevenson [Mike@armcpa.com]  
**Sent:** Monday, February 07, 2005 12:06 PM  
**To:** Comments  
**Subject:** Docket # 017

My comment surrounds the definition of routine as related to the new rules on auditor independence and tax services. Defined as not routine is "prepares individual tax returns for client company officers with oversight authority over financial statements." Would this apply to an auditor who only performs audit work related to the company's 11-K and prepares the VP-Human Resources individual tax return? The VP-HR signs the 11-K representation letter.

Mike Stevenson  
Ary, Roepcke & Mulchaey  
614-486-3600 office  
614-554-2295 cell



**STATE BOARD OF ADMINISTRATION  
OF FLORIDA**

1801 HERMITAGE BOULEVARD  
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32308  
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**JEB BUSH**  
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AS TREASURER  
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ATTORNEY GENERAL  
AS SECRETARY  
**COLEMAN STIPANOVICH**  
EXECUTIVE DIRECTOR

February 14, 2005

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

Re: PCAOB Rulemaking Docket Matter No. 017

Dear Sir or Madam:

The State Board of Administration (SBA) of Florida is writing in support of the PCAOB's proposed "ethics and independence rules concerning independence, tax services, and contingent fees." Managed by the SBA, the Florida Retirement System (FRS) is the fourth largest public pension plan in the United States with approximately 850,000 beneficiaries and retirees, and assets totaling approximately \$110 billion.

The SBA, as a large institutional investor in global capital markets, has a significant interest in promoting the highest ethical and independence standards of registered public accounting firms. Accurate financial information is necessary in order for investors to make reasonably informed decisions and for the orderly functioning of the U.S. capital markets.

We believe that tax compliance services should be permitted, but only if the audit committee 1) pre-approved such services, 2) found those services to be in the best interest of the shareholders, and 3) provided disclosure of that finding to investors in the annual proxy to shareholders. In pre-approving all non-audit services provided by an independent accountant, the audit committee should have all the relevant facts including the terms of the engagement as set forth in the engagement letter. Without such a framework, it is difficult to understand how an audit committee can make a finding consistent with the SEC's rules.<sup>1</sup> Historically, engagement letters have not commonly

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<sup>1</sup> Regulation S-X, Article 210.2-01(b) states: "The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission."

PCAOB Comment Letter—Rulemaking Docket No. 017

February 14, 2005

Page 2 of 2

been provided to audit committee members, including instances of inappropriate contingent fees where members may have been unable to exercise the proper judgment and oversight.

The SBA believes that large amounts of non-audit revenues received for providing non-audit and other consulting services can impair a firm's ability to independently review a company's financial situation. A survey of financial analysts by The CFA Institute noted that non-audit fees that exceeded 50 percent of audit fees caused a majority of the analysts to conclude an auditor's independence was impaired. The report of the Conference Board Commission on Public Trust and Private Enterprise states:

“The Commission believes that any work performed by the company's outside auditors be closely related to the audit. Auditors' development and recommendations of new tax strategies for their clients is not closely related to the audit and, in our opinion, removes focus from their audit work and poses a potential conflict of interest.”<sup>2</sup>

In 2000, the SEC adopted revised auditor independence rules and has required proxy disclosure of billing for auditing and other types of services. These standards assure investors that the auditor of a company's financial statements has no other financial interest at stake with the company, and, therefore, it can be objective. The SBA believes strongly that a corporate audit committee's responsibility is to determine that an auditor's non-audit work for the company will not jeopardize the auditor's independence and to pre-approve such work.<sup>3</sup> Ideally, a company's external auditor should not perform *any* non-audit services for the company, except those required by statute or regulation.

The SBA believes an auditor should *not* provide tax planning including tax opinions, structuring, shelter or expatriate type services to a company they audit. An auditor should not provide a tax opinion on tax issues that subsequently must be examined by the independent auditor in connection with an examination of the financial statements. In some instances (e.g., expatriate tax work), tax services do not contribute to the quality of an audit; rather such service raises concerns and may not be in the best interest of shareholders.

Additionally, an auditor's independence is impaired when they are providing tax services to senior officers of an audit client, as well as those on the Board of Directors in an oversight role (i.e., members of the audit committee). If so, such services can put the auditor into the conflicted position of having to serve the interests of these individual officers that at times, may conflict with those of shareholders. Accordingly, we believe the PCAOB should expand its proposal to prohibit tax services being provided to at least the members of the audit committee of the board of directors.

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<sup>2</sup> *Report of the Commission on Public Trust and Private Enterprise*. The Conference Board, 2003, Page 41.

<sup>3</sup> The SBA's *Corporate Governance Principles & Proxy Voting Guidelines* also supports annual ratification of the independent audit firm by shareholders (available at [www.sbafla.com](http://www.sbafla.com)).

PCAOB Comment Letter—Rulemaking Docket No. 017

February 14, 2005

Page 3 of 3

We concur that an auditor should be prohibited from entering into contingent or commission fee arrangements with a company they audit. Finally, we believe the SEC's definitions of key terms, such as an affiliate of an accounting firm, should be emulated by the PCAOB to avoid differences that could contribute to confusion among auditors.

In their public interest role, auditors are to make an independent and unbiased examination of a company's financial statements and render an opinion as to whether they fairly present the results of operations, cash flows and financial condition of the company. I commend the PCAOB's efforts towards achieving meaningful auditor independence reforms.

Sincerely,



Coleman Stipanovich

Executive Director

cc: Mr. Donald Nicholiasen, Chief Accountant, SEC  
Ms. Ann Yerger, Exec. Dir., Council of Institutional Investors  
Mr. Kurt Schacht, Exec. Dir., CFA Centre for Financial Market Integrity

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**From:** Gregory Stone [bkgreg@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 3:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gregory Stone  
65 Kinderkamack Rd  
Park Ridge, NJ 07656-2114

---

**From:** Paul Story [phstory@cox.net]  
**Sent:** Tuesday, January 18, 2005 7:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Paul Story  
6701 NW 119th St  
Oklahoma City, OK 73162-1776

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**From:** William Stosch III [wstosch1@msn.com]  
**Sent:** Tuesday, January 25, 2005 7:40 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 25, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William Stosch III  
89 S Canal St  
Yardley, PA 19067-1503

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**From:** Mary Theresa Stout [mtstout@ptd.net]  
**Sent:** Tuesday, January 18, 2005 2:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Mary Theresa Stout  
906 Country Club Dr  
Bloomsburg, PA 17815-8535

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**From:** Jeff Strand [jeffstrandsas@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 11:43 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jeff Strand  
1212 15th St N  
Princeton, MN 55371-1072

---

**From:** Susan Strolla [suestrolla@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Susan Strolla  
2774 S Ocean Blvd  
Palm Beach, FL 33480-5539

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**From:** charles stromwall [charles.stromwall@verizon.net]  
**Sent:** Thursday, January 27, 2005 11:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 27, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. charles stromwall  
7913 Greeley Blvd  
Springfield, VA 22152-3015

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**From:** Julia Strong [jhstrong@mindspring.com]  
**Sent:** Thursday, January 20, 2005 8:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I support PCAOB's efforts and the overall proposal.

Sincerely,

Julia Strong  
821 Hillside Dr  
Gainesville, GA 30501-3116

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**From:** Richard Struzik [rich.struzik@experian.com]  
**Sent:** Tuesday, January 18, 2005 2:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Struzik  
14649 Birch St  
Orland Park, IL 60462-2689

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**From:** Michael Stuart [mike3116@msn.com]  
**Sent:** Tuesday, January 18, 2005 6:56 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Stuart  
3116 Shady Dr  
Wonder Lake, IL 60097-9318

---

**From:** Edwin A. Sturman [otisowl@pipeline.com]  
**Sent:** Thursday, January 20, 2005 10:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Edwin A. Sturman  
15847 Loch Maree Ln Apt 2202  
Delray Beach, FL 33446-3250

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**From:** Mark Sullivan [mark.sullivan9@comcast.net]  
**Sent:** Tuesday, January 18, 2005 4:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mark Sullivan  
2635 Russell St  
Berkeley, CA 94705-2131

---

**From:** Carl Sundberg [cjsund@yahoo.com]  
**Sent:** Thursday, January 20, 2005 7:39 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Carl Sundberg  
3807 22nd Ave  
Moline, IL 61265-4416

---

**From:** Joan Stupler [joangeri@optonline.net]  
**Sent:** Tuesday, January 18, 2005 3:54 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Joan Stupler  
1085 Warburton Ave  
Yonkers, NY 10701-1051

---

**From:** Shirley Supplee [sup1313@msn.com]  
**Sent:** Tuesday, January 18, 2005 6:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Shirley Supplee  
250 Sea Eagle Drive  
Unit 4  
Rehoboth Beach, DE 10071

---

**From:** Richard Swayne [rswayne@compuserve.com]  
**Sent:** Thursday, January 20, 2005 2:31 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Swayne  
18175 Goebel Ct  
Los Gatos, CA 95033-8949

---

**From:** ROGER SWANSON [swansonroger@hotmail.com]  
**Sent:** Wednesday, January 19, 2005 11:58 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. ROGER SWANSON  
301 Windsor Dr  
Syracuse, NY 13214-1510

---

**From:** Jay Sweeney [jnl@epix.net]  
**Sent:** Tuesday, January 18, 2005 5:03 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jay Sweeney  
RR 2 Box 143B

-

Dalton, PA 18414-9011

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**From:** Sally Anne Syberg [salux@earthlink.net]  
**Sent:** Friday, January 21, 2005 12:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 21, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Sally Anne Syberg  
606 17th St # 2  
Brooklyn, NY 11218-1112

---

**From:** John Tatum [jtt2@cornell.edu]  
**Sent:** Tuesday, January 18, 2005 2:05 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

John Tatum  
4180 Providence Sq  
Alpharetta, GA 30004-1288



February 14, 2005

Ms. Bella Rivshin, Assistant Chief Auditor  
 Mr. Greg Scates, Associate Chief Auditor  
 Office of the Secretary  
 Public Company Accounting Oversight Board  
 1666 K Street, N.W.  
 Washington, D.C. 20006

[comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: Rulemaking Docket Matter No. 017

Dear Ms. Rivshin and Mr. Scates:

Thank you for allowing an opportunity to comment on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. I am Tax Counsel with Taxware LP, a global provider of automated transaction tax software.<sup>1</sup>

Taxware provides integrated, Sarbanes-Oxley compliant, digital solutions for transaction tax calculation and return preparation in over 170 foreign and over 7,500 state and local tax jurisdictions in the U.S. Most of our clients are registered with the Securities and Exchange Commission and are audited by firms overseen by the Public Company Accounting Oversight Board.

Taxware supports the PCAOB's efforts to improve ethics and auditor independence in the area of non-audit tax services. However, with respect to Proposed Rule 3522 we believe that the rule, as currently drafted, is too narrowly drawn and unnecessarily establishes two standards for determining auditor independence in relation to "planning, or opining" on tax shelter transactions. It would be preferable to have a single, well-principled rule drafted along the lines of 3522 (c) followed by an expanded series of examples drafted along the lines of 3522 (a) and (b) that are culled from a reasonably wide variety of taxes and from an equally wide variety of tax jurisdictions.

#### INTRODUCTION

Abusive tax shelters are a global problem, one that is recognized across all tax jurisdictions, and across all tax-types.<sup>2</sup> Auditor independence and investor confidence in the

<sup>1</sup> An earlier article published on the topic of this letter has been attached. "Global Changes in Regulating Corporate Auditors: A Comparative Assessment," *Tax Notes International* (December 20, 2004) page 1029.

<sup>2</sup> See for example the establishment of the Joint International Tax Shelter Information Center (JITSIC) among the United States, United Kingdom, Australia, and Canada on April 23, 2004. "The participating countries bring to the task force different, specialized expertise in fighting tax avoidance. The United Kingdom's expertise lies in identifying and uncovering avoidance mechanisms, especially those concerning VAT, whereas the United States

financial statements they produce are impacted just as strongly when the auditor is promoting an abusive tax shelter in the US market<sup>3</sup> as it is when the auditor is promoting an abusive tax shelter in the UK market. US and UK revenue authorities are equally concerned, and have established similar regulations that require promoters and their clients to disclose to revenue authorities the use of similar, defined abusive tax shelters. However, Proposed Rule 3522 appears to operate with one standard for auditors that promote US shelters (subsections (a) and (b)), and a different standard for auditors that promote UK shelters (subsection (c)).

Additionally, there is no difference (measured in terms of auditor independence or investor confidence) whether the auditor is promoting an abusive value added tax (VAT) shelter, or an abusive income tax shelter to an audit client. As a result, in jurisdictions where the VAT is a major revenue source, like the UK and Australia, there are a parallel disclosure-based enforcement structures that target promoters of abusive VAT shelters and their clients. Nevertheless, Proposed Rule 3522 operates with one standard for US income tax shelters (subsections (a) and (b)), and a different standard for VAT shelters (subsection (c)).

The importance of these rules on auditor independence and the provision of non-audit tax services cannot be understated. They are keystone regulations. They cap a series of statutory and regulatory efforts by Congress and the SEC to move US security regulation closer to international norms. As currently drafted however, Proposed Rule 3522 fails to advance this effort toward an “objectives-oriented” standard. Proposed Rule 3522 appears to regress and revert to the kind of “rules-based” regulation that Congress encouraged the SEC to abandon in section 108(d) of the Sarbanes-Oxley Act.

#### PROPOSED RULE 3522

Proposed Rule 3522 provides:

“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 non-audit services to the audit client relating to planning, or opining on the tax treatment of, a transaction --”

The rule then identifies three categories of transactions: “(a) Listed Transactions ... (b) Confidential Transactions ... or (c) Aggressive Tax Positions ...” each of which are deemed to deny the auditor independence if the auditor or an affiliate provides non-audit planning or opinion services on them to the audit client.

Both “listed transaction” and “confidential transaction” are defined specifically and exclusively with reference to US Treasury Regulations, 26 C.F.R. § 1.6011-4(b)(2) and 26 C.F.R.

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specializes in corporate and income tax avoidance and offshore tax shelters. ... On May 3 U.K. tax authorities issued a statement that the work will target ‘the ways in which financial products and derivative arrangements are used in abusive tax schemes by corporations and individuals to reduce their tax liabilities,’ and will identify ‘promoters developing and marketing those products and arrangements.’” Bruce Zagaris, “International Tax Enforcement Continues to Increase,” *Tax Notes International* (August 25, 2004); 2004 WTD 165-13; Sirena J. Scales, “Multinational Task Force Created to Combat Abusive Tax Avoidance,” *Tax Notes International* (April 27, 2004); 2004 WTD 81-3.

<sup>3</sup> The PCAOB is urged by the US Senate Permanent Subcommittee on Investigations in its recently released investigation report, *The Role of Professional Firms in the US Tax Shelter Industry* (February 8, 2005) to “... strengthen and finalize proposed rules restricting certain accounting firms from providing aggressive tax services to their audit clients, charging companies a contingent fee for providing tax services, and using aggressive marketing efforts to promote generic tax products to potential clients.”

- (1) The premium fee test: If a promoter (or a connected person) would not be able to obtain a premium fee for the arrangement, then the arrangement would not be subject to disclosure. A premium fee is chargeable by virtue of any element of the arrangement from which an expected tax advantage arises and must be to a significant extent attributable to or contingent on the obtaining of the advantage.
- (2) The confidentiality test: A transaction is confidential if a promoter might reasonably be expected to want to keep the tax avoidance element confidential in the sense of wanting to keep the tax operation of the scheme hidden from competitors.
- (3) The off-market test: If a promoter (or a connected person) becomes a party to the financial product (typically where a banking institution becomes a party to a financial product), then this test seeks to determine if the terms of the financial product differ from what could have been obtained on the open market.<sup>6</sup>

The US tax shelter disclosure rules are set out very differently. The US identifies particular kinds of transactions that are deemed *per se* to constitute an abusive tax shelter subject to disclosure requirements. These are “bright line” tests. *Notice 2004-67*<sup>7</sup> is the most recent update of the slate of “listed transactions” under sections 6011 and 6111. *Notice 2004-67* restates the transactions listed in prior *Notice 2003-76*<sup>8</sup> and adds transactions identified in subsequent guidance.

*Notice 2004-67* identifies 30 discrete transactions-types, each of which is deemed *per se* to be an abusive tax shelter:

- Some items reference IRS litigation, like: “(3) Transactions substantially similar to those at issue in *ASA Investerings Partnership v. Commissioner*, 20F.3d 505 (D.C. Cir. 2000) and *ACM Partnership v. Commissioner*, 157 F.3d 231 (2d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as “listed transactions” on February 28, 2000).”
- Others items reference *IRS Regulations*, like: “(6) *Section 1.7701(l)-3 of the Income Tax Regulations* (transactions involving fast-pay arrangements as defined in section 1.7701(l)-3(b) (identified as “listed transactions” on February 28, 2000).”
- Still other items reference *IRS Revenue Rulings*, like: “(7) *Rev. Rul. 2000-12. 2000-1 C.B. 744* (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000).”

It is certainly possible, given these divergent definitional schemes, that the US and UK will not reach the same result, on occasion, as to whether or not a particular transaction constitutes an abusive tax shelter. For example, based on just the materials above, two scenarios can be hypothesized where this would happen:

- (A) Financial transactions that escape the UK net can be caught by the US rules. A transaction that violates *Rev. Rul. 2000-12* under the US rules could be common enough to fail the UK’s confidentiality test.

<sup>6</sup> *Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004* (SI 2004/1863).

<sup>7</sup> *Notice 2004-67*; 2004-41 IRB 1, release date September 24, 2004.

<sup>8</sup> *Notice 2003-76*, 2003 IRB 1181.

- (B) UK tax rules might identify a transaction that would violate the “spirit” of what the US deems to be a tax shelter. However, because the IRS “lists” abusive tax shelter transaction retrospectively, the particular fact pattern is at the time “un-listed.” It has either not been the subject of litigation, or it has not been previously identified in “other IRS guidance.”<sup>9</sup>

Differences like this are to be expected. Although both countries have income taxes, “local laws” differ. However, the constant in both systems is with the impact that these “local laws” have on investor confidence. This is where the concern of the PCAOB lies. When an auditor promotes an abusive tax shelter (as that concept is locally defined and understood) to audit clients, the impact on independence and investor-confidence is the same. Differences in technical definitions of what constitutes an abusive tax shelter are irrelevant to this inquiry. These are promotional activities that need to be prohibited.

*Abusive tax shelters in a Value Added Tax context.* The US is one of the few countries, and the only major economy in the world, that has not implemented a national level VAT. In many countries more revenue is generated through VAT than income tax. As a result, abusive VAT shelters are a concern as much, if not more often in some jurisdictions as are abusive income tax shelters.

Thus, when the UK adopted disclosure rules for abusive income tax shelters, rules requiring the disclosure of abusive VAT shelters were simultaneously adopted. Similar rules can be found in Australia.<sup>10</sup> Unlike the UK rules, the Australian VAT shelter rules do not have monetary penalties for non-disclosure. The Australian approach is to match vigorous enforcement with heightening professional standards. The Australian rules do require disclosure by the auditor, unlike the UK rules that compel the corporation to disclose VAT shelters.<sup>11</sup>

Thus, Proposed Rule 3522 should incorporate specific reference to abuse tax shelter regulations in foreign jurisdictions, and in taxes other than the income tax in a manner similar to that way that US Treasury regulations are referenced in sections (a) and (b) of the current Proposed Rule.<sup>12</sup>

## A KEYSTONE RULE

<sup>9</sup> This fact pattern has been recognized by the PCAOB as a potential problem. At page 29 of PCAOB Release No. 2004-015 the Board observes: “Although the proposed rule does not address situations in which a transaction planned, or opined on, by the auditor becomes listed after it is executed, the Board seeks comments on whether the rule should address the possible impairment of an auditor’s independence in such situations.” The reason that this fact pattern is perceived as a problem is attributable to the structural design of the rule. Proposed Rule 3522 (a), as currently positioned, functions like a bright line test. While it is possible to respond to this concern by stating that Proposed Rule 3522 (c) functions as a general rule capturing transactions that fall outside the scope of Proposed Rule 3522 (a), it is unlikely that such an interpretation will survive the heat of a contested independence inquiry. The clear tendency will be to read this as a bright line, unless the substance of this rule is reconstituted as an example, one of many examples, of independence violations under these rules. Such a structure would place the independence burden where it truly belongs, on the professional judgment of the auditor, and not on the blind reliance on bright-line tests.

<sup>10</sup> For the Australian rules see: <http://www.ato.gov.au/atp/>

<sup>11</sup> See *The Value Added Tax (Disclosure of Avoidance Schemes) Regulation 2004* (SI 2004/1929). Available at: <http://www.legislation.hmso.gov.uk/si/si2004/20041929.htm>

<sup>12</sup> It is not just foreign jurisdictions that have rules on abusive tax shelters. Consideration should be given in an example format for the inclusion of specific references to state legislation when disclosure-based tax shelter rules are adopted. See for example: CAL. REV. and TAX CODE § 18628.

§ 1.6011-4(b)(3). An “aggressive tax position” however, is defined more generally and as a result becomes a second standard, one that encompasses by default promotions of all non-income-tax-based abusive tax shelters, as well as all abusive tax shelters under foreign tax systems that do not violate the cited US Treasury regulations. Under this second standard a tax position that is “initially recommended by the registered public accountant” but which has “tax avoidance” as a “significant purpose” is deemed to compromise auditor independence, *but only if* the tax treatment is “more likely than not” to be allowable under “applicable tax laws.”

These are very different rules. The rules under Proposed Rule 3522 (a) “Listed Transactions,” and 3522 (b) “Confidential Transactions” are classic bright line tests, whereas the rule under Proposed Rule 3522 (c) “Aggressive Tax Positions,” is a measured, sliding-scale rule that requires professional judgments about both the “significant purpose” of the non-audit tax services, and whether the “tax position” is “more likely than not” to be allowable under “local law.”

#### SUGGESTED REDESIGN OF PROPOSED RULE 3522

Proposed Rule 3522 should be redrafted. The design should elevate section 3522 (c) to a dominant position, and relegate 3522 (a) and 3522 (b) to a lesser status where they function as two among many examples of the kinds of “tax positions” that the PCAOB would deem to clearly violate of the intent of the standard.

At this point the PCAOB should add several more examples, drawn from the abusive income tax and VAT shelter rules of foreign jurisdictions. These additions would underscore that what constitutes an abusive tax shelter (the promotion of which by the auditor to clients would compromise independence damage investor confidence) may vary by tax jurisdiction and tax-type.

#### OTHER ABUSIVE TAX SHELTER REGULATIONS

In the U.K. abusive tax shelter disclosure rules came into force on August 1, 2004. There are two sets of rules, one issued under the income tax by the Inland Revenue Service,<sup>4</sup> and another issued under the VAT by H.M. Customs and Excise.<sup>5</sup> Both sets of regulations require disclosure to the government of defined tax shelter activities. However, under income tax rules both the promoter and the taxpayer are required to make disclosures, whereas under VAT rules only the taxpayer has disclosure obligations.

*Comparison of tax shelter transactions subject to disclosure under US and UK income tax rules.* Although the overall design of the US and UK tax shelter disclosure rules are similar (promoters under both systems are subject to penalties for failure to disclose) there are important differences in details. The most significant of these concern the definition of the kinds of tax schemes that are subject to disclosure. The essential UK-US difference is somewhat akin to the difference between fishing with a net or fishing with a series of lines and baited hooks. The UK approach sweeps broadly, but allows certain transactions to escape through holes in the net, where the US approach is one that pursue discrete, narrowly defined transactions that have been identified by the IRS as abusive in prior litigation or rulings.

Thus, for example, the UK tax shelter rules apply broadly to all arrangements involving financial products, except those that fail any of the following three tests or “filters:”

<sup>4</sup> Regulations 2004 No. 1863; 1864; 1865; 2429; 2613. Available at: <http://www.inlandrevenue.gov.uk/aiu/index.htm>

<sup>5</sup> Notice 700/8, “Disclosure of VAT Avoidance Schemes.” Available at: <http://www.hmce.gov.uk>

The importance of these rules cannot be understated. These rules represent much more than a set of rules about ethics, independence, and the provision of non-audit tax services. They are, in fact, the final and keystone pieces in a coordinated effort of the US Congress, and the Securities and Exchange Commission to move US security regulation closer to international norms.

The SEC's *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System*<sup>13</sup> was critical of prevailing rulemaking, and urged the adoption of an "objectives-oriented" standard whenever possible.

The SEC criticized a "principles-only" approach to standards, an approach favored by the EU. Principles-only standards were not reliably operational. The SEC observed that under a "... principles-only approach auditors are required to exercise significant judgment in applying overly-broad standards to more specific transactions and events..."<sup>14</sup> However, the SEC was also critical of the US preference for "... rules-based standards [because they] can provide a roadmap to avoidance of the accounting objectives inherent in the standards. Internal inconsistencies, exceptions and bright-line tests reward those willing to engineer their way around the intent of the standards."<sup>15</sup>

The SEC envisioned a new methodology, one that it called an "objectives-oriented" approach to rule-making. This standard has five distinct elements:

- (1) It is based on a consistently applied conceptual framework.
- (2) It clearly states the accounting objective.
- (3) It provides sufficient detail and structure so that the standard can be operationalized and applied on a consistent basis.
- (4) It minimizes exceptions from the standard.
- (5) It avoids the use of percentage ("bright-line") tests that allow financial engineers to achieve technical compliance with the standard while evading its intent.<sup>16</sup>

What makes the PCAOB's proposed rules on ethics, independence, and tax services so important is that they constitute the third, and last to be adopted, of the five elements in the design of an objectives-oriented standard on non-audit tax services and auditor independence.

The production of comprehensive, objectives-oriented standards cannot be the work of the PCAOB alone. It is a cooperative effort, involving the US Congress, the SEC and the PCAOB. Nothing could make the dynamics of this cooperation clearer than to observe the development of rules in this area of auditor independence. Elements (4) and (5) have been contributed by the US Congress in the Sarbanes-Oxley Act. Elements (1) and (2) have been set in place through SEC regulation. Element (3) is the last piece. Congress expressly provided that the PCAOB was to draft the rules for this last section.<sup>17</sup>

<sup>13</sup> Available at: <http://www.sec.gov/news/studies/principlesbasedstand.htm>

<sup>14</sup> SEC, *Study Pursuant to Section 108(d)*, at 6.

<sup>15</sup> SEC, *Study Pursuant to Section 108(d)*, at 6.

<sup>16</sup> SEC, *Study Pursuant to Section 108(d)*, at 4-5.

<sup>17</sup> Congress determined that the PCAOB would draft these rules in section 201(a)(9) of the Sarbanes-Oxley Act of 2002 (P.L. 107-204, 116 Stat. 274.101).

*US Congress:* The fourth element of an “objectives-oriented” standard is that exceptions must be minimized. The fifth is that bright-line tests must be avoided. The Sarbanes-Oxley Act contributed directly to meeting both of these requirements through the modification of the Levitt regulations. The Sarbanes-Oxley Act eliminated twenty-five distinct exceptions, percentage limitations and bright line tests in the area of auditor independence. Each of these provisions had allowed financial engineers to achieve technical compliance with the standard while evading its intent.

*SEC Regulation:* The first element of an “objectives-oriented” standard is that rules should be based on a consistently applied conceptual framework. The second is that rules should clearly state the regulatory objective. The SEC applies a consistent conceptual framework to all non-audit services. SEC regulation makes it clear that a three-part structure is applied to determine the appropriateness of any non-audit service. Non-audit services are either (a) allowed and approved by the audit committee; or (b) allowable but not approved by the audit committee; or they are (c) prohibited because they violate one or more of the governing principles.<sup>18</sup> The audit committee discriminates between audit services in category (a) and (b) by weighing efficiency and investor protection considerations.<sup>19</sup>

The SEC also makes it clear that the same basic objectives are applicable to all non-audit services. These “simple principles” of auditor independence are discussed in the final regulations:

... the principles of independence with respect to services provided by auditors are largely predicated on three basic principles, violations of which would impair the auditor's independence:

- (1) an auditor cannot function in the role of management,
- (2) an auditor cannot audit his or her own work, and
- (3) an auditor cannot serve in an advocacy role for his or her own client.<sup>20</sup>

Although presented here as three, rather than four, principles<sup>21</sup> the SEC expressly references the “basic principles” of auditor independence placed by the Levitt reforms in the *Preliminary Note* to Rule 2-01 of Regulation S-X, 17 CFR 210.2-01.

In the context of cooperative global cooperation in security regulation, both the Congressional elimination of exceptions and bright line tests, as well as the SEC’s emphasis on basic principles and a consistently applied framework have had wide international resonance. Even though there are “framework” differences over the role of the audit committee, the recognition of commonly accepted basic principles unrestricted by exceptions, limitations and

<sup>18</sup> Wardell, Thomas, *International Accounting Standards in the Wake of Enron: The Current State of Play under the Sarbanes-Oxley Act of 2002*, 28 North Carolina Journal of International Law and Commercial Regulation, 935 (Summer, 2003); *The Good the Bad and Their Corporate Code of Ethics: Enron, Sarbanes-Oxley, and the Problems with Legislating Good Behavior*, 116 Harvard Law Review, 2123 (May, 2003).

<sup>19</sup> Durst, Michael C. & Thomas H. Gibson. “Audit” vs. Non-Audit” *Tax Services under Sarbanes-Oxley*. The Tax Executive (November-December, 2003) 474-477.

<sup>20</sup> SEC, *Final Rule. Strengthening the Commission's Requirements Regarding Auditor Independence*, effective May 6, 2003; [www.sec.gov/rules/final/33-8183.htm](http://www.sec.gov/rules/final/33-8183.htm). See also: PCAOB, *Briefing Paper: Auditor Independence Roundtable*, (July 14, 2004) at 4. See: [http://www.pcaobus/documents/standards/Briefing\\_Paper%20-%20Independence\\_Roundtable.pdf](http://www.pcaobus/documents/standards/Briefing_Paper%20-%20Independence_Roundtable.pdf)

<sup>21</sup> There seems to be some ambiguity with respect to whether there are three or four principles. In its *Briefing Paper: Auditor Independence and Tax Services Roundtable*, the PCAOB specifically recites, without comment, the “four overarching principles that inform the Commission’s application of the general standard of independence,” and in the next paragraph recites the shorter list of “three basic principles.” (pages 4-5).

bright line tests has been welcomed.<sup>22</sup> It is time for the PCAOB to play its part, and it needs to be consistent with the prior efforts of the Congress and the SEC.

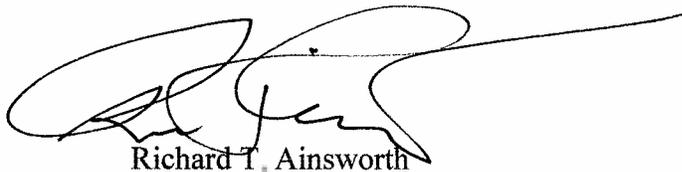
### CONCLUSION

Thus, the PCAOB stands at a critical design juncture with respect to these Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. To complete the design an “objectives-oriented” standard the PCAOB needs to draft rules that “... provide sufficient detail and structure that the standard can be operationalized and applied on a consistent basis...” without retreating into a “... rules-based ... roadmap ... [of] inconsistencies, exceptions and bright-line tests [that] reward those willing to engineer their way around the intent of the standards.”<sup>23</sup>

This is a difficult undertaking. However the way forward seems reasonably clear. Proposed Rule 3522 (c) needs to be elevated into the status of a general rule. Proposed Rule 3522 (c) places heavy emphasis on the exercise of good professional judgment. However, left by itself, such a rule would fall victim to the SEC criticism of “principles-only” standard-setting.

Therefore Proposed Rule 3522 (c) needs to be coupled with specific examples drawn widely from tax jurisdictions, and tax-types around the world. In particular the PCAOB needs to seek out those rules that adopt auditor and company disclosure requirements when combating tax shelter activities. Rules that are similar to those in the U.S. Treasury regulations at 26 C.F.R. § 1.6011-4(b)(2) and 26 C.F.R. § 1.6011-4(b)(3), or U.K. *Notice 700/8*, “Disclosure of VAT Avoidance Schemes;” or U.K. *Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004* (SI 2004/1863) should be preferred. In this manner the PCAOB will provide auditors with sufficient detail and structure so that the independence standard can be operationalized and applied on a consistent, global, and diversified tax-type basis.

Sincerely,



Richard T. Ainsworth

<sup>22</sup> For example the EU formulation can be found in the *Consultative Paper on Statutory Auditor's Independence in the EU: A Set of Fundamental Principles*, (December 15, 2000) at 3(1) and (2). Available at: [http://europa.eu.int/comm/internal\\_market/en/company/audit/news/independence\\_en.pdf](http://europa.eu.int/comm/internal_market/en/company/audit/news/independence_en.pdf); the UK framework was introduced in 1997, and was placed into conformance with the EU framework in June 2002, Institute of Chartered Accountants in England and Wales, *Guide to Professional Ethics: Introduction and Fundamental Principles, Statement 1.200 Revised*, (2002); the Australian reforms are found in the Corporations Act at sections 324CE(7) and 324CF(7). *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, No. 103, 2004. At: <http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>.

<sup>23</sup> SEC, *Study Pursuant to Section 108(d)*, at 6.

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# **Global Changes in Regulating Corporate Auditors: A Comparative Assessment**

**by Richard T. Ainsworth**

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- Myanmar:** Timothy J. Holzer, Baker & McKenzie, Singapore
- Nauru:** Peter H. MacSporran, Melbourne
- Nepal:** Prem Karki, Regional Director, Regional Treasury Directorate, Kathmandu
- Netherlands:** Eric van der Stoel, Otterspeer, Haasnoot & Partners, Rotterdam; Dick Hofland, Freshfields, Amsterdam; Michaela Vrouwenvelder, Amsterdam; Jan Ter Wisch, Allen & Overy, Amsterdam
- Netherlands Antilles:** Dennis Cijntje, KPMG Meijburg & Co., Curaçao; Koen Lozie, Deurle
- New Zealand:** Adrian Sawyer, University of Canterbury, Christchurch
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- Northern Mariana Islands:** John A. Manglona, Saipan
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- Oman:** Fudli R. Talyarkhan, Ernst & Young, Muscat
- Panama:** Leroy Watson, Arias, Fabrega & Fabrega, Panama City
- Papua New Guinea:** Lutz K. Heim, Ernst & Young, Port Moresby
- Peru:** Italo Fernández Origg, Yori Law Firm, Lima
- Philippines:** Benedicta Du Baladad, Bureau of Internal Revenue, Manila
- Poland:** Dr. Janusz Fiszer, Warsaw University/White & Case, Warsaw
- Portugal:** Francisco de Sousa da Câmara, Morais Leitao & J. Galvão Teles, Lisbon; Manuel Anselmo Torres, Galhardo Vilão, Torres, Lisbon
- Qatar:** Finbarr Sexton, Ernst & Young, Doha
- Romania:** Sorin Adrian Anghel, Senior Finance Officer & Vice President, The Chase Manhattan Bank, Bucharest
- Russia:** Scott C. Antel, Ernst & Young, Moscow; Joel McDonald, Salans, London
- Saint Kitts-Nevis:** Mario M. Novello, Nevis Services Limited, Red Bank
- Saudi Arabia:** Fauzi Awad, Saba, Abulkhair & Co., Dammam
- Sierra Leone:** Shakib N.K. Basma and Berthan Macaulay, Basma & Macaulay, Freetown
- Singapore:** Linda Ng, White & Case, Tokyo, Japan
- Slovakia:** Albeta Harvey, Principal, KPMG New York
- South Africa:** Peter Surtees, Deneys Reitz, Cape Town
- Spain:** José M. Calderón, University of La Coruña, La Coruña
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- Sweden:** Leif Mutén, Professor Emeritus, Stockholm School of Economics
- Taiwan:** Keye S. Wu, Baker & McKenzie, Taipei; Yu Ming-i, Ministry of Finance, Taipei
- Trinidad & Tobago:** Rolston Nelson, Port of Spain
- Tunisia:** Lassaad M. Bediri, Hamza, Bediri & Co., Legal and Tax Consultants, Tunis
- Turkey:** Mustafa Camlica, Ernst & Young, Istanbul
- Turks & Caicos Islands, British West Indies:** Ariel Misick, Misick and Stanbrook, Grand Turk
- Uganda:** Frederick Ssekandi, Kampala
- United Arab Emirates:** Nicholas J. Love, Ernst & Young, Abu Dhabi
- United Kingdom:** Trevor Johnson, Trevor Johnson Associates, Wirral; Eileen O'Grady, barrister, London; Jefferson P. VanderWolk, Baker & McKenzie, London
- United States:** Richard Doernberg, Emory Univ. School of Law, Atlanta GA.; James Fuller, Fenwick & West, Palo Alto
- U.S. Virgin Islands:** Marjorie Rawls Roberts, Attorney at Law, St. Thomas, USVI
- Uruguay:** Dr. James A. Whitelaw, Whitelaw Attorneys, Uruguay
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- Vanuatu:** Bill L. Hawkes, KPMG, Port Vila
- Venezuela:** Ronald Evans, Baker & McKenzie, Caracas
- Vietnam:** Frederick Burke, Baker & McKenzie, Ho Chi Minh City
- Western Samoa:** Maiava V.R. Peteru, Kamu & Peteru, Apia
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# Global Changes in Regulating Corporate Auditors: A Comparative Assessment

by Richard T. Ainsworth

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**A**uditor independence was a global concern of financial regulators in the 1990s. Some observers saw this in a positive light, as a natural development. Adjusting auditor independence rules was a manifestation of global convergence in corporate governance structures.<sup>1</sup> New rules, especially rules leaning toward a harmonized system, were welcome.

There was a more sobering view. This view held that global regulators were less concerned with convergence than they were with a sense of impending disaster. Things had gone too far. Significant, maybe even radical, change was needed. The independence of corporate auditors had eroded; trust had been fundamentally compromised in the quest for audit firm profits. Corrective measures were needed immediately to avert widespread financial collapse.

The new century brought startling events: the collapse of HIH (March 2001)<sup>2</sup> and One.Tel (July 2001)<sup>3</sup>

<sup>1</sup>Considerable academic discussion has focused on the global convergence of corporate governance practices. See, e.g., L.A. Bebchuck and M.J. Rowe, "A Theory of Path Dependence in Corporate Ownership and Governance," (1999) 52 *Stan. L. Rev.* 127; A.N. Licht, "The Mother of All Path Dependencies Toward a Cross-Cultural Theory of Corporate Governance Systems," (2001) 26 *Del. J. of Corp. L.* 147; L.E. Ribstein, "Politics, Adaptation and Change," (2001) 8 *Aust. Jnl. of Corp. L.* 246; and R. Romano, "A Cautionary Note on Drawing Lessons from Comparative Corporate Law," (1993) 102 *Yale L. J.* 2021. Some have seen that convergence "coinciding with the civil/common law divide" (Paul von Nessen, "Corporate Governance in Australia: Converging with International Norms," (2003) 15 *Aust. Jnl. of Corp. L.* 1, 47, n. 73, citing further to P.G. Maloney, "The Common Law and Economic Growth: Hayek Might Be Right," (2001) 30 *J. Leg. Stud.* 503). That "divide" is not apparent in the response of the Japanese government to the auditor independence issue considered in this paper.

<sup>2</sup>HIH was the largest general insurance company in Australia. Accounting entries hid claims that exceeded accounting reserves, forcing the company's liquidation. See HIH Royal Commission (Justice Neville Owen), *Report of the HIH Royal Commission*, 2003 at <http://www.hihroyalcom.gov.au/finalreport/> and M. De Martinis, "Do directors, regulators, and auditors speak, hear and see no evil? Evidence from the Enron, HIH and One.Tel collapses," (2003) 15 *Aust. Jnl. of Corp. L.* 66.

in Australia; and the bankruptcy of Enron (October 2001)<sup>4</sup> and WorldCom (June 2002)<sup>5</sup> in the United States. Similar scandals broke in the European Union. There was Vivendi (July 2002) in France, Ahold (February 2003)<sup>6</sup> in the Netherlands, and Parmalat (February 2003)<sup>7</sup> in Italy. Were the early years of this century a time of global convergence or a time of financial collapse attributable to widespread accounting failure?

This paper considers global changes in the regulation of the statutory corporate auditor. It focuses on nonaudit tax services as an instance when real movement toward convergence of corporate governance can be seen.

## I. Improving Auditor Independence Regulation

### A. European Union

*Auditor independence rules in the European Union.* During the 1990s the convergence of accounting regulation was a major concern in the European Union. The lack of a harmonized position on the role, position, and liability of the statutory auditor was seen as a barrier to the development of the single market. Not only was the quality of European audits affected, but the

<sup>3</sup>One.Tel was one of Australia's largest telecommunications companies. One.Tel paid lucrative performance bonuses to the directors when the company was on the verge of collapsing. That internal incentives could have rewarded directors of a failing company outraged Australians and accelerated reform efforts there.

<sup>4</sup>Enron was the seventh largest company in the United States. Sham transactions involving Cayman Islands entities improperly inflated asset values. See Peter Behr and April Witt, "Visionary's Dream Led to Risky Business: Opaque Deals, Accounting Sleight of Hand Built an Energy Giant and Ensured Its Demise," *The Washington Post*, July 28, 2002, at A-1.

<sup>5</sup>WorldCom was the second-largest long-distance carrier in the United States. Expenses for client development were booked as assets. See Carrie Johnson and Ben White, "WorldCom Arrests Made: Two Former Executives Charged With Hiding Expenses," *The Washington Post*, Aug. 2, 2002, at A-1.

<sup>6</sup>In Ahold, earnings were overstated because of improper booking of supplier discounts.

<sup>7</sup>In Parmalat, US \$3.5 billion in false assets were recorded in Cayman Islands subsidiaries.

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European Union also felt handicapped when it tried to influence international accounting standards. That convergence theme was advanced in a green paper (1996)<sup>8</sup> and was soon followed by a communication from the commission (1998),<sup>9</sup> a consultative paper (2000),<sup>10</sup> a commission recommendation (2000),<sup>11</sup> and, finally, a comprehensive study of auditor liability (2001).<sup>12</sup>

### **Corrective measures were needed immediately to avert widespread financial collapse.**

When the accounting problems at Enron became public in October 2001, Europeans characterized the scandal as primarily a U.S. problem, one that “brought to light a number of significant international policy issues.” In simple terms, the problem was the U.S. preference for a “rules based approach to financial reporting.” The European Union, in contrast, “strongly promoted a strategy based on a principles-based approach to financial reporting, [one that was] designed to reflect economic reality and give[s] a true and fair view of the financial position and performance of a company. . . . [T]he heart of the [European] Union’s strategy [was] the application, from 2005, of International Accounting Standards (IAS) as the reporting framework for all listed EU countries.”<sup>13</sup>

In May 2003 the European Commission recommended changes in the 8th company law directive (84/

253/EEC) reflecting that position.<sup>14</sup> Auditor independence rules were part of that initiative.

According to the commission, what Europe needed was a set of harmonized, principles-based financial reporting and auditor independence rules that were based on five generalized “threats” to independence (self-interest, self-review, advocacy, familiarity or trust, and intimidation) and their associated “safeguards” (prohibitions, restrictions, policies and procedures, and disclosures within the audit firm, the audit client, and governance bodies).<sup>15</sup> The EU method relies heavily on documentation; it requires the auditor to demonstrate and document the exercise of good professional judgment. Threats need to be identified and safeguards applied whenever the situation demands.

*Nonaudit tax services and auditor independence in the European Union.* Nonaudit tax services were not a highlight of the reform. The European Union did not consider the provision of nonaudit tax services by the statutory auditor to be a separate and distinct threat to auditor independence. Therefore, general principles are applied. An auditor who provides nonaudit tax advice to a client is required to be alert to the possibility of a threat to independence. The auditor is instructed to document both that awareness and the safeguards that are considered and used to minimize or eliminate the threat. A tax-related activity that poses a threat that cannot be adequately minimized is prohibited.

The May 16, 2002, commission recommendation does not isolate tax services as a threat to independence. Tax services are not itemized in article 7, “Nonaudit services.” They are not specifically considered in the “General” rules at 7.1, nor are they used in the “Examples — analysis of specific situations” at 7.2. Only annex 1 mentions nonaudit tax services. There they are used as an example of an approved activity, one that poses no threat to independence.

[Routine valuation services involve situations] . . . where the underlying assumptions are determined by law (e.g., tax rates, depreciation rates for tax purposes), other regula-

<sup>8</sup>European Commission, *The Role, the Position and the Liability of the Statutory Auditor within the European Union*. 1996 Green Paper. O.J. No. C321,28.10.1996. At: [http://europa.eu.int/comm/internal\\_market/en/company/audit/news/staten.pdf](http://europa.eu.int/comm/internal_market/en/company/audit/news/staten.pdf).

<sup>9</sup>Communication from the European Commission, *The Statutory Audit in the European Union: The Way Forward*. May 7, 1998. O.J. No. C143, 8.5.1998. At: [http://europa.eu.int/comm/internal\\_market/en/company/audit/news/auditen.pdf](http://europa.eu.int/comm/internal_market/en/company/audit/news/auditen.pdf).

<sup>10</sup>European Commission, *Consultative Paper on: Statutory Auditors’ Independence in the EU*. Dec. 15, 2000. At: [http://europa.eu.int/comm/internal\\_market/en/company/audit/news/independence\\_en.pdf](http://europa.eu.int/comm/internal_market/en/company/audit/news/independence_en.pdf).

<sup>11</sup>European Commission Recommendation, *Quality Assurance for the Statutory Audit in the European Union: Minimum Requirements*. Nov. 15, 2000. At: <http://europa.eu.int/comm/eurostat/research/index.htm?http://europa.eu.int/en/comm/eurostat/research/viros/search3.htm&1>.

<sup>12</sup>European Commission, *A Study on Systems of Civil Liability of Statutory Auditors in the Context of a Single Market for Auditing Services in the European Union*. Jan. 15, 2001. At: [http://europa.eu.int/comm/internal\\_market/en/company/audit/docs/auditliability.pdf](http://europa.eu.int/comm/internal_market/en/company/audit/docs/auditliability.pdf).

<sup>13</sup>European Commission, *A First EU Response to Enron Related Policy Issues* (April 12 and 13, 2002). At: [http://europa.eu.int/comm/internal\\_market/company/docs/enron/ecofin\\_2004\\_04\\_enron\\_en.pdf](http://europa.eu.int/comm/internal_market/company/docs/enron/ecofin_2004_04_enron_en.pdf).

<sup>14</sup>See Commission of the European Community, *Communication from the Commission to the Council and the European Parliament: Modernising Company Law and Enhancing Corporate Governance in the European Union — A Plan to Move Forward*, COM (2003) 284 final. At: [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0284en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0284en01.pdf).

<sup>15</sup>See Commission of the European Union, *Commission Recommendation: Statutory Auditors’ Independence in the EU: A Set of Fundamental Principles*, at A(3)-(4). At: [http://europa.eu.int/eur-lex/pri/en/oj/dat/202/1\\_191/19120020719en00220057.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/202/1_191/19120020719en00220057.pdf). See also Commission of the European Union, *Proposal for a Directive of the European Parliament and of the Council on Statutory Audit of Annual Accounts and Consolidated Accounts and Amending Council Directives 78/660/EEC and 83/349/EEC*.

tions (e.g., the provision to use certain interest rates), or are widely accepted within the Audit Client's business sector, and when the techniques and methodologies to be used are based on generally accepted standards, or even prescribed by laws and regulations. In such circumstances, the result of a valuation performed by an informed third party, even if not identical, is unlikely to be materially different. The provision of such valuation services might therefore not compromise a statutory auditor's independence, even if the valuation itself could be regarded as material to the financial statements, provided that the Audit Client or its management has at least approved all significant matters of judgment.<sup>16</sup>

In the 2004 commission proposal for the EU directive, nonaudit tax services remain unspecified.<sup>17</sup> The underlying assumption seems to be that threats to auditor independence from the provision of tax services are minimal, because the tax authorities regularly audit and assure compliance.

The recommendations of the commission are not binding EU legislation. The commission expects to review the country-by-country response to its recommendation in about three years. Binding legislation could follow if the commission is not satisfied with the laws enacted by the member states.

The European Union is clearly trying to achieve a European convergence in corporate governance. In terms of tax service the proposed directive is designed to accommodate very different views, like those of the United Kingdom and France. Those views will be considered in detail in the next sections. Where the United Kingdom seeks more specific guidance on tax services, the French simply prohibit all tax services without any guidance at all. The hope in the EU is that a way can be found to craft a harmonized set of rules for the union during the three-year experimental period.

## B. The United Kingdom

*Auditor independence rules in the United Kingdom.* The United Kingdom takes the provision of nonaudit tax services by the statutory auditor more seriously

than the commission. The secretary of state for trade and industry and the chancellor of the exchequer established the Coordinating Group for Audit and Accounting Issues to examine U.K. auditor independence rules and make recommendations for regulatory change. The final report was issued on January 29, 2003. Although generally adopting the EU principles-based method, the report goes further than the European Union on tax services. A "strong case" is made for more "specific guidance" in the area of tax services. It states:

*Taxation Services.* There are no specific requirements or guidance in existing U.K. Standards, though of course threats to independence have to be considered against the principles of auditor independence referred to at para 1.35 above. The amount of taxation services supplied by the auditor to the company can be considerable. However, the considerations to be taken into account in deciding whether or not to supply them are no different in principle from those that apply to other nonaudit services. In essence, when the taxation service involves the application of well tried and tested tax law, no difficulties arise. And in any event the tax authorities review the work and generally welcome the close involvement of the auditors. In the circumstances when a particular piece of advice or position taken is material to the financial statements, and when the outcome is subjective or otherwise significantly uncertain, this should be disclosed to the audit committee and careful consideration should be given to the safeguards that must be put in place, including perhaps the need for the company to obtain an independent second opinion. We think therefore that there is a strong case for further consideration by the standard setting body, with a view in particular to the need for specific guidance.<sup>18</sup>

In October 2004 the U.K. Auditing Practices Board (part of the Financial Reporting Council, the new U.K. accounting regulator) completed a revision of ethical standards. For the first time, "specific requirements" on the provision of nonaudit tax services were provided. The standards are effective for audits of financial statements beginning after December 15, 2004. Two nonaudit tax services are prohibited: the promotion of "tax structures or products . . . where the audit partner has, or ought to have, reasonable doubt

<sup>16</sup>Commission Recommendation of May 16, 2002, *Statutory Auditors' Independence in the EU: A Set of Fundamental Principles* (2002/590/EC). OJ L 191/22, 19.7.2002. That same approach to nonaudit tax services was taken in the related *Consultative Paper on Statutory Auditors' Independence in the EU: A Set of Fundamental Principles*, *supra* note 10.

<sup>17</sup>Commission of the European Union, *Proposal for a Directive of the European Parliament and of the Council on Statutory Audit of Annual Accounts and Consolidated Accounts and Amending Council Directives 78/660/EEC and 83/349/EEC*, *supra* note 15.

<sup>18</sup>Coordinating Group for Audit and Accounting Issues, *Final Report*, Jan. 29, 2003, p. 32. At: <http://www.dti.gov.uk/cld/cgaai-final.pdf>.

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as to the appropriateness of the related accounting treatment involved” and the provision of “tax services to an audit client wholly or partly on a contingent fee basis.”<sup>19</sup>

Despite the movement toward stricter standards, the U.K.’s general approach, like that of the European Union, is to rely heavily on the oversight function of tax authorities. Most tax services are permissible under both approaches. Differences are more than a matter of perspective. Although EU standards seem to nod affirmatively in favor of tax services, the new U.K. rules take a more skeptical stance. The United Kingdom provides some guidance on how to analyze the threats to auditor independence that arise from tax services and sets forth certain tax services for which no safeguard is sufficient protection for investors.

### C. France

*Auditor independence rules in France.* Auditor independence reforms became law in France while work on the 8th company directive in the European Union progressed. French law had long employed a principles-based approach to auditor regulation. The *Companie nationale des commissaires aux comptes* (CNCC) and the *Commission des opérations de bourse* (COB) presented a report in 1997 that supported a principles-based approach and rejected a U.S.-styled rules-based system.<sup>20</sup> A post-Enron study by AFEP-AGREF (*Association Française des Entreprises Privées et Association des Grandes Entreprises Françaises*) supported changes in French law, but not its regulatory method. It indicated that “French companies find themselves in a very different situation from that of their US counterparts. In many respects, French companies are better protected against the risk of excessive or misguided practices.”<sup>21</sup>

The French response was the *Loi de Sécurité Financière*. The law modified the content, but not the underlying theory of French auditor independence rules. It was approved July 17, 2003, and published August 2, 2003.<sup>22</sup>

<sup>19</sup>Auditing Practices Board, “APB Ethical Standard 5 — Non-audit Services Provided to Audit Clients,” paragraphs 66 and 68. Available at: <http://www.frc.org.uk/apb/publications/ethical.cfm>.

<sup>20</sup>CNCC/COB Working Group on Independence and Objectivity of the Statutory Auditors of Public Companies, *Summary of the December 1997 Report* (April 3, 1998) [in English] at: [http://www.amf-france.org/styles/default/documents/general/4151\\_1.pdf#xml=http://www.amf-france.org:80/snqhilight/xml104](http://www.amf-france.org/styles/default/documents/general/4151_1.pdf#xml=http://www.amf-france.org:80/snqhilight/xml104).

<sup>21</sup>AFEP-AGREF, *Promoting Better Corporate Governance in Listed Companies*, Sept. 23, 2002. At: [http://www.medef.fr/staging/medias/upload/367\\_FICHER.pdf](http://www.medef.fr/staging/medias/upload/367_FICHER.pdf).

<sup>22</sup>The *Loi de Sécurité Financière* is published in the Official French Journal, Aug. 2, 2003. In French at: <http://www.legifrance.gouv.fr/Waspad/UnTexteDeJorf?numjo=ECOX0200186L>.

*Nonaudit tax services and auditor independence in France.* The *Loi de Sécurité Financière* prohibits the auditor from performing any nonaudit services. No distinction is drawn among types of nonaudit tax services. Thus, the French view, like that of the United Kingdom, is fully compatible with the EU position on auditor independence; principles, not rules, should determine the permissible scope of nonaudit tax services. However, France has staked out an extreme position. Under French law, performing nonaudit tax services poses such a “threat” to auditor independence that there is no acceptable “safeguard.”<sup>23</sup>

### D. United States

*Auditor independence rules in the United States (pre-Sarbanes-Oxley).* On June 30, 2000, the U.S. Securities and Exchange Commission under Chairman Arthur Levitt proposed revisions to the SEC’s auditor independence rules.<sup>24</sup> Those amendments were adopted on November 21, 2000. They were fashioned through compromise, blending what the SEC proposed with what the accounting profession would accept. They are classic examples of rules-based regulation. Nine types of nonaudit services were deemed to be inconsistent with auditor independence. Most of the prohibitions were severely limited. All but three (management, broker-dealer, and legal services) were riddled with exceptions.

### **Eliminating exceptions was more than a reaction to Enron: It constituted a change in regulatory theory.**

*Nonaudit tax services and auditor independence in the United States (pre-Sarbanes-Oxley).* The Levitt reforms, like the EU proposals and the older U.K. standards, treat tax services as a special category of nonaudit services. In all three systems, they are generally deemed to be immune from auditor independence problems because of Treasury/Inland Revenue/IRS oversight. According to the SEC/Levitt reforms, “An accountant’s independence should not be deemed impaired when the accountant performs

<sup>23</sup>This opinion is not limited to the French government. The respected opinion is that the United States would agree with a very restricted role for the statutory auditor. See, e.g., Harvard Law School Professor Bernard Wolfman’s letter to the SEC when the SEC was drafting the Sarbanes-Oxley rules on auditor independence. “To assure auditor independence the Commission must require that auditors of public companies stick to auditing, leaving consulting (including all tax services other than return preparation and compliance work) to others.” At: <http://www.sec.gov/rules/proposed/s74902/bwolfman1.txt>.

<sup>24</sup>SEC, *Final Rule: Revision of the Commission’s Auditor Independence Requirements*, RIN 3235-AH91 (Oct. 12, 2001). At: <http://www.sec.gov/rules/final/33-7919.htm>.

appraisal or valuation services as a necessary part of permitted tax services. As the rule text and this Release make clear, accountants will continue to be able to provide tax services to audit clients . . . [and even with respect to contingency fee arrangements] tax services generally do not create the same independence risks as other non-audit services.”<sup>25</sup>

This is not to say that the SEC did not raise questions about an auditor’s independence when providing tax services. The questions raised about tax services just did not survive in the final rules. At III(D)(1)(b)(xi), the proposed rules stated:

*Tax services.* The proposed rule would not affect tax-related services provided by auditors to their audit clients. Tax services are unique, not only because there are detailed tax laws that must be consistently applied, but also because the Internal Revenue Service has discretion to audit any tax return. We do not think that the Congressional purpose for requiring independent audits is thwarted by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client. We are considering whether special considerations apply when the auditor provides a tax opinion for the use of a third party in connection with a business transaction between the audit client and the third party. . . . Under those circumstances, the auditor may be acting as an advocate. . . . We request comment on whether providing tax opinions, including tax opinions for tax shelters . . . would impair, or would appear to reasonable investors to impair, an auditor’s independence. . . . Are there other tax-related services that if provided to an audit client, would impair, or would appear to reasonable investors to impair, an auditor’s independence?<sup>26</sup>

For the Levitt reforms, the final outcome was that “special considerations” were not deemed necessary for tax services. However, Enron, WorldCom, and Tyco have shed new light on this area. The accounting problems at each of these firms involved both tax and financial statement deceptions. As a result, the SEC is revisiting the tax services issue under Sarbanes-Oxley.

*Auditor independence in the United States (post-Sarbanes-Oxley).* Section 201(a) of Sarbanes-Oxley

codified the auditor independence rules of the Levitt reforms. However, changes were made. Section 201(a) eliminates all the exceptions and limitations to prohibited services that had crept into the rules through compromise with the accounting profession.

Eliminating exceptions was more than a reaction to Enron; it constituted a change in regulatory theory. It was the first sign that Congress expected the SEC to shift the United States away from a rules-based regulatory method toward a more principles-based set of standards. The SEC observed, “We interpret the legislative history as indicating (1) Congress did not intend the rules to contain broad categorical exceptions and (2) the scope of the prohibited services should be judged against three basic principles. Those three broad principles are that an auditor cannot (1) audit his or her own work, (2) perform management functions, or (3) act as an advocate for the client. To do so would impair the auditor’s independence. . . . We assume, therefore, that Congress intended the Commission to revise its existing rules, at a minimum, to eliminate categorical exceptions and exemptions.”<sup>27</sup>

Those “three broad principles” had a history. They had been incorporated into the *preliminary note* to rule 2-01 of regulation S-X, 17 CFR 210.2-01 in the Levitt reforms. Now those proposals were to guide the SEC as it drafted new rules on auditor independence.

*Nonaudit tax services and auditor independence in the United States (post-Sarbanes-Oxley).* The SEC and the Public Company Accounting Oversight Board (PCAOB) are both moving ahead in the area of tax services. New SEC rules made tax services a suspect classification within the field of nonaudit services. Where the Levitt reforms had required registrants to report nonaudit services in aggregate,<sup>28</sup> the new SEC rules require tax services to be separately itemized.<sup>29</sup>

<sup>27</sup>SEC, *Strengthening the Commission’s Requirements Regarding Auditor Independence*, (Dec. 2, 2002) RIN 3235-AI73 at II (B). At: <http://www.sec.gov/rules/proposed/33-8154.htm>.

<sup>28</sup>“Under the final rule, we are not requiring registrants to describe each professional service or to disclose the fee for each service . . . under the caption ‘All Other Fees,’ the fees billed for all other nonaudit services, including fees for tax-related services, rendered by the principal accountant during the most recent year.” SEC, *Final Rule: Revision of the Commission’s Auditor Independence Requirements*, *supra* note 24.

<sup>29</sup>“We also believe it is appropriate to add transparency regarding a second category of fees: ‘Tax Fees.’ . . . We believe that investors will benefit from being able to consider those fees separately from the ‘All Other Fees’ category. The ‘Tax Fees’ category will capture all services performed by professional staff in the independent accountant’s tax division except those related to the audit as discussed previously. Typically, it would include fees for tax compliance, tax planning, and tax advice.” SEC, *Final Rule: Strengthening the Commission’s Requirements Regarding Auditor Independence*, (Jan. 28, 2003) at II (H). At: <http://www.sec.gov/rules/final/33-8183.htm>.

<sup>25</sup>*Id.*

<sup>26</sup>SEC, *Proposed Rule: Revision of the Commission’s Auditor Independence Requirements*, RIN 3235-AH91 (June 30, 2000). At: <http://www.sec.gov/rules/proposed/34-42994.htm>.

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The PCAOB embraced the three broad principles that governed the Levitt reforms as guiding principles that would control further regulatory efforts. A July 14, 2004, roundtable was organized to solicit comments on tax services.<sup>30</sup> The following specific areas were isolated for investigation: tax compliance services; tax planning and advisory services; tax strategy services; and executive and international assignment tax services.<sup>31</sup>

Is the United States moving closer to a principles-based system of auditor independence regulation? In the area of tax services, the answer appears to be yes, but the U.S. approach remains far more detail-oriented than the EU approach. Nevertheless, steps are being taken toward global convergence.

Taken together, the actions of the Congress, the SEC, and the PCAOB seem to confirm a conscious effort to change and accommodate. Congress pushed both the SEC and the PCAOB in that direction when it required in section 108(d) of the Sarbanes-Oxley Act that a study be prepared on *The Adoption by the United States Financial Reporting System of a Principles-Based Accounting System*.

### E. Australia

*Auditor independence rules in Australia.* Australia began a comprehensive corporate law economic reform program in 1997 called the CLERP initiative. The ninth package of reforms in the initiative, referred to as CLERP 9, dealt with auditor independence: *Corporate Disclosure: Strengthening the Financial Reporting Framework*. Australia was responding to the domestic and world crisis in auditor independence standards. The ITS reform program was presented to

Parliament December 2, 2003,<sup>32</sup> well after the collapse of HIH (March 2001) and One.Tel (July 2001) and the passage of Sarbanes-Oxley (July 30, 2002) and the *Loi de Sécurité Financière* (July 17, 2003). The reforms were enacted June 24, 2004.<sup>33</sup>

CLERP 9 is based on proposals for change from three sources: the Ramsay report, *Independence of Australian Company Auditors* (October 2001);<sup>34</sup> the Joint Committee on Public Accounts and Audits *Report 391: Review of Independent Auditing by Registered Company Auditors* (September 2002);<sup>35</sup> and recommendations from the HIH Royal Commission.<sup>36</sup>

### The Australian system of auditor oversight is one of shared responsibility.

The substance of CLERP 9 is the legislative decision that auditor independence is a governmental concern as well as a concern of the accounting profession. Australian reforms are principles-based, because they adopt the rules of the profession, which, in turn, are based on international accounting standards. That approach was strongly supported by the Ramsay report, Report 391, and the HIH Royal Commission. The rules go through the familiar process of identifying and documenting threats to independence and then the auditor's safeguards to those threats.<sup>37</sup> If the auditor determines that the safeguards are ineffective, the professional standard (and now the Corporations Act) mandates prohibition.<sup>38</sup>

<sup>30</sup>Andrew Parker's article "US Regulator Close to Ban on Audit and Tax Links," in the electronic version of the *Financial Times* of November 21, 2004, indicates that the PCAOB is expected to issue proposed rules on nonaudit tax services in December 2004. In two areas nonaudit tax services are expected to be prohibited: the provision of tax services to corporate executives of the companies they audit; and the provision of "success services" or tax contingency fee arrangements. However, it is unclear if those will be the only proposed rule changes. The full scope of the anticipated rules have not been disclosed. Parker writes, "The big four accounting firms — Deloitte, Ernst & Young, KPMG and PwC — are lobbying hard for limited reform by the US regulator, partly because tax is their biggest source of income after audit. But the regulator, which has been considering the tax rules since a round-table on the issue in July, has found it difficult to define which tax avoidance strategies are abusive. As yet, no final decisions about the tax rules have been made by the PCAOB but an initial draft has been completed."

<sup>31</sup>PCAOB, *Briefing Paper: Auditor Independence and Tax Services Roundtable* (July 14, 2004). At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14_Roundtable_Transcript.pdf).

<sup>32</sup>The complete legislation package can be found at: [http://www.treasury.gov.au/documents/700/PDF/CLERP\\_Bill.pdf](http://www.treasury.gov.au/documents/700/PDF/CLERP_Bill.pdf).

<sup>33</sup>See *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, No. 103, 2004. At: <http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>.

<sup>34</sup>The Ramsay report can be found at: <http://www.treasury.gov.au/documents/183/PDF/ramsay.pdf>.

<sup>35</sup>See <http://www.aph.gov.au/house/committee/jpaa/indepaudit/reportsript.pdf>.

<sup>36</sup>HIH Royal Commission, *supra* note 2.

<sup>37</sup>The threats to independence are self-interest, self-review, advocacy, familiarity, and intimidation. The safeguards are safeguards created by the profession, legislation, or regulation; safeguards within the client; and safeguards within the audit firm itself. See Institute of Chartered Accountants in Australia and CPA Australia, *Professional Statement F-1 (Applicable to All Members): Professional Independence*, at 1.22 to 1.37. Available at: [http://www.cpaaustralia.com.au/cps/rde/xbc/SID-3F57FEDE-D62BB915/cpa/submission\\_fl.pdf](http://www.cpaaustralia.com.au/cps/rde/xbc/SID-3F57FEDE-D62BB915/cpa/submission_fl.pdf).

<sup>38</sup>*Id.* at 2.54 to 2.101.

The Australian system of auditor oversight is one of shared responsibility; both the government and peer review structures oversee the accounting profession. Thus, ethical rules drafted by the accounting profession essentially define statutory rules for auditor independence.<sup>39</sup> CLERP 9 simply incorporates those rules into the Corporations Act, making them statutorily (as well as ethically) applicable to auditors of Australian corporations. Section 324CA presents the general requirement of auditor independence and section 324CB prohibits conflicts of interest.

The Institute of Chartered Accountants in Australia lent its support to CLERP 9 in a July 16, 2002, news release, "Australia Ahead of the Game." In the release, the Institute favorably compared the Australian principles-based approach with the United States' rules-based method and characterized Sarbanes-Oxley as a movement by the United States closer to the international norm: "[Sarbanes-Oxley is] the first step towards convergence of US standards to the development of comprehensive international accounting standards."<sup>40</sup>

*Nonaudit tax services and auditor independence in Australia.* CLERP 9 does not contain a definition of nonaudit services, much less nonaudit tax services. The law does contain a requirement that the board of directors provide a statement in the annual report that identifies all nonaudit services provided by the audit firm and the fees applicable to each item of nonaudit service (subsection 300(11A) of the Corporations Act). Also, a statement by the directors must indicate that they are satisfied that the provision of nonaudit services is compatible with the general standard of independence and an explanation of why those nonaudit services do not compromise audit independence (subsection 300(11B) of the Corporations Act).

Consideration of tax services is found outside of the act in the standards of the accounting profession. *Professional Statement F.1* contains the following:

The firm may be asked to provide taxation services to an audit client. Taxation services comprise a broad range of services including compliance, planning, provision of formal taxation opinions, and assistance in the resolution of tax disputes. Such assignments

are generally not seen to create threats to independence.<sup>41</sup>

An extended itemization of tax services is set out in appendix 1 of the *Guidance Notice*. However, the Australian rules are not very critical of tax services: All the listed services are approved. The only limitation is that the auditor must have the "appropriate experience and skills" needed to perform the tax services.<sup>42</sup>

## F. Japan

*Auditor independence rules in Japan.* Japan took an entirely different path to improving auditor independence. Seemingly immune from the wave of accounting-related corporate collapses, Japan did not implement reforms until April 2004. Japan even waited after it learned of Enron, WorldCom, HHH, One.Tel, Vivendi, Ahold, and Parmalat.

### **The nonaudit services prohibited under Japanese law are a mirror image of the nonaudit services that are prohibited under U.S. law.**

Japan responded not to accounting failures, but to the wave of overseas regulatory reforms that threatened to affect Japanese businesses and the Japanese accounting profession itself. The defining event for Japanese regulators was section 106(a) of Sarbanes-Oxley, the extraterritorial enforcement provision of the act, providing that the SEC and PCAOB are authorized to oversee foreign accounting firms if they perform statutory audits for firms listed on U.S. exchanges.<sup>43</sup> When the PCAOB initiated rulemaking

<sup>41</sup>Institute of Chartered Accountants in Australia and CPA Australia, *Professional Statement F-1 (Applicable to All Members): Professional Independence*, at 2.77, *supra* note 37.

<sup>42</sup>The listed services are: (1) acting as tax agent; (2) tax advice for income tax matters; (3) preparation of tax returns on behalf of an entity; (4) tax advisory services, for indirect taxes, for example, customs and excise, goods and services tax, sales tax, and stamp duty; (5) tax advice for transfer pricing; (6) tax advisory services for the Australian Tax Office audits; (7) tax advice for employee-specific matters, for example, employee-share schemes, fringe benefits tax, and superannuation; (8) tax advisory services for an entity's employees' tax return, for example, an overseas-based employee; (9) tax return preparation for an entity's employees; and (10) expatriate employment and relocation services, for example, employment contract advice and relocation coordination. See The Auditing and Assurance Standards Board of the Australian Accounting Research Foundation, *Auditor Independence and Other Services*, Guidance Note, March 2003 at Appendix 1, 1-2. Available at: <http://www.aarf.asn.au/docs/NewGuidanceNoteMarch2003.pdf>.

<sup>43</sup>See the comments of Naohiko Matsuo, Director for International Financial Markets, Japanese Financial Services Agency responding to the PCAOB's proposed rules on January 26, 2004. See item 6 in the zip file associated with "Rulemaking Docket Matter 013" at: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/rulemaking\\_docket.asp](http://www.pcaobus.org/Rules_of_the_Board/rulemaking_docket.asp).

<sup>39</sup>See *id.* Also see The Auditing and Assurance Standards Board of the Australian Accounting Research Foundation, *Auditor Independence*, Guidance Note, March 2003 at appendix 1, 1-2. Available at: <http://www.aarf.asn.au/docs/NewGuidanceNoteMarch2003.pdf>.

<sup>40</sup>The Institute of Chartered Accountants in Australia, *Australia Ahead of the Game*, at: <http://www.icaa.org.au/news/index.cfm?menu=269&id=A105172188>.

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procedures<sup>44</sup> that would potentially bring Japanese auditing firms under direct U.S. oversight, Japan began to replace its peer review system with an independent regulatory structure.<sup>45</sup>

The PCAOB is willing to rely on investigation by non-U.S. authorities after an evaluation of the “independence and rigor” of the foreign system. Local law, the independence of the agency, its funding, transparency, and its history of performance are all considered.<sup>46</sup>

Japan’s response to Sarbanes-Oxley has two aspects. First, the Japanese legislature amended the “Certified Public Accountant Law” (*Kouninkaikeishihou* 1948-8-1) through “An Act to Amend Part of the Certified Public Accounting Law” (*Kouninkaikeishihou no ichibu wo kaisei suru houritsu* 2004-4-1). Second, the Japanese government issued Cabinet Office ordinances (*Naikakuhurei* 2004-4-1). In the law promulgated June 6, 2003, a new government oversight and inspection agency, the CPA and Auditing Oversight Board (CPAAOB) was established. In the Cabinet ordinance at article 5, rules on auditor independence were published.

### **Japan responded, not to accounting failures, but to the wave of overseas regulatory reforms.**

The Cabinet ordinance rules are a literal translation of Sarbanes-Oxley section 201(a)(1)-(8) and nothing more. Thus, the nonaudit services prohibited under Japanese law are a mirror image of the nonaudit services that are prohibited under U.S. law. The Japanese law and ordinances were effective April 1, 2004.

*Nonaudit tax services and auditor independence in Japan.* The Japanese have no rules on nonaudit tax services. Because the prohibitions of sections 201(a)(1)-(8) make no direct reference to tax services, the same is true of the Japanese law. Tax services are permitted.<sup>47</sup>

However, section 201(a)(9) of Sarbanes-Oxley grants the PCAOB discretion to extend the list of prohibited nonaudit services. According to the July 14, 2004, “Auditor Independence and Tax Services Roundtable,” the PCAOB is considering rulemaking that would directly extend these prohibitions into the tax services area. One could expect that if U.S. rules on tax services were issued, that Japan would make a similar rule change through an update to the Cabinet Ordinance. At least that would appear to be true for any tax services that the PCAOB determines should be expressly prohibited.

## II. Signs of Convergence

Are there signs of convergence in corporate governance on the provision of nonaudit services? The answer is yes in at least two respects.

First, there is general agreement around a common goal: the improvement of investor confidence through the increased reliability of financial statements. Second, there is remarkable consensus on the ultimate principles that need to be applied to meet that goal.

In the United States, those principles were set out in the Levitt reforms. They remain in the *preliminary note* to rule 2-01 of regulation S-X, 17 CFR 210.2-01 and were unchanged by Sarbanes-Oxley. The Japanese statement of principles follows the United States. In the European Union, United Kingdom, and Australia,<sup>48</sup> the same principles, formulated in a different manner, are expressed in terms of threats to auditor independence.<sup>49</sup>

Viewed side-by-side, the harmony in the underlying principles in those alternate formulations is apparent.

<sup>44</sup>The rules were finalized on June 9, 2004. PCAOB, *Final Rules Relating to the Oversight of Non-US Public Accounting Firms*. At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/Release2004-005.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/Release2004-005.pdf). They were forwarded to the SEC for final approval on June 17, 2004. At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/Docket\\_013/PCAOB%202004-04%20Form%2019b-4%20for%20International%20Rules%20-%20June%2017%202004.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/Docket_013/PCAOB%202004-04%20Form%2019b-4%20for%20International%20Rules%20-%20June%2017%202004.pdf).

<sup>45</sup>PCAOB, *Proposed Rules Relating to the Oversight of Non-U.S. Public Accounting Firms*, (Dec. 10, 2003). At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/Release2003-024.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/Release2003-024.pdf).

<sup>46</sup>PCAOB proposed rule 4012. At PCAOB, *Final Rules Relating to the Oversight of Non-U.S. Public Accounting Firms*, p. A1-2. At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14_Roundtable_Transcript.pdf).

<sup>47</sup>An indirect prohibition under Sarbanes-Oxley can be seen, for example, in the advocacy prohibition. Because advocacy (representing an audit client in court) is a prohibited activity under section 201(a)(8), so too is tax advocacy (representing an audit client in tax court).

<sup>48</sup>Because the French view is that all nonaudit services should be prohibited, France is omitted from this assessment. The French view follows that of the International Federation of Accountants. However, from the French perspective, threats to independence cannot be mitigated through any safeguard short of absolute prohibition.

<sup>49</sup>The common source for those formulations is the International Federation of Accountants, *Code of Ethics for Professional Accountants*, IFAC Ethic Committee, New York, NY (2001).

U.S.; Japan	EU; <sup>50</sup> U.K.; <sup>51</sup> Australia <sup>52</sup>
1. The auditor should have no mutual or conflicting interest with the client.	Self-interest threat. <sup>53</sup> Familiarity threat. <sup>54</sup> Intimidation threat. <sup>55</sup>
2. The auditor should not audit his or her own work.	Self-review threat (element 1). <sup>56</sup>
3. The auditor should not function as management or as an employee of the client.	Self-review threat (element 2).
4. The auditor should not act as an advocate for the client.	Advocacy threat. <sup>57</sup>

Convergence, then, is not a matter of agreeing on goals or ultimate principles; it is a matter of developing common implementation schemes and designing uniform enforcement. That is the difference. The United States has preferred rules-based standards, while most other countries have preferred principles-based standards. However, the United States

<sup>50</sup>The EU formulation can be found in the *Consultative Paper on Statutory Auditor's Independence in the EU: A Set of Fundamental Principles*, *supra* note 10.

<sup>51</sup>The U.K. framework was introduced in 1997 and was placed into conformance with the EU framework in June 2002 by adopting the "Fundamental Principles" of the European Union. See Institute of Chartered Accountants in England and Wales, *Guide to Professional Ethics: Introduction and Fundamental Principles, Statement 1.200 Revised*, (2002).

<sup>52</sup>The CLERP 9 reforms place those rules into the Corporations Act at sections 324CE(7) and 324CF(7). *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, *supra* note 33.

<sup>53</sup>A self-interest threat occurs when a firm or a member of the assurance team could benefit from a financial interest in, or other self-interest conflict with an assurance client." Institute of Chartered Accountants in Australia and CPA Australia, *Professional Statement F-1 (Applicable to All Members): Professional Independence*, at 1.23, *supra* note 37.

<sup>54</sup>A familiarity threat occurs when, by virtue of a close relationship with an assurance client, its directors, officers or employees, a firm or a member of the assurance team becomes too sympathetic to the client's interests." *Id.* at 1.26.

<sup>55</sup>An intimidation threat occurs when a member of the assurance team may be deterred from acting objectively and exercising professional skepticism by threat, actual or perceived, from directors, officers or employees of an assurance client." *Id.* at 1.27.

<sup>56</sup>A self-review threat occurs when (1) any product or judgment of a previous assurance engagement or non-assurance engagement needs to be re-evaluated in reaching conclusions on the assurance engagement, or (2) when a member of the assurance team was previously a director or officer of the assurance client or was an employee in a position to exert direct and significant influence over the matter of the assurance engagement." *Id.* at 1.24.

<sup>57</sup>Advocacy threat occurs when a firm, or a member of the assurance team, promotes, or may be perceived to promote an assurance client's position or opinion to the point that objectivity may, or may be perceived to be compromised. Such may be the case if a firm or member of the assurance team were to subordinate their judgment to that of the client." *Id.* at 1.25.

appears to be moving toward convergence. The questions that remain are: Has the United States moved far enough? If the United States has only moved halfway, and halfway is not enough, will the United States be met in the middle?

The SEC has offered an assessment of rules-based and principles-based standards. It has found both to be wanting and has proposed that rules should be written in a manner that blends rules- and principles-based methods. It calls that blend an objectives-oriented method of setting standards.<sup>58</sup> The developing U.S. rules on tax services are important because they appear to be the first comprehensive attempt to put that new approach into practice. They form the case study at the end of this paper.

### III. Principles- vs. Rules-Based Regulation

Two theories of standard-setting — principles-based and rules-based — characterize auditor independence regulation.

*Principles-based regulation.* Concise statements of substantive principles characterize principles-based rules. The regulatory objective is an integral part of the standard. The standard itself is characterized by few, if any, exceptions. Principles-based regulation commonly provides detailed implementation guidance. It is normally devoid of bright-line tests. The standard implements, is consistent with, and is derived from a coherent overall conceptual framework of corporate governance practices.

*Rules-based regulation.* In contrast, a rules-based approach to standard-setting is characterized by bright-line tests. The standards themselves frequently incorporate exceptions. Voluminous, detailed implementation guidance is usually needed to resolve uncertainties about application of the standard. The underlying vision of a rules-based system is to incorporate within the standard an examination of virtually every imaginable scenario and provide detailed guidance on the resolution of each fact pattern. In theory, that approach seeks to minimize the need for professional judgment.

*Convergence of principles-based and rules-based theories.* Aside from press statements, the best evidence that convergence efforts are underway is found in the SEC's *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the*

<sup>58</sup>SEC, *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System*. Available at: <http://www.sec.gov/news/studies/principlesbasedstand.htm>.

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*United States Financial Reporting System of a Principles-Based Accounting System.*<sup>59</sup> In the study, the SEC criticizes both principles-only and rules-only standards and proposes a middle ground of objectives-oriented standard-setting.

A principles-only approach is criticized for not providing sufficient guidance to make standards reliably operational. Under a principles-only approach, "auditors are required to exercise significant judgment in applying overly-broad standards to more specific transactions and events."<sup>60</sup> The SEC saw heavy reliance on judgment as a factor that would result in a loss of comparability among reporting entities, as well as increase the likelihood of litigation.

However, the SEC also criticizes a rules-only approach: "A rules-based standard can provide a roadmap to avoidance of the accounting objectives inherent in the standards. Internal inconsistencies, exceptions and bright-line tests reward those willing to engineer their way around the intent of the standards."<sup>61</sup> The danger here is financial reporting that is not representationally faithful to the underlying economic substance of the transactions and events. The large number of exceptions in rules-based systems leads to internal inconsistencies. Considerable judgment is needed to determine where, within a myriad of exceptions, a transaction falls. A rules-based system fosters technical compliance more than sincere communication or full and fair disclosure.

*Objectives-oriented standard-setting.* The significant characteristic of an objectives-oriented standard is that it has few, if any, scope exceptions. A theory of optimal scope governs. That means that it avoids a scope that is too broad when a standard could not provide meaningful and useful guidance and avoids a scope that is too narrow when a standard would not have sufficient applicability to cover all transactions of similar economic substance.<sup>62</sup>

As envisioned by the SEC, an objectives-oriented standard would be comprised of five distinct elements:

- it would be based on a consistently applied conceptual framework;
- it would clearly state the accounting objective;
- it would provide sufficient detail and structure that the standard can be operationalized and applied on a consistent basis;

<sup>59</sup>Available at: <http://www.sec.gov/news/studies/principlesbasedstand.htm>.

<sup>60</sup>SEC, *Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System* (July 25, 2003) at 6. See <http://www.sec.gov/news/studies/principlesbasedstand.htm>.

<sup>61</sup>*Id.*

<sup>62</sup>*Id.* at 24.

- it would minimize exceptions from the standard; and
- it would avoid use of percentage (bright-line) tests that allow financial engineers to achieve technical compliance with the standard while evading its intent.<sup>63</sup>

## IV. Case Study of Convergence

In the narrow area of nonaudit tax services, the SEC appears to be following an objectives-oriented approach to developing standards. The global response to those rules will be a measure of the current convergence opportunity.

### **Each of the highly publicized U.S. security scandals involved either the tax positions taken by the companies or the determination of their tax reserves.**

Tax services raise some of the most contentious auditor independence issues.<sup>64</sup> The intensity of the controversy is directly related both to how lucrative tax services have become for major accounting firms and how often the auditor's tax advice has become the source of corporate governance problems.<sup>65</sup> Each of the highly publicized U.S. security scandals involved either the tax positions taken by the companies or the determination of their tax reserves. The cases of Enron,<sup>66</sup> Tyco,<sup>67</sup> and WorldCom<sup>68</sup> are the most prominent examples. It is not surprising that the SEC

<sup>63</sup>*Id.* at 4-5.

<sup>64</sup>For a survey of the empirical literature in the United States and United Kingdom on this issue, see Vivian Beattie and Stella Fearnley, *Auditor Independence and Non-Audit Services: A Review of the Literature* (2000) at 28-30. At: [http://www.icaew.co.uk/library/index.cfm?AUB=TB21\\_63272,MNXI\\_63272](http://www.icaew.co.uk/library/index.cfm?AUB=TB21_63272,MNXI_63272). For a similar survey from an Australian perspective, see the Ramsay report, *supra* note 34.

<sup>65</sup>In a survey of SEC audit clients performed by the then Big Five audit firms, the ratio of accounting and auditing revenues to consulting revenues dropped from about 6 to 1 in 1999 to 1.5 to 1 in 1999. In 1999, 4 percent of the Big 5 firms' SEC audit clients had consulting fees in excess of audit fees, up from 1 percent in 1990. Panel on Audit Effectiveness, *Report and Recommendations*, (2000) chaired by Shaun F. O'Malley at paragraph 5.14. At: <http://www.pobauditpanel.org/download.html>.

<sup>66</sup>Peter Behr and April Witt, "Visionary's Dream Led to Risky Business: Opaque Deals, Accounting Sleight of Hand Built an Energy Giant and Ensured Its Demise," *The Washington Post*, July 28, 2002, at A-1.

<sup>67</sup>Mark Maremount and Laurie P. Cohen, "New York Prosecutors Seek Auditor Link in Tyco Probe," *Wall Street Journal Europe*, Sept. 30, 2002, at A-1.

<sup>68</sup>Carrie Johnson and Ben White, "WorldCom Arrests Made: Two Former Executives Charged With Hiding Expenses," *The Washington Post*, Aug. 2, 2002, at A-1.

requires that the fees for tax services must be separately itemized in SEC reports.<sup>69</sup>

**The Old Standard for Tax Services**

On June 29, 2000, the SEC proposed a "Revision to the Commission's Auditor Independence Requirements,"<sup>70</sup> also known as the Levitt reforms. On tax services the release stated:

The proposed rule would not affect tax-related service provided by auditors to their audit clients. Tax services are unique, not only because there are detailed laws that must be consistently applied, but also because the Internal Revenue Service has discretion to audit any tax return. We do not think that the Congressional purpose for requiring independent audits is thwarted by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client.

Functionally, the SEC was giving blanket regulatory approval to tax services, primarily because the IRS was presumed to be overseeing that compliance area.

**New Standards for Tax Services**

*The Sarbanes-Oxley Act — Efforts at Convergence Legislatively: Elements 4 and 5 of an Objectives-Oriented Standard*

The fourth element of an objectives-oriented standard is that exceptions must be minimized. The fifth is that bright-line tests must be avoided. The Sarbanes-Oxley Act contributes directly to meeting both of those requirements through its modification of the Levitt regulations.

The Levitt reforms are codified in section 201(a). However, the codification omits all exceptions and limitations. Sarbanes-Oxley eliminated 26 distinct exceptions, percentage limitations, and bright-line tests, each of which had allowed financial engineers to achieve technical compliance with the standard while evading its intent.

Sarbanes-Oxley, Section 201(a)	Levitt Reforms <sup>71</sup>
(1) "bookkeeping or other services related to the accounting records or financial statements of the audit client";	"bookkeeping or other services related to the audit clients accounting records or financial statements . . . maintaining or preparing an audit client's accounting records; preparing financial statements that are filed with the Commission . . . ; preparing or originating source data underlying the audit client's financial statements." <sup>72</sup>
(2) "financial information systems design and implementation";	"Financial information systems design and implementation. Directly or indirectly operating or supervising the operation of the audit client's information system or managing the audit client's local area network. Designing or implementing a hardware or software system that aggregates source data underlying financial statements." <sup>73</sup>
(3) "appraisal or valuation services, fairness opinions, or contribution-in-kind reports";	"Appraisal or valuation services or fairness opinions. Any appraisal service, valuation service, or any service involving a fairness opinion for an audit client where . . . material to the financial statements, or where the results of these service will be audited by the accountant." <sup>74</sup>

<sup>71</sup>Id.

<sup>72</sup>There are two categories of exceptions at (c)(4)(i)(B) in the final rule. The first is for "emergency or other unusual situations, provided the accountant does not undertake managerial actions or make managerial decisions." The second is applicable to foreign divisions or subsidiaries. That exception allows six categories of activities, those that are: "(i) . . . limited, routine, or ministerial; (ii) . . . [when it is] impractical . . . to make other arrangements; (iii) . . . [when] the foreign division or subsidiary is not material . . . ; (iv) . . . [when] a foreign employee is not capable or competent . . . ; (v) [when] the services performed are consistent with local professional ethical rules; (vi) [when] the fees . . . do not exceed 1 [percent] of the consolidated audit fees or \$10,000."

<sup>73</sup>There are five exceptions at (c)(4)(ii)(B) in the final rule: "(1) [when] the audit client's management has acknowledged in writing . . . its responsibility to establish and maintain a system of internal accounting controls . . . ; (2) [when] the audit client's management designates a competent employee . . . with responsibility to make all management decisions . . . ; (3) [when] the audit client's management makes all management decisions with respect to design and implementation . . . ; (4) [when] the audit client's management evaluates the adequacy and results of the design and implementation . . . ; (5) [when] the audit client's management does not rely on the accountant's work as the primary basis of the design and implementation."

<sup>74</sup>There are four exceptions at (c)(4)(iii)(B) in the final rule: "(1) [when] the accounting firm's valuation expert reviews the work of the audit client . . . ; (2) [when] . . . the audit client has determined and taken responsibility for all significant assumptions and data; (3) [when] the valuation is performed in the context of the planning and implementation of a tax planning strategy or for tax compliance services; (4) [when] the valuation is for nonfinancial purposes."

<sup>69</sup>U.S. Securities and Exchange Commission, RIN 3235-AI73 *Strengthening the Commission's Requirements Regarding Auditor Independence* (January 28, 2003, release date; May 6, 2003, effective date). At: <http://www.sec.gov/rules/final/33-8183.htm>.

<sup>70</sup>SEC, *Final Rule: Revision of the Commission's Auditor Independence Requirements*, *supra* note 24.

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(4) "actuarial services";	"Actuarial services. Any actuarially-oriented advisory service involving the determination of insurance company policy reserves and related accounts." <sup>75</sup>
(5) "internal audit outsourcing services";	"Internal audit services. Either of internal audit services in an amount greater than 40 [percent] of the total hours expended on the audit . . . any internal audit services, or any operational audit services." <sup>76</sup>
(6) "management functions or human resources";	"Human resources . . . <sup>77</sup> acting as a negotiator on the audit client's behalf, such as determining positions, status or title, compensation, fringe benefits or other conditions of employment . . . (management functions)." <sup>78</sup>
(7) "broker or dealer, investment adviser, or investment banking services";	"Broker dealer services. Acting as a broker-dealer, promoter, or underwriter, on behalf of a client." <sup>79</sup>
(8) "legal services and expert services unrelated to the audit";	"Legal services. Providing any legal service to a client under circumstances in which the person providing the service must be admitted to practice before courts of a US jurisdiction." <sup>80</sup>
(9) "any other service that the Board [PCAOB] determines, by regulation, is impermissible."	

<sup>75</sup>There are four exceptions at (c)(4)(iv)(B) in the final rule: "(1) [when the accountant] . . . assists management to develop appropriate methods, assumptions and amounts for policy or loss reserves . . . ; (2) [when the accountant] assists management in the conversion of financial statements . . . ; (3) [when the accountant] analyzes actuarial considerations and alternatives in federal income tax planning; (4) [when the accountant] assists management in the financial analysis of various matters, such as new policies, new markets, business acquisitions, and reinsurance needs."

<sup>76</sup>There are six exceptions at (c)(4)(v)(B) in the final rule: "(1) [when] the audit client's management has acknowledged in writing . . . its responsibility to establish and maintain a system of internal accounting controls . . . ; (2) [when] the audit client's management designates a competent employee . . . to be responsible for the internal audit function . . . ; (3) [when] the audit client's management determines the scope, risk, and frequency of internal audit activities . . . ; (4) [when] the audit client's management evaluates the findings and results arising from internal audit activities . . . ; (5) [when] the audit client's management evaluates the adequacy of the audit procedures performed . . . ; (6) [when] the audit client's management does not rely on the accountant's work as the primary basis for determining the adequacy of its internal controls."

<sup>77</sup>No exceptions.

<sup>78</sup>No exceptions.

<sup>79</sup>No exceptions.

<sup>80</sup>No exceptions.

### Tax Services in Sarbanes-Oxley

Sarbanes-Oxley places tax services under that same conceptual framework controlled by the same general principles as all other nonaudit services. The language has been problematic to some. It not only raises the possibility that tax services could be prohibited but it also expresses the opposite position — that some tax services are permissible. The law states:

A registered public accounting firm may engage in any nonaudit service, including tax services, that is not described in any of the paragraphs (1) through (9) . . . only if the activity is approved by the audit committee of the issuer.<sup>81</sup>

Distinguishing between permissible and impermissible tax services with the same principles that govern other nonaudit services is left for SEC regulation and PCAOB rulings.

#### SEC Regulation — Contributions to Convergence: Elements 1 and 2 of an Objectives-Oriented Standard

The first and second elements of an objectives-oriented standard are that the standard is based on a consistently applied conceptual framework and that it clearly states the regulatory objective.

#### The Conceptual Framework: Element 1 in an Objectives-Oriented Standard

A consistently applied conceptual framework is applied to all nonaudit services. SEC regulation makes it clear that a three-part structure is applied to determine the appropriateness of any nonaudit service. Nonaudit services are: (1) allowed and approved by the audit committee; (2) allowable but not approved by the audit committee; or (3) prohibited because they violate one or more of the governing principles.<sup>82</sup> The audit committee discriminates between audit services in categories (1) and (2) by weighing efficiency and investor protection considerations.<sup>83</sup>

That conceptual framework is consistently applied to all nonaudit services, including tax services. The SEC explains how to use the framework to determine whether a tax service is permissible under (1) or (2) above, or prohibited under (3). The decisionmaker should reason by analogy to the other prohibited

<sup>81</sup>Section 201(a) of the Sarbanes-Oxley Act.

<sup>82</sup>Wardell, Thomas, "International Accounting Standards in the Wake of Enron: The Current State of Play under the Sarbanes-Oxley Act of 2002," 28 *N.C. J. Int'l L. & Com. Reg.*, 935 (Summer, 2003); "The Good, the Bad, and Their Corporate Code of Ethics: Enron, Sarbanes-Oxley, and the Problems with Legislative Good Behavior," 116 *Harv. Law Rev.*, 2123 (May, 2003).

<sup>83</sup>Durst, Michael C., and Thomas H. Gibson, "'Audit' vs. 'Non-Audit' Tax Services under Sarbanes-Oxley." *The Tax Executive* (November-December, 2003) 474-477.

services and be guided in that analogy by an application of the regulatory objective — auditor independence.

For example, the SEC states that, because there is no bright-line excluding tax services, “merely labeling a service as a ‘tax service’ will not necessarily eliminate its potential to impair independence under Rule 2-01(b).”<sup>84</sup> The proper analysis is to observe that, because providing legal services for a client is prohibited, an auditor should understand that “representing an audit client before a tax court, district court or federal court of claims [is also prohibited].”<sup>85</sup>

*The Clearly Stated Objective: Element 2 in an Objectives-Oriented Standard*

The SEC also makes it clear that the same basic objectives are applicable to all nonaudit services. Those “simple principles” of auditor independence are discussed in the final regulations:

... the principles of independence with respect to services provided by auditors are largely predicated on three basic principles, violations of which would impair the auditor’s independence:

- (1) an auditor cannot function in the role of management,
- (2) an auditor cannot audit his or her own work, and
- (3) an auditor cannot serve in an advocacy role for his or her own client.<sup>86</sup>

Although presented here as three, rather than four, principles,<sup>87</sup> the SEC expressly references the basic principles of auditor independence placed by the Levitt reforms in the *preliminary note* to rule 2-01 of regulation S-X, 17 CFR 210.2-01. Senator Paul S. Sarbanes,

D-Maryland, spelled out the same standards during Senate floor debates.<sup>88</sup>

*PCAOB Rulemaking: Element 3 of an Objectives-Oriented Standard*

The third element in an objectives-oriented standard is that the standard must provide sufficient detail and structure so that the standard can be operationalized and applied on a consistent basis.

That aspect of an objectives-oriented standard for tax services is not finalized at the time of this writing. The PCAOB recognizes the need for added “detail and structure” in this area, and initiated a rulemaking project on July 14, 200, to “consider the impact of tax services on auditor independence.”<sup>89</sup> A roundtable was held, signaling the beginning of the rulemaking process. The PCAOB is considering rules in the following areas:

- tax compliance services (preparation of original and amended returns, planning estimated tax payments, and preparation of return extensions at all levels of government — local, state, federal, and international jurisdictions);
- tax planning and advisory services (the treatment of mergers and acquisitions, executive compensation, employee benefit plans, proposed or pending tax legislation, and international tax requirements like trade and customs duties);
- tax strategy services (tax-motivated, structured transactions that enable a company to reduce tax liability or achieve a financial accounting result); and
- executive and international assignment tax services.<sup>90</sup>

As expected, the range of opinions at the roundtable was diverse. Some argued that the auditor should be prohibited from engaging in any tax services,<sup>91</sup> while

<sup>84</sup>SEC, *Final Rule: Strengthening the Commission’s Requirements Regarding Auditor Independence*, (Jan. 28, 2003) at II (B) (11), *supra* note 29.

<sup>85</sup>*Id.*

<sup>86</sup>*Id.*, effective May 6, 2003; <http://www.sec.gov/rules/final/33-8183.htm>. See also PCAOB, *Briefing Paper: Auditor Independence Roundtable*, (July 14, 2004) at 4, *supra* note 31.

<sup>87</sup>There seems to be some ambiguity on whether there are three or four principles. In its *Briefing Paper: Auditor Independence and Tax Services Roundtable*, the PCAOB specifically recites, without comment, the “four overarching principles that inform the Commission’s application of the general standard of independence,” and in the next paragraph recites the shorter list of “three basic principles” (pp. 4-5). Perhaps the first principle, that the auditor cannot perform an activity that would create a mutual or conflicting interest between the accountant and the audit client, is deemed to be a further abstraction of the other three principles dealing with functioning as management, auditing his own work, and advocating for the client. See [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14-Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14-Roundtable_Transcript.pdf).

<sup>88</sup>Senate Report 107-205, 107th Cong., 2d Sess., July 3, 2002.

<sup>89</sup>PCAOB, *Briefing Paper: Auditor Independence and Tax Services Roundtable*, (July 14, 2004) at 3, *supra* note 31.

<sup>90</sup>*Id.* at 4-8.

<sup>91</sup>See the comments of Donald Nicolaisen, chief accountant of the SEC: “Personally, I believe that no accounting firm should be in the business of selling these kinds of tax products [highly engineered tax products] to their audit clients” (p. 12); Elliot Schwartz, Council of Institutional Investors, “We have established a very bright-line test, which is to say that, the appropriate non-audit services that an audit firm ought to provide are zero.” (p. 68); and Michael Gagnon, PricewaterhouseCoopers (Risk Compliance), “Fundamentally, I believe our tax system is, if you will, an advocacy system. . . . we would all prepare our returns in a manner that is consistent with the tax laws, but in a manner that would be designed to . . . minimize our taxes. That’s the way the system works” (pp. 121-122). Schwartz argued, “Audit firms should not be providing non-audit services to their audit clients” (p. 147). At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14-Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14-Roundtable_Transcript.pdf).

## Special Reports

others argued for great latitude in the rules.<sup>92</sup> There was however, unanimous agreement that whatever rules were to be drafted, they should follow logically from the “basic principles” first set out in the Levitt reforms.<sup>93</sup>

### V. Conclusion

The United States has responded to the most serious criticisms of its rules-only-based method of setting standards. For nonaudit services generally, the United States has eliminated exceptions, limitations, bright-line rules, and percentage tests. Specifically in the area of tax services, the United States is directly tying principles with operational rules. That represents a significant movement toward a principles-based method of setting standards.

For its own part, the United States has been critical of foreign principles-only standards. In particular, the United States is critical of those regulations when they do not provide a sufficiently detailed structure, resulting in a standard that is not clearly operationalized. The SEC feels that principles-only-based rules depend too much on the exercise of individual judgment.

Like the United Kingdom, the United States believes that more direction is needed. The rules need not be as restrictive as the French envision, but they need to be considerably more specific than the rules

that have been advanced in the European Union and Australian legislation. The United States is no longer comfortable with the assumption of the Levitt regulations, an assumption that still underpins rules in the European Union, Australia, and elsewhere, that the tax authorities provide enough oversight of the auditor in tax matters so that security regulation can be relaxed.

In that context, the PCAOB's project to draft tax service rules is very important. By some accounts, those rules are expected in proposed form in December 2004. The PCAOB intends to draft rules that apply the basic principles of the Levitt reforms, within the conceptual framework established by Sarbanes-Oxley. The manner of that application is a classic example of objectives-oriented standard-setting and it signals a new direction for U.S. rulemaking. If the PCAOB accomplishes its mission and provides detailed rules for tax services without reintroducing bright-line tests, exceptions, and limitations, a significant step toward corporate governance convergence will have been taken. At least in the area of tax services, the United States will be governed by an integrated, objectives-oriented set of coordinated standards, found in statutes, regulations, and rulings that seek to assure auditor independence.

The foreign response to those efforts will be a measure of how far we have come toward convergence. ♦

<sup>92</sup>Scott Bayless from Deloitte & Touche argued that having the auditor provide tax services would “enhance audit quality” because tax issues cannot be “decided once a year, but involve continuous consultation as the company undertakes transactions and business events during the year” (p. 41). Michael Gagnon from PricewaterhouseCoopers indicated that having the auditor provide tax services increases “transparency” and promotes “efficiency from the client’s point of view” (p. 47). Jim Brasher from KPMG added that there is an “advantage in using the auditor” to provide tax services, because the auditor “has to be approved by the audit committee” (p. 76). Tom Ochsenschlager from the American Institute of Certified Public Accountants extended that argument, noting there would be “four levels of review,” rather than just two, if the auditor performs tax services (p. 93). In the long run, that would “save costs” and make it “much more likely that you would get appropriate tax advice” (pp. 73-74). At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14_Roundtable_Transcript.pdf).

<sup>93</sup>This conclusion was reached early in the discussions. See p. 17. At: [http://www.pcaobus.org/Rules\\_of\\_the\\_Board/Documents/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Rules_of_the_Board/Documents/2004-07-14_Roundtable_Transcript.pdf).

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**From:** Carol taylor [carolk7@bellsouth.net]  
**Sent:** Tuesday, January 18, 2005 10:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Carol taylor  
8103 NW 74th Ave  
Tamarac, FL 33321-4855

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**From:** Lauryn Taylor [kazlot@pacbell.net]  
**Sent:** Tuesday, January 18, 2005 3:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Lauryn Taylor  
404 La Casa Ave  
San Mateo, CA 94403-5027

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**From:** Timothy Taylor [tt327@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 6:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

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Los Angeles, CA 90024-6610

# Tax Executives Institute, Inc.



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March 1, 2005

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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. 017  
 Proposed Ethics and Independence Rules Concerning  
 Independence, Tax Services, and Contingent Fees*

Dear Chairman McDonough:

As President of Tax Executives Institute, I am pleased to submit the following comments relating to the Public Company Accounting Oversight Board's Rulemaking Docket Matter No. 017, on Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (hereinafter "the proposed rules"). TEI shares the Board's interest in maintaining the integrity and vitality of America's self-assessment tax system and the financial reporting system of which the provision for taxes, at the federal, state, and local levels in the United States, and for foreign levies as well, is a material part.

The *Sarbanes-Oxley Act of 2002* ("the Act") was passed to address concerns that our members share with the investing public. Section 103(a) of the Act directs the Board to establish "ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports." The proposed rules issued by the Board on December 14, 2004, provide guidance in respect of whether certain tax services rendered by an SEC registrant's audit firm impair the audit firm's independence and thus should preclude the audit firm from rendering an opinion on the client's financial statements. TEI supports the goals of the Act as well as the efforts of the PCAOB to ensure the independence of registered public accounting firms.

## BACKGROUND

Tax Executives Institute is the preeminent association of corporate tax executives in North America. Our more than 5,400 members are accountants,

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attorneys, and other business professionals employed by approximately 2,800 of the leading companies in the United States, Canada, and Europe. TEI represents a cross-section of the business community, and is dedicated to the development and implementation of sound tax policy and to promoting the uniform and equitable enforcement of the tax laws. The Institute is proud of its record of working with congressional committees, government agencies, and other policy-making bodies (including the Financial Accounting Standards Board and the Securities and Exchange Commission) to minimize the cost and burden of tax administration and compliance to the mutual benefit of the government, business, and ultimately the public. We also support efforts to ensure that companies fairly present their financial position in financial statements and documents filed with the SEC.

TEI members are responsible for conducting the tax affairs of their companies and ensuring their compliance with the tax laws. Thus, members deal with the tax code in all its complexity, as well as with the Internal Revenue Service, on almost a daily basis. Most of the companies represented by our members are SEC registrants that issue financial statements. In addition, they are subject to scrutiny by the Internal Revenue Service and various other agencies in the United States and foreign jurisdictions on a continual basis.

As a professional association of in-house tax executives, TEI offers a different perspective on the issues from other organizations. The Institute does not represent the professional advisers who render the tax services that are the subject of the proposed rules. Rather, TEI's members work directly for the corporations that routinely enter into business transactions requiring an analysis of their benefits and burdens. These companies have professional staffs dedicated to ensuring compliance with the tax law while minimizing their tax liability. To accomplish this, TEI members regularly engage the services of professional tax advisers (whether attorneys or accountants), including those rendered by their companies' independent auditors. We, along with the government and the investing public, have the most at stake in trying to craft a financial reporting system that fairly presents the results of company operations, ensures the independence in fact and appearance of registered public accounting firms, and is as administrable and efficient as possible.

Hence, we believe that the diversity, background, and professional training of our members provide us with a uniquely qualified position from which to comment on the Board's proposed rules on the independence of registered public accounting firms and their provision of tax services. TEI provided comments to the Securities and Exchange Commission in respect of the auditor independence rules adopted on February 5, 2003. We are pleased that the SEC concluded that auditors should be permitted to render tax services to their clients on a pre-approval basis without impairing their independence. Moreover, TEI supports efforts to curb the marketing of inappropriate tax-advantaged transactions and to enhance the rules of professionalism for tax practitioners. Thus, we are pleased to provide the following comments on the Board's proposed rules on ethics and independence for tax services supplied by registered public accounting firms.

## Overview

In general, the proposed rules are sound and represent a balanced and measured approach to the difficult line drawing that the Board must undertake. The rules must preserve the ability of registered public accounting firms to provide their clients with tax planning and compliance services — as both Congress and the SEC concluded would be beneficial — while proscribing classes of services that might impair the firms' independence in fact or appearance. Since we are concerned principally with ensuring that audit clients can obtain professional tax services from the advisers that the clients deem best suited to provide that advice, we offer specific comments on the three rules affecting tax services — Rules 3522, 3523, and 3524 — and offer additional comments for the Board's consideration.

### Rule 3522 — Tax Transactions

Under Rule 3522, 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 non-audit service to the audit client related to planning, or opining on the tax treatment of, a transaction —

- (a) that is a listed transaction (within the meaning of Treas. Reg. § 1.6011-4(b)(2));
- (b) that is a confidential transaction (within the meaning of Treas. Reg. § 1.6011-4(b)(3)); or
- (c) that was initially recommended by the registered public accounting firm or another tax adviser and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

In general, the proposed rule is sound and supportable. Moreover, the rule adequately describes the classes of transactions that might carry an unacceptable risk of impairing an auditor's independence. There are, however, several aspects of the rule's potential interpretation and application that could be clarified.

1. Neither the proposed rule nor the Board's explanatory Release<sup>1</sup> addresses what is meant by the phrase "planning, or opining on the tax treatment of a transaction." We believe the intent of the rule is to permit an audit firm to render an opinion on the fairness of the financial statement presentation of a transaction's tax effects so long as the audit firm has not rendered advice in respect of the merits of a transaction — *i.e.*, whether the client's treatment of a

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<sup>1</sup> PCAOB Release No. 2004-015, December 14, 2004.

transaction or position will be sustained — or for protection of the audit client from the assertion of penalties by the tax authorities or the courts. We recommend that the rules be so clarified.

Moreover, TEI submits that an auditor should be permitted, *in response to a client's request*, to address whether the firm believes the transaction is a listed transaction (or substantially similar to a listed transaction), a confidential transaction, or an aggressive tax position. The goal of maintaining auditor independence should not be to inhibit the client from communicating with its registered public accounting firm about the treatment of the client's transaction by the tax authorities; rather, the goal should be to preclude the auditor from bringing or promoting a transaction to the client or assisting in the transaction's planning or implementation on a forward-looking basis. Thus, an audit firm should always be permitted to recommend against an audit client's participation in a transaction or aggressive tax position. If a client chooses to participate in the transaction or aggressive tax position, there should be no impairment of the independence of the auditor merely because the client asked for the audit firm's assessment of the transaction. The decision whether to engage in a transaction should rest with the client, but the client should not be precluded from seeking the candid and timely advice of its auditor in respect of the treatment of the transaction.<sup>2</sup> In TEI's view, an auditor's independence should not be considered impaired unless the auditor is a material adviser,<sup>3</sup> *i.e.*, has, in return for consideration, promoted the transaction to the client and assisted in planning or engaging in a listed, confidential, or aggressive transaction by providing a "covered," "limited scope," or "other" opinion within the meaning of the recently revised rules under Circular 230 prior to the transaction's execution.<sup>4</sup>

2. The Board's Release notes that the proposed rules do not address situations where a transaction is planned or opined on by the auditor and becomes listed after it is executed. TEI believes that a transaction that an audit firm plans or opines on that subsequently becomes listed after its execution should *not per se* impair the auditor's independence. As a practical matter, many registrants have adopted a blanket policy against using their audit firms for any tax services. Other registrants are refraining from using their auditors for tax planning services. For those registrants that continue to use their registered public accounting firms for tax planning and compliance services, a *per se* rule that causes the audit firm to lose its independence automatically as a result of a subsequent listing of a transaction by the IRS would be extremely

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<sup>2</sup> The proposed rule could be interpreted as prohibiting an auditor from providing an opinion at a level of less than more likely than not for client-initiated transactions or for transactions where a non-audit firm acted as the tax adviser. We do not believe this is the intent, nor should it be. The proposed rule could also be read as precluding an audit firm from assisting a client in its appeal of a client-initiated transaction with a less than "more likely than not" likelihood of prevailing. Such a result would be inconsistent with the goal of permitting audit firms to continue rendering traditional tax services, including advocacy of client tax positions where the auditor has not marketed a transaction to the client.

<sup>3</sup> See, I.R.C. § 6111 for a workable definition of a material adviser.

<sup>4</sup> See T.D. 9165, 69 Fed. Reg. 75839, December 20, 2004, amending 31 C.F.R. part 10, the so-called Circular 230 regulations, which govern practice before the Internal Revenue Service.

harsh and disruptive. This is especially the case since the mere listing of a transaction by the IRS is not determinative of its proper tax treatment; rather, when a transaction becomes listed, the client is subject to a special disclosure obligation to ensure that the IRS is aware of the transaction and can challenge it. Thus, we recommend against adopting a rule that would retroactively deem the auditor to lose its independence for transactions undertaken before a transaction is listed.

Presumably, a transaction that subsequently becomes a listed transaction would — prior to its listing — have been considered an “aggressive tax position” within the meaning of proposed Rule 3522(c). In other words, in such a situation the auditor would have “opined on” or “planned” the treatment of a transaction that had only substantial authority or a reasonable chance of success but did not have sufficient authority to warrant a conclusion that the tax treatment of a proposed transaction was “more likely than not” allowable. In the event the Board concludes — contrary to TEI’s recommendation — that it should adopt a rule addressing the circumstances where an aggressive transaction subsequently becomes listed, then, at a minimum, a transaction that had a “more likely than not” chance of prevailing on the merits at the time the transaction was entered into should not cause an impairment of the auditor’s independence.

3. Both listed and confidential transactions are defined by reference to regulations adopted by the Department of the Treasury and Internal Revenue Service. Although those definitions are workable in respect of a U.S. registrant and the U.S. federal tax treatment of a transaction, it is unclear how, if at all, either provision would be applied to transactions under foreign, state, or local laws. We recommend that Rules 3522(a) and (b) be clarified and limited to planning or opining on the U.S. federal tax benefits of a transaction.

The “more likely than not to be allowable” standard set forth in Rule 3522(c) relating to aggressive tax positions is also a U.S. federal tax law concept, but the rule is broad enough to serve as a general rule addressing foreign, state, or local transactions if it is understood to mean a more than 50-percent likelihood of success in the relevant tax jurisdiction. We recommend that Rule 3522(c) be so clarified.

4. Rule 3522(c) states that an auditor may not plan or opine on a transaction<sup>5</sup> “that was initially recommended by the registered public accounting firm *or another tax advisor* and a *significant purpose of which is tax avoidance*, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.” (Emphasis supplied.)

a. The operative phrase “a significant purpose of which is tax avoidance” is not defined in the rule or the Release. We recommend that the Board provide a definition for “a significant purpose.” Now-superseded regulations under section 6111 of the Internal Revenue Code referred to items “structured to produce Federal income tax benefits that constitute an

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<sup>5</sup> The heading of Rule 3522(c) refers to “aggressive tax positions,” but the rule seemingly applies to “transactions.” We recommend that the Board clarify the header by changing “Aggressive Tax Positions” to “Aggressive Tax Transactions.”

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important part of the intended results of the arrangement.” The superseded regulations also provided exceptions for (1) transactions entered into in the ordinary course of business that were consistent with customary commercial practice and (2) transactions with well-accepted tax treatment. We recommend that the Board adopt a similar rule here.

b. Under the rule, any transaction recommended by “another tax advisor” (*i.e.*, any transaction entered into by the audit client that is not self initiated) that does not satisfy the “more likely than not to be allowable” standard would, if entered into by the client, seemingly impair the auditor’s independence. TEI questions why the proposed rules for auditor independence should apply to transactions “initially recommended” by *another* tax adviser. Where another tax adviser brings the transaction to the attention of the client, there is no mutuality of interest between the auditor and its client in respect of the transaction’s treatment. Thus, we believe the proposed rule is too broad and recommend that the phrase “or another tax advisor” be eliminated.

In addition, TEI recommends that the Board limit the rule’s application to completed transactions involving a minimum fee, say, \$250,000.<sup>6</sup> Without a minimum fee requirement, an informal exchange of ideas between tax professionals at an educational seminar, reception, or athletic event might be swept into the other tax adviser prong of the rule. As important, the terms “planning, or opining on the tax treatment of, a transaction” in the preamble of Rule 3522 are very broad and we believe it would be appropriate, especially in the context of 3522(c), to establish a minimum fee before an audit firm’s or “another tax advisor’s” activity is considered significant enough to cause a loss of the registered public accounting firm’s independence. Finally, unless a transaction is completed, a registered accounting firm would not lack independence because there would be no transaction reflected in the client’s financial statements that would be subject to audit.

5. The Release invites comment on whether other types of reportable transactions should be treated as *per se* impairments of an auditor’s independence. TEI does not believe it is necessary to expand the rules to address the other categories of reportable transactions (*i.e.*, transactions with contractual protection, certain loss transactions exceeding a dollar threshold, transactions involving brief asset holding periods, or to certain book-tax differences exceeding a dollar threshold). Although these transactions trigger a disclosure requirement, they encompass many routine transactions where the tax treatment is not in question. Thus, expanding the rules to include these transactions would not further the goal of ensuring an auditor’s independence.

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<sup>6</sup> I.R.C. § 6111(b) defines a “material advisor” as anyone who renders material assistance in carrying out a reportable transaction and who receives a fee in excess of a dollar threshold. For a corporation that engages in a reportable transaction, the threshold is \$250,000.

### **Rule 3523 — Tax Services for Senior Officers of Audit Clients**

Under proposed Rule 3523, a registered public accounting firm is not independent of its audit client if the firm or any affiliate of the firm provides tax services to an officer in a “financial reporting oversight role” at an audit client. Again, TEI believes the proscription against auditors providing tax services to an officer of an audit client is generally sound. We recommend though that the Board consider clarifying which officers are subject to the rules, perhaps by cross reference to the SEC’s definition of an officer for purposes of the insider trading rules under section 16 of the Securities Exchange Act.<sup>7</sup> If TEI’s recommendation is not accepted, then, at a minimum, the rules should clarify specifically that employees who serve in an overseas assignment working for a *subsidiary* of the registrant-issuer are *not* covered unless they serve in a “financial reporting oversight role” for the *registrant-issuer*. Thus, nearly all expatriates working for a subsidiary of the registrant-issuer would be able to receive tax services from the auditor or the auditor’s affiliates.

In addition, we recommend adoption of a transition rule exception for the tax year of the affected officers during which these rules become effective. In other words, if the proposed rule were adopted in 2005, we believe it would be appropriate to permit the client’s auditor — subject to disclosure to, and approval by, the client’s audit committee — to supply tax services to the affected individuals for the calendar year 2005 tax return.<sup>8</sup> Finally, if an auditor has supplied tax services to an officer in the past, there should be a transition rule that permits the accounting firm to respond to inquiries from, or audits by, tax authorities in respect of returns filed or transactions undertaken in connection with the officer’s prior year returns. Because of the time lag between the filing of a return and its examination by the tax authorities, a transition rule for tax services rendered prior to the adoption of a final rule will be useful and necessary.

The Release invites comments on whether the prohibition on providing tax services to senior officers should be expanded to encompass other individuals at the audit client, including members of the client’s board of directors. TEI believes the proposed rule provides a clear demarcation and should *not* be expanded. There are only four international accounting firms that most multinational companies are able to employ. Moreover, many individuals who serve as members of boards of directors serve on multiple companies’ boards. Expanding Rule 3523 to

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<sup>7</sup> See 17 C.F.R. § 240.16a-1(f). The term “officer” shall mean an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer’s parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust.

<sup>8</sup> In addition, a permanent transition rule would be beneficial in order to address situations where an individual becomes a covered officer.

include all members of clients' boards of directors may preclude such individuals from using any of the Big-4 firms for tax services and create a significant disincentive to serving as a member of a board. If, contrary to TEI's recommendation, the scope of the rules is expanded, we recommend that the rule be limited to *no more than* the audit committee of a client's board of directors.

### **Rule 3524 — Audit Committee Pre-Approval of Certain Tax Services**

Under proposed Rule 3524, a registered public accounting firm is required in connection with seeking audit committee pre-approval to perform tax services for an audit client to provide the audit committee with a copy of the engagement letter, any amendment to the engagement letter, or any other agreement between the firm and the audit client disclosing the scope of the services and fee structure, including any fee-sharing arrangement.

Although TEI believes it is appropriate for the Board to consider providing guidance fleshing out the Act's and the SEC's pre-approval requirements, we regret that Rule 3524(a)(i) is far broader than necessary and imposes undue burdens on clients and audit committees as well as audit firms. More important, there is no evidence (and it is at least premature) to suggest that the SEC's pre-approval rules are not working. Even without Rule 3524(a)(i), prudent audit committees have adopted pre-approval policies pursuant to which they currently obtain significant amounts of information about the nature, scope, and cost of the tax services to be provided by a company's auditors. The proposed rule would effectively eliminate the flexibility that the SEC's rules afford to audit committees to decide which tax services engagements are material and warrant detailed review, which can be addressed summarily, and which can be given a blanket annual pre-approval subject to client personnel adhering to the policy guidelines adopted by the audit committee or the full board of directors in connection with the approval of the tax services.<sup>9</sup> Moreover, the proposed rule would create one standard for pre-approval of tax services while the SEC's rule would apply in respect of pre-approval for all other non-audit services. We believe the dual standard may confuse audit committees.

Engagement letters can run 30 to 40 pages or more, including a substantial amount of legal boilerplate that does not relate to the nature, scope, or cost of the tax services. For any one client, there may be numerous services provided during the course of a particular year, each pursuant to a separate engagement letter. Thus, under a literal application of Rule 3524(a)(i) audit committees may be inundated with hundreds of pages of documents that could be beneficially summarized by the auditor in several paragraphs (or a few pages) of a well-tailored

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<sup>9</sup> For example, in certain foreign jurisdictions, the tax return closely follows the statutory accounts attested to by the auditor. In the interest of efficiency, the local auditor (which may or may not be the same firm used in the United States) will often prepare the income tax return pursuant to a locally approved engagement. It is unclear how the purposes of the Act would be enhanced by requiring the audit committee to obtain each local engagement letter, translate them to English where necessary, and specifically approve each engagement in advance.

description. Requiring audit committees to read through each engagement letter and specifically approve each separate engagement in advance would substantially increase the workloads of audit committee members.<sup>10</sup> Indeed, the additional workload might distract audit committees from their oversight duties in other areas and thus be counterproductive to the goals of the Act. In addition, the added burden involved in approving tax services rendered by a company's auditors may lead many audit committees to adopt a blanket prohibition against using the company's auditor for routine tax compliance and planning services. Such a result would be clearly inconsistent with congressional intent, the SEC's rules, as well as the Board's expressed intention of permitting — even encouraging — auditors to supply routine tax planning and compliance services to their clients.<sup>11</sup>

In lieu of requiring the audit committee to obtain, read, and maintain all the legal boilerplate documentation for every engagement, we recommend that the Board consider permitting accounting firms to submit a description of the key terms of their agreements along with a detailed summary of the services to be provided in respect of each material engagement. In the event that the Board concludes that a stringent documentation requirement similar to Rule 3524(a)(i) is necessary under certain circumstances in order to buttress the SEC's pre-approval rules, we urge the Board to consider adopting a *de minimis* exception or supplying a definition of "material" tax services engagements subject to more stringent documentation, review, and approval requirements. For example, the Board might require the audit committee to review and specifically approve engagements for tax services where the fee for tax services would exceed the greater of five percent of the annual audit fee or \$250,000.

Under Rules 3524(b) and (c), audit committees would be supplied with information to render a meaningful judgment about the independence of the auditor supplying the tax services. Thus, we believe that the burden of the documentation requirement can be reduced without undermining the audit committee's governance role and duties. We urge the Board to significantly narrow the scope and application of Rule 3524(a)(i).

## Other Issues

Under sections 201 and 202 of the *Sarbanes-Oxley Act of 2002* and the Board's proposed rules, audit firms may supply tax return preparation and tax compliance services (subject to the client audit committee's pre-approval), but may not supply legal advocacy services such as

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<sup>10</sup> Most audit committees meet on a regular basis, but not necessarily every month. Requiring audit committees to obtain the required level of detailed documentation for every engagement no matter how minor the tax services will not only increase the committee's workload, but also potentially impair the timeliness of the tax services.

<sup>11</sup> There are only four audit firms that most multinationals can employ on a worldwide basis for both tax and audit services. Indeed, with conflicts of interests among clients and with disparities among the firms' expertise in various jurisdictions, there are fewer than four firms that multinational clients can employ in any particular country. If the proposed rule discourages audit committees from using the auditor for tax services, companies may have only one or no choice among the Big-4 firms in a particular country.

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representing the audit client before a court or providing certain “expert services” for the purpose of advocating the client’s position in a controversy. TEI recommends that the Board explicitly recognize that when an audit firm supplies tax return preparation or tax compliance services, the firm is obligated to the client and to the relevant taxing authority, such as the IRS, to explain and document its work upon request. Where a client’s senior tax executive decides to outsource some of the company’s tax return preparation or compliance work, the executive does so because the tax department lacks the internal resources or expertise to perform the work. The lack of resources or expertise extends to presenting, explaining, documenting, and defending the work before a revenue agent or an Appeals officer. A representation by the audit firm in these forums that it believes its work was correct should not be considered to rise to the level of advocacy. The Board should recognize that it is in the best interests of tax administration and the investing public for audit firms to be able to explain and document routine compliance and tax return preparation work without undue concerns about impairment of independence.<sup>12</sup> Audit firms should be permitted to perform a routine assistance role for the tax department without being viewed as impairing their independence.

## Conclusion

TEI appreciates the opportunity to comment on the proposed rules and would be pleased to discuss the comments with the Board or its staff. These comments were prepared under the aegis of TEI’s Federal Tax Committee, whose chair is Neil D. Traubenberg. If you should have any questions about the comments, please do not hesitate to contact Mr. Traubenberg at 303.673.3904 or [neil\\_traubenberg@stortek.com](mailto:neil_traubenberg@stortek.com) or Jeffery P. Rasmussen of the Institute’s legal staff at 202.638.5601 or [jrasmussen@tei.org](mailto:jrasmussen@tei.org).

Respectfully submitted,



Judith P. Zelisko  
*TEI International President*

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<sup>12</sup> It would be consistent with both congressional intent and the SEC’s rules permitting registered public accounting firms to provide tax services for the Board to explicitly recognize the auditor’s obligation to provide the follow-up services described. If the Board’s rules were otherwise, a transition rule would be necessary because of the normal lag in the completion of tax audits. Specifically, compliance and return preparation work performed prior to the passage of the *Sarbanes-Oxley Act of 2002* is currently being reviewed by tax authorities and it would be appropriate to permit the audit firms to complete those engagements.

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**From:** James Tercek [jimtercek@usa.net]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Tercek  
2890 S Ridge Rd  
Perry, OH 44081-9670

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**From:** Theresa Terhark [jas90m@aol.com]  
**Sent:** Tuesday, January 18, 2005 8:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Theresa Terhark  
2328 Sumac Cir  
Woodbury, MN 55125-3941

---

**From:** Anthony Terich [aj.terich@verizon.net]  
**Sent:** Tuesday, January 18, 2005 8:00 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

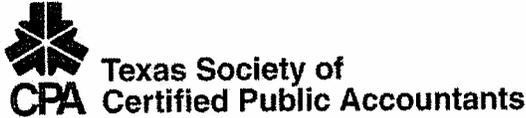
Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Anthony Terich  
43513 Ridge Park Dr  
Temecula, CA 92590-3690



February 11, 2005

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

RE: PCAOB Rulemaking Docket Matter No. 017

Members of the PCAOB:

One of the expressed goals of the Texas Society of Certified Public Accountants (TSCPA) is to speak on behalf of its members when such action is in the best interest of its members and serves the cause of Certified Public Accountants in Texas, as well as the public interest. The TSCPA has established a Professional Standards Committee (PSC) to represent those interests on accounting and auditing matters.

We appreciate the opportunity to provide input into your deliberations regarding the proposed rule concerning independence, tax services and contingent fees.

The TSCPA PSC is in agreement with a majority of the rule changes being proposed in this document. We believe the proposed rules will strengthen the public's confidence in the auditor/client relationship and provide greater transparency and objectivity in the performance of professional services. However, there are two issues we wish to raise for the Board's consideration.

First, we respectfully suggest the Board consider including one additional tax service in the discussion as requested on page 17 of the proposed rules. We request the Board include a service we believe is often provided by tax practitioners. This common service involves providing written advice concerning the qualifications of a qualified plan. We believe consideration should be given to including this as a permissible service as defined in the proposed rules.

Our second suggestion involves the guidance surrounding Proposed Rule 3524 dealing with pre-approval of an issuer audit client's audit committee to perform tax services that are not otherwise prohibited. The proposed rule requires the registered public accounting firm to:

- Provide the audit committee detailed documentation of the nature and scope of the proposed tax service;
- Discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the audit committee.

The TSCPA PSC believes the amount of detail involved in such a pre-approval process is far in excess of the benefit to be derived from such an exercise. We have no problem with informing the audit committee of the services to be performed, but to provide

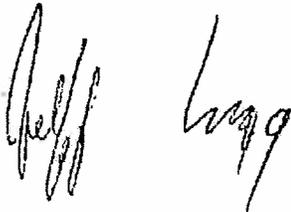
Public Company Accounting Oversight Board  
February 11, 2005  
Page Two

"detailed documentation of the nature and scope of the proposed tax service," and then "discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service" appears to be more information than is necessary for the types of tax services that would be subject to these rules.

We suggest the registered public accounting firm be required to submit some form of summary documentation regarding the tax service to be performed, the reason for its performance, and the amount of time and fee considerations involved. This summary should include an invitation to members of the audit committee to request a more detailed explanation of the nature and scope of the proposed tax service and the impact such tax service would have on the firm's independence. We believe this type of guidance would result in an efficient and meaningful pre-approval process and provide members of the audit committee the ability to request additional information when they consider such a request necessary.

We appreciate the opportunity to provide our input to the standard setting process.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Jeff Gregg". The signature is written in a cursive, somewhat stylized font.

C. Jeff Gregg, CPA  
Chairman, Professional Standards Committee  
Texas Society of Certified Public Accountants

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**From:** Phyllis Thakis [pthakis@cau.edu]  
**Sent:** Tuesday, January 18, 2005 1:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Phyllis Thakis  
1203 Woodland Ave SE  
Atlanta, GA 30316-3147

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**From:** Chan Thanawalla [cbtict@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Chan Thanawalla  
6 Ironwood Dr  
Collegeville, PA 19426-3922

---

**From:** boniface thayil [onlyhiteck@aol.com]  
**Sent:** Tuesday, January 18, 2005 10:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Following my steep losses in the market in 2000 and 2001 I was horrified to learn of all the shenanigans that went on to make that possible. Needless to say Investment Bankers, Brokers, many executive officers of publically traded companies and accounting firms and the regulatory agencies were essentially responsible for what happened. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. boniface thayil  
5550 S Indigo Dr  
Gold Canyon, AZ 85218-5364

---

**From:** Chester Thomas [ez\_writer\_clt@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:07 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Chester Thomas  
505 Cherokee Ave SE  
Atlanta, GA 30312-3206

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**From:** James Thomas [jmichaelthomas@tennis.com]  
**Sent:** Tuesday, January 18, 2005 4:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. James Thomas  
5900 Hathaway Ln  
Chapel Hill, NC 27514-9618

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**From:** Joan Thomas [joansold@att.net]  
**Sent:** Tuesday, January 18, 2005 2:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Joan Thomas  
15785 Boeing Ct  
Wellington, FL 33414-8343

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**From:** Charles Thompson [nanchas@comcast.net]  
**Sent:** Wednesday, January 19, 2005 6:34 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Charles Thompson  
707 Reef Point Cir  
Naples, FL 34108-8702

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**From:** janet c. thompson [janetct1@att.net]  
**Sent:** Tuesday, January 18, 2005 6:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

janet c. thompson  
225 Kensington Rd  
Garden City, NY 11530-1314

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**From:** Johnie Thompson [jjetop1@internetoutlet.net]  
**Sent:** Tuesday, January 18, 2005 9:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Johnie Thompson  
2000 S Eagleson Rd  
Boise, ID 83705-3617

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**From:** Mary Thompson [slowfolk@neo.rr.com]  
**Sent:** Tuesday, January 18, 2005 4:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mary Thompson  
250 Lawrence St  
Ravenna, OH 44266-3238

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**From:** Nola L. Thompson [nltt@ktc.com]  
**Sent:** Wednesday, January 19, 2005 12:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. After loosing considerable sums from our savings for retirement, I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Nola L. Thompson  
1382 Upper Liveoak Rd  
Fredericksburg, TX 78624-3059

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**From:** Don and Roberta Timmerman [don2roberta@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 6:55 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Don and Roberta Timmerman  
N15878 Tamarack Rd  
Park Falls, WI 54552-8245

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**From:** Colum Tinley [none@nowhere.com]  
**Sent:** Wednesday, January 19, 2005 1:21 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Colum Tinley  
5391 Cape George Rd  
Port Townsend, WA 98368-9036

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**From:** David Tongel [legnot@charter.net]  
**Sent:** Tuesday, January 18, 2005 6:23 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Tongel  
88 Sagamore Rd  
Worcester, MA 01609-1744

---

**From:** Gary Trabucco [gary.trabucco@snet.net]  
**Sent:** Tuesday, January 18, 2005 2:47 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Gary Trabucco  
12 Red Horse Dr  
Gaylordsville, CT 06755-1222

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**From:** Meghan Tracy [meg1027@comcast.net]  
**Sent:** Tuesday, January 18, 2005 2:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Meghan Tracy  
185 Mesa Dr Apt 101B  
Costa Mesa, CA 92627-6652

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**From:** Ann Trinz [atrinz@aol.com]  
**Sent:** Tuesday, January 18, 2005 7:02 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ann Trinz  
4351 Saltillo St  
Woodland Hills, CA 91364-4430

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**From:** Frank Trumble [ft1010@adelphia.net]  
**Sent:** Tuesday, January 18, 2005 3:33 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Frank Trumble  
PO Box 181  
East Amherst, NY 14051-0181

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**From:** Albert Tully [almtully@comcast.net]  
**Sent:** Tuesday, January 18, 2005 10:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Albert Tully  
5464 Northway Rd  
Pleasanton, CA 94566-5447

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**From:** Bobby Ty [bxy11@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 4:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Bobby Ty  
41 Arlington Ave W Apt 102  
Saint Paul, MN 55117-3842

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**From:** Jason Tyburczy [jasontybur@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Jason Tyburczy  
3401 Koso St  
Davis, CA 95616-6036

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**From:** Kimberlee Ulrich [kulrich@state.pa.us]  
**Sent:** Wednesday, January 19, 2005 8:07 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Kimberlee Ulrich  
120 W Big Spring Ave  
Newville, PA 17241-1607

---

**From:** Sandra Upright [rupr167291@cs.com]  
**Sent:** Tuesday, January 18, 2005 7:21 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Sandra Upright  
494 Westwood Circle  
West Palm Beach, FL 33411

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**From:** Gene Vapenik [fringedweller@tds.net]  
**Sent:** Tuesday, January 18, 2005 7:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Gene Vapenik  
W5551 Center Rd  
Monroe, WI 53566-8834

---

**From:** THOMAS VAREHA JR [tvarehajr@yahoo.com]  
**Sent:** Sunday, February 20, 2005 11:53 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. THOMAS VAREHA JR  
1821 Paulding Ave  
Bronx, NY 10462-3117

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**From:** Frank Vastano [fvastano@patmedia.net]  
**Sent:** Tuesday, January 18, 2005 7:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Frank Vastano  
112 Perrine Pike  
Hillsborough, NJ 08844-4363

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**From:** Preston Vaughan [janepres@tampabay.rr.com]  
**Sent:** Tuesday, January 18, 2005 2:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Preston Vaughan  
12701 Noreast Lake Dr  
Tampa, FL 33612-3345

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**From:** Richard Vaughan [rvrealtor@msn.com]  
**Sent:** Tuesday, January 18, 2005 3:10 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. It is outrageous to consider otherwise unless you work for the corporate criminals and have no ethics or honor. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Richard Vaughan  
2282 Longbow Dr  
Twin Falls, ID 83301-4465

---

**From:** Louis Vitali [levitali@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 3:35 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Louis Vitali  
530 Delaware Ave  
Riverside, NJ 08075-3712



815 Ninth Street South  
La Crosse, WI 54601

The Honorable William McDonough  
Chairman  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, D.C. 20006-2803

Filed electronically at [comments@pcaobus.org](mailto:comments@pcaobus.org)

**RE: Comment on PCAOB Rulemaking Docket Matter No. 017,  
Proposed Rules to Strengthen Auditor Independence and  
Limit Inappropriate Tax Services**

Dear Mr. Chairman and Members of the Board:

This letter is written in strong support of proposed rules issued by the Public Company Accounting Oversight Board (PCAOB) to strengthen auditor independence and place appropriate limits on the tax services that a registered public accounting firm may provide to an audit client that is a publicly traded corporation.

Auditor independence is essential to public confidence in audited financial statements, but has long suffered from confusion over the requirements for independence and from indifferent enforcement. The proposed rules would revitalize this area by, first, codifying in plain language the fundamental principle that an auditor must maintain independence from an audit client throughout the audit period and related engagement. The proposed rules would also bar a registered public accounting firm from entering into a contingent fee arrangement with an audit client, from providing tax services to certain executives of the audit client, and from planning or opining on certain aggressive tax positions involving the audit client. They would also help clarify and enforce the statutory requirement in the Sarbanes-Oxley Act that registered public accounting firms obtain prior approval from the audit committee of a corporation's Board of Directors before performing any tax service for that corporation.

Together, the proposed rules provide a set of minimum standards that would help restore auditor independence, increase investor confidence in corporate financial statements, and rein in abusive practices within the U.S. tax shelter industry. In fact, the proposed rules would benefit from additional, strengthening provisions, as suggested below.

*David K. Banner, PhD*  
*Professor of Management*

tel: 608-796-3000 • fax: 608-796-3050 • [www.viterbo.edu](http://www.viterbo.edu)

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**From:** Robert Vogel [rjlcvogel@netscape.net]  
**Sent:** Wednesday, January 19, 2005 4:28 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Robert Vogel  
PO Box 155  
Shanksville, PA 15560-0155

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**From:** Steve Vu [svu\_tx@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Steve Vu  
6005 Danwood Dr  
Austin, TX 78759-4726

---

**From:** Laurel Wadley [strawberrystar@sisna.com]  
**Sent:** Sunday, January 23, 2005 12:37 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Laurel Wadley  
789 Ponderosa Dr  
Sandy, UT 84094-0213

---

**From:** William M Waldrip [m-waldrip@animail.net]  
**Sent:** Tuesday, January 18, 2005 5:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. Conflicts of interest must be avoided where possible. Enabling their establishment is clearly wrong. The auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. Auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. William M Waldrip  
2207 Forest Bend Dr  
Austin, TX 78704-4521

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**From:** Julie Waldrup [bwaldrup@sbcglobal.net]  
**Sent:** Tuesday, January 18, 2005 3:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Julie Waldrup  
92 Rocking Pine Pl  
The Woodlands, TX 77381-6312

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**From:** Carolyn Waller [caroline@thegrid.net]  
**Sent:** Tuesday, January 18, 2005 1:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Carolyn Waller  
23060 Lawson Ave  
Strathmore, CA 93267-9604

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**From:** Cindy Waltershausen [waltersh@mwt.net]  
**Sent:** Tuesday, January 18, 2005 9:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Cindy Waltershausen  
E1790 Jeffers Ln  
De Soto, WI 54624-6128

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**From:** Jeannette Ward [jeannetteward@cs.com]  
**Sent:** Tuesday, January 18, 2005 8:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Jeannette Ward  
3419 Shenandoah Ave  
Saint Louis, MO 63104-1721

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**From:** Shelly Wardell [edema53@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 12:01 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Shelly Wardell  
860 Caspers St  
Edmonds, WA 98020-2618

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**From:** Robert Waring [easymark@optonline.net]  
**Sent:** Tuesday, January 18, 2005 2:32 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Robert Waring  
100 Cuttermill Rd  
Great Neck, NY 11021-3126

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**From:** Jay Wasman [thejake94@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 7:30 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Jay Wasman  
22225 Calverton Rd  
Shaker Heights, OH 44122-2023

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**From:** Thomas Watson [tomwat@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:41 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. Please, let's clean up our acts as Americans so that we can trust our government and institutions again. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Thomas Watson  
3537 W 62nd Ave  
Denver, CO 80221-1907

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**From:** Judi Watt [wattfun@alltel.net]  
**Sent:** Wednesday, January 19, 2005 1:22 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Judi Watt  
1382 Center Dr  
Jamestown, PA 16134-5416

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**From:** Edward Waxman [erwaxman@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Edward Waxman  
2677 Carnegie Rd Apt 202  
York, PA 17402-3751

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**From:** Jayme Weare [scifidancer@yahoo.com]  
**Sent:** Thursday, January 20, 2005 9:56 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jayme Weare  
2709 1/2 S 13th St  
Omaha, NE 68108-1598

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**From:** Susan Wechsler [susan@hp.com]  
**Sent:** Tuesday, January 18, 2005 2:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Susan Wechsler  
1820 NE Vine Ave  
Corvallis, OR 97330-9207

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**From:** Michael Weekley [mhw16@juno.com]  
**Sent:** Friday, January 28, 2005 3:24 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 28, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Michael Weekley  
4610 Governor Kent Ct  
Upper Marlboro, MD 20772-5905

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**From:** Charles Wegrzyn [cew@garbage.com]  
**Sent:** Tuesday, January 18, 2005 2:18 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles Wegrzyn  
12 Baileys Ln  
West Newbury, MA 01985-1124

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**From:** Diane Weinberg [diane.weinberg@mscustoms.com]  
**Sent:** Tuesday, January 18, 2005 2:46 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Diane Weinberg  
245 E 54th St Apt 21S  
New York, NY 10022-4722

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**From:** Nancy Welch [pearl\_of\_egypt@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 2:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. These financial companies have compromised their integrity and misused the trust of the American public. This is a flaw in the system, which should of been corrected years ago, instead of waiting until it turned into a national crisis. Correcting it at this stage may not inspire potential investors to immediately feel confident in the financial statements of these public companies, or in the auditors who are responsible for auditing the financial accounts of these same companies. I myself have continued doubts, in all parties involved. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nancy Welch  
168 Brier Ln  
PO Box 239  
West Farmington, ME 04992-0239

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**From:** Erin Wells [synergistix84@aol.com]  
**Sent:** Saturday, February 05, 2005 10:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Feb 5, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. As an auditor myself, I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Erin Wells  
4085 NW 87th Ave  
Sunrise, FL 33351-6587

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**From:** Mary Wells [mwells@coin.org]  
**Sent:** Wednesday, January 19, 2005 4:37 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mary Wells  
605 Manor Dr  
Columbia, MO 65203-1745

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**From:** Darlene Wendt [wendt\_d@msn.com]  
**Sent:** Tuesday, January 18, 2005 8:14 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Darlene Wendt  
33505 11th PI SW  
Federal Way, WA 98023-5310

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**From:** Jo Wesley [jwesley@socal.rr.com]  
**Sent:** Tuesday, January 18, 2005 6:36 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jo Wesley  
10201 Mason Ave Unit 40  
Chatsworth, CA 91311-3309

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**From:** E. Joseph West [ejkrwest@bellatlantic.net]  
**Sent:** Wednesday, January 19, 2005 12:06 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. E. Joseph West  
Skyline Square  
5501 Seminary Rd  
Falls Church, VA 22041-3901

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**From:** David Wexstein [wexstein@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. David Wexstein  
1858 S Cross Hollow Dr  
Cedar City, UT 84720-8285

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**From:** Larry Whipple [whipl@bellsouth.net]  
**Sent:** Tuesday, January 18, 2005 2:09 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Larry Whipple  
2320 SW 24th St  
Miami, FL 33145-3616

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**From:** Joel White [whiteplague@earthlink.net]  
**Sent:** Thursday, January 20, 2005 10:17 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Joel White  
PO Box 1061  
Cornelius, OR 97113-1061

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**From:** Vernon Whitney [vewcfw@swbell.net]  
**Sent:** Tuesday, January 18, 2005 5:40 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Vernon Whitney  
8411 Academy St  
Houston, TX 77025-2901

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**From:** christina wicker [smkngdv@aol.com]  
**Sent:** Tuesday, January 18, 2005 11:59 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. christina wicker  
815 W Harriett Ave  
Montesano, WA 98563-1003

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**From:** Stewart Wilber [s.wilber@mindspring.com]  
**Sent:** Monday, January 24, 2005 7:12 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 24, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Stewart Wilber  
801 Tom Smith Rd SW  
Lilburn, GA 30047-2215

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**From:** Jeanne Wilhelm [jeannedw@att.net]  
**Sent:** Tuesday, January 18, 2005 7:26 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jeanne Wilhelm  
170 E 3rd St Apt D  
New York, NY 10009-7759

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**From:** Charles F. Williams [wmsassociates@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 4:42 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Charles F. Williams  
12078 Callado Rd  
San Diego, CA 92128-2646

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**From:** J. Kent Williams [kwilliams1@triad.rr.com]  
**Sent:** Tuesday, January 18, 2005 8:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. J. Kent Williams  
1 Crab Tree Ct  
Greensboro, NC 27455-3427

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**From:** Keith Williams [p1call@frontiernet.net]  
**Sent:** Thursday, January 20, 2005 11:49 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Keith Williams  
41 Fontaine Dr  
Buffalo, NY 14215-2005

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**From:** Ronald Willams [roncwms@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:15 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I do not believe that a public corporation's auditors should be allowed to give tax advice to its officers or to its directors. That's a potential conflict of interest. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ronald Willams  
11226 Tradition View Dr  
Charlotte, NC 28269-1416

---

**From:** susan Williams [peacefamily137@msn.com]  
**Sent:** Saturday, January 22, 2005 6:16 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 22, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. susan Williams  
7575 Quiet Cove Cir  
Huntington Beach, CA 92648-6826

---

**From:** Janet Wilson [janetaw@comcast.net]  
**Sent:** Wednesday, January 19, 2005 12:02 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Janet Wilson  
1711 Wildberry Dr Unit F  
Glenview, IL 60025-1745

---

**From:** Kent Wilson [wkentw@comcast.net]  
**Sent:** Thursday, January 20, 2005 4:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Kent Wilson  
1711 Wildberry Dr Unit F  
Glenview, IL 60025-1745

---

**From:** pamela wilson [pwmilestones@hotmail.com]  
**Sent:** Thursday, January 27, 2005 1:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 27, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. pamela wilson  
1471 Blake St  
Berkeley, CA 94702-2103

---

**From:** Tim Wilson [timwilson@rocketmail.com]  
**Sent:** Tuesday, January 18, 2005 2:11 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tim Wilson  
2827 Quail Oak St  
San Antonio, TX 78232-1816

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**From:** Thomas Windberg [tjwindberg@hotmail.com]  
**Sent:** Tuesday, January 18, 2005 5:57 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Thomas Windberg  
2416 Pace Bend Rd S  
Spicewood, TX 78669-2619

---

**From:** Warren Winter [wwinter1@comcast.net]  
**Sent:** Thursday, January 20, 2005 2:50 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Warren Winter  
3488 Indian Ln  
Atlanta, GA 30340-2708

---

**From:** Tony Witlin [tony.fla@verizon.net]  
**Sent:** Tuesday, January 18, 2005 2:04 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Tony Witlin  
6079 Bayou Grande Blvd NE  
St Petersburg, FL 33703-1801

---

**From:** Ernest Wittenbreder [etecwitt@npgcable.com]  
**Sent:** Wednesday, January 19, 2005 10:27 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ernest Wittenbreder  
3260 S Gillenwater Dr  
Flagstaff, AZ 86001-8946

---

**From:** darlene wolf [navistar@wildmail.com]  
**Sent:** Wednesday, January 19, 2005 2:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

darlene wolf  
1705 Gordon Dr  
Naples, FL 34102-7553

-----Original Message-----

**From:** Bernard Wolfman [mailto:wolfman@law.harvard.edu]

**Sent:** Wednesday, December 15, 2004 1:33 PM

**To:** Rivshin, Bella; Scates, Greg

**Subject:** Rulemaking Docket Matter No. 017, Release No. 2004-015

Dear Ms. Rivshin and Mr. Scates:

I commend the effort that the PCOAB is making to establish a clear rule that would help assure the independence of an auditor of a public company. The Rule that the PCOAB proposes, however, does not go far enough. An auditor of a public company should not be permitted to render tax services **to any company**, whether the company is an audit client of the auditor or not, except for routine compliance work and tax return preparation. The reasons for this are set forth in my short piece, '*Sarbanes-Oxley*' Needs Fixing, 71 U.S. Law Week 2083 (Aug. 13, 2002), a copy of which is attached to this message. If you would, please accept that piece as a Comment to the Proposed Rule and provide copies to the members of the Board.

If you or any member of the Board has questions or would like further elaboration of my views, I will be happy to respond. I would also be pleased to come to Washington to discuss my views with you or with any member of the Board if you or any Board member would like me to do so.

Thank you.

Bernard Wolfman  
Fessenden Professor of Law  
Harvard Law School  
Cambridge, MA 02138  
Tel: (617) 495-4623  
Fax: (617) 496-4865

**BNA, Inc. - United States LAW WEEK**

Volume 71 Number 6 Page 2083

Tuesday, August 13, 2002

ISSN 1522-4317

**'Sarbanes-Oxley' Needs Fixing****By Bernard Wolfman**

*Bernard Wolfman is the Fessenden Professor of Law at Harvard Law School, where he teaches and writes on federal income taxation and on standards of tax practice.*

On July 30, 2002, President Bush signed the Sarbanes-Oxley Act of 2002, a law designed in large part to assure the public that the certified financial reports of public companies are reliable. To do so it seeks to eliminate auditor conflict, an important goal that the Act will not achieve unless Congress amends it in two significant respects.

Although it should go without saying, and as recent shameful events remind us, the obligation of an auditor is to maintain a single focus, with a loyalty that is undivided. The auditor's service and fidelity must be dedicated to the public investor and not to the company it is auditing. To that end the Act prohibits an auditor from performing non-audit services for its audit clients. In listing the non-audit services that it covers, the Act includes "legal services and expert services unrelated to the audit," services that are often grouped under the term "consulting." The Act does, however, permit an auditor to provide tax services to its audit client if the company's audit committee gives its approval. The purpose of tax advice and tax planning in connection with a company's prospective transaction is, of course, to save it taxes. Frequently such consulting activity is successful, and it attains its objective legitimately, but at times it does so questionably or even illegitimately. The line between the questionable and the legitimate is sometimes clear, sometimes fuzzy.

**Tax Services Should Be Banned**

Those who sell tax shelter plans to corporations do so for big dollars. When it can find them, the IRS will often have reason to disallow the shelters and will do so. Investors and prospective investors in those companies should be able to tell from looking at a company's financial statements whether the auditor thinks that the tax shelters in which the company has invested are vulnerable to IRS attack. If the auditor thinks so, it should make sure that the company's reserve for taxes is large enough to account for the additional taxes the company may have to pay if the IRS disallows the shelter. At the least, a footnote to the financials should note the prospect. No auditor who has sold a company a tax shelter or other tax minimization plan should audit that company because clearly the auditor would be conflicted. Either the auditor would have to indicate that the plan it sold the client was vulnerable or it would have to hide something from public investors that they need to know. Just as the prohibition of an auditor's rendering non-tax expert services to an audit client may not be waived by the audit committee, so the conflict posed by tax planning should not be subject to waiver. There is too much at stake to permit otherwise, and the Act should be amended promptly to correct this flaw. The amendment should not ban an auditor's tax services other than those involving transactional tax advice and planning, since there is no need to prohibit an auditor's preparation of tax returns or its performance of tax compliance work for its audit clients.

### **Other Consulting Services Too**

Although auditors are prohibited from performing non-audit services for audit clients, the Act allows them to do so for everyone else. At first blush this may sound reasonable, yet it is anything but. A serious problem lies in the fact that the Big Five accounting-consulting firms are dominant when it comes to the audit of public companies. The Big Five audit more than 90 percent of them. Moreover, all five sell essentially the same types of consulting services and products. Even those that proclaim that they have rid themselves of much of their consulting activity have retained all of their tax consulting. And so, for example, if Deloitte and Touche audits Coat Co. and sells a tax shelter plan to Hat Co., audited by KPMG, there would be no violation of the law. But to allow that result would be naive at best because Arthur Andersen or Ernst & Young or KPMG or PwC has sold Coat Co. a tax shelter similar in all major respects to the one that

Deloitte sold to Hat Co. It would, therefore, be unlikely, indeed bizarre, for Deloitte to require Coat Co. to footnote the vulnerability of the plan it bought from, say, PwC, when Deloitte has been marketing the same kind of shelter to Hat Co. as well as to every other company that it does not audit. The reality is that conflict of interest is present whenever the auditor of a public company renders non-audit services to anyone, not just to its audit clients.

As enacted, Sarbanes-Oxley will fail to secure auditor independence, but a simple amendment will correct the failure. First, the amendment should include tax services (other than return preparation and compliance work) among the expert services that are prohibited to auditors, not permitting the prohibition to be waived by an audit committee, just as all the other expert services may not be waived. Second, the amendment should prohibit an auditor from performing non-audit services for anyone, not just for its audit clients, thereby requiring that auditors stick to their auditing.

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**From:** jerome wondoloski [jwondo1@yahoo.com]  
**Sent:** Tuesday, January 18, 2005 1:53 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. jerome wondoloski  
555 Sterling Hill Dr  
Lawrenceville, GA 30045-2410

---

**From:** Tami Wrice [t-wrice@wildmail.com]  
**Sent:** Tuesday, January 18, 2005 2:13 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Tami Wrice  
2179 Sunrise Cir  
Park City, UT 84060-7409

---

**From:** Daniel Wolter [dwolter@umich.edu]  
**Sent:** Tuesday, January 18, 2005 5:58 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Dr. Daniel Wolter  
1134 Walnut St  
Napa, CA 94559-2208

---

**From:** Jean Woodman [mountnbird@aol.com]  
**Sent:** Tuesday, January 18, 2005 4:45 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Jean Woodman  
1501 Ashland Ave  
Evanston, IL 60201-4089

---

**From:** Gary Wortman [gwort1@aol.com]  
**Sent:** Thursday, January 20, 2005 4:48 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Gary Wortman  
11809 Triple Crown Rd  
Reston, VA 20191-3044

---

**From:** Dave Wylie [davewylie@mail.sseworks.com]  
**Sent:** Tuesday, January 18, 2005 1:52 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Dave Wylie  
1204 Wicklow Dr  
Cary, NC 27511-4422

---

**From:** Willard Wynne [wilard@ix.netcom.com]  
**Sent:** Wednesday, January 19, 2005 12:22 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Willard Wynne  
473 Nancy Jack Rd  
Gerrardstown, WV 25420-3826

---

**From:** Nancy Yamagata [nyamagata@att.net]  
**Sent:** Thursday, January 20, 2005 6:00 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 20, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Nancy Yamagata  
1139 Nolan Ave  
Chula Vista, CA 91911-3634

---

**From:** Susan Yango [yango@un.org]  
**Sent:** Tuesday, January 18, 2005 2:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mrs. Susan Yango  
53 Headley Rd  
Morristown, NJ 07960-5913

---

**From:** Tabatha Yeatts [tabatha@threeleggeddragon.com]  
**Sent:** Tuesday, January 18, 2005 5:25 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Ms. Tabatha Yeatts  
10624 Tuppence Ct  
Rockville, MD 20850-3930

---

**From:** richard zaengle [rhzleh@earthlink.net]  
**Sent:** Tuesday, January 18, 2005 6:29 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

richard zaengle  
125 Boom Way  
Little Egg Harbor Twp, NJ 08087-2045

DAVID L. ZALLES, CPA  
2014 SPRING MILL ROAD  
LAFAYETTE HILL, PA 19444-2110  
610-825-3366  
[dlzallestaxes@msn.com](mailto:dlzallestaxes@msn.com)

Public Company Accounting Oversight Board  
Office of the Secretary  
1666 K Street, NW  
Washington, DC 20006-2803

March 2, 2005

**Rulemaking Docket Matter No. 017, release No. 2004-015: Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees**

Gentlemen :

I am a sole practitioner who has practiced since 1961, and have no public clients.

However, I believe that you must differentiate between the regulations for closely-held clients and public clients. The small businessman relies on his accountant for business advice, and preparation of financial statements and tax returns, both for the business and personally. I believe that it would cause irreparable harm if you forced small businesses to have separate accounting firms preparing the tax returns vs. preparing the financial statements. They are integrated services.

I can understand your concern about accounting firms developing tax shelter type transactions, and then reporting on them in the financial statements, and preparing tax returns with these strategies which might be of questionable status. But those situations do not exist usually for closely-held small businesses. I think that they should be excluded from such restrictions. Actually, I think that even the "Big Four" should be permitted to prepare business (partnership or corporate) tax returns for public companies, so long as there is no "tax shelter type activity" involved. Also, they should be permitted to prepare the tax returns of officers, executives, and even audit committee members. This will provide consistency of reporting, and might disclose to the practitioners activities that might require further scrutiny by the "auditor".

Another situation that I wish to comment on is "contingent fees". I believe that tax return preparers should be permitted to bill on a "contingent-fee basis" for services other than the initial preparation of a tax return, or for the amending of a tax return they prepared.

If the initial tax return was prepared by another firm, then a tax practitioner should be permitted to bill on a "contingent-fee basis" to correct items that he has discovered which will result in a lower tax liability, and probably a refund. His "expertise" should be rewarded beyond just hourly rates for the "value" of his services. In a practical sense, how can anyone monitor what the value of those services are on an hourly basis at "premium" rates, versus a percentage of the tax saving? (I'm assuming that the services are performed in a professional manner, not just making an adjustment to generate a questionable refund and a fee.)

I have confirmed with the IRS that all amended tax returns for refunds are reviewed by at least 1 IRS representative, and that those beyond some certain figure are actually reviewed by 2 or 3 people before a refund check is issued. The basic "tenet" of contingent-fee regulations has always been that the tax return must be "reasonably expected" to be reviewed by the taxing authority. The IRS has confirmed that for all practical matters this is what is done. (Obviously, a \$ 500 adjustment resulting in a \$ 125 refund would probably not be given more than a cursory review by the IRS at best. But also, it would be rare that a situation this small would be on a "contingent-fee" basis anyway. Since "contingent-fee" arrangements would almost always involve larger amounts, therefore the greater the probability that the IRS would be reviewing it 1 or more times.

I appreciate your considering comments from the "other end" of the profession.

Sincerely,

A handwritten signature in black ink that reads "David L. Zalles, CPA". The signature is written in a cursive, slightly slanted style.

David L. Zalles, CPA

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**From:** Ralph Zarumba [zarumba@aol.com]  
**Sent:** Tuesday, January 18, 2005 2:01 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Ralph Zarumba  
3800 Genessee St  
Kansas City, MO 64111-3924

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**From:** Samz Zaslavsky [zsv2136@msn.com]  
**Sent:** Tuesday, January 18, 2005 8:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Samz Zaslavsky  
45 Fairview Ave  
New York, NY 10040-2718

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**From:** Glen Zorn [gwz@groovy.com]  
**Sent:** Tuesday, January 18, 2005 2:51 PM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 18, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Reverend Glen Zorn  
1310 E Thomas St Apt 306  
Seattle, WA 98102-5874

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**From:** Manuel B. Zuniga Sr. [manuelbzunigasr@yahoo.com]  
**Sent:** Wednesday, January 19, 2005 11:36 AM  
**To:** Comments  
**Subject:** Docket No. 017: End conflicts of interest!

Jan 19, 2005

Public Company Accounting Oversight Board

Dear Accounting Oversight Board,

I am writing to support your proposal to promote the ethics and independence of public accounting firms that audit and review financial statements of U.S. public companies. I believe that the auditing profession must reinforce its long-held ethical standards by helping to ensure that the auditor remains independent of his or her audit client. I believe that auditors compromise their independence when they sell tax shelters and other aggressive tax strategies to audit clients and when they provide tax services to the company officials who oversee the financial reporting process. I agree with the Securities and Exchange Commission that the independence requirement serves two related, but distinct public policy goals. One is to foster high quality audits by minimizing potential conflicts of interest, the other is to promote investor confidence in the financial statements of public companies. I support PCAOB's efforts and the overall proposal.

Sincerely,

Mr. Manuel B. Zuniga Sr.  
9707 Penn Ave N  
Brooklyn Park, MN 55444-1031



1666 K Street, NW  
 Washington, D.C. 20006  
 Telephone: (202) 207-9100  
 Facsimile: (202)862-8430  
 www.pcaobus.org

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ETHICS AND INDEPENDENCE RULES  
 CONCERNING INDEPENDENCE, TAX  
 SERVICES, AND CONTINGENT FEES

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 ) PCAOB Release No. 2005-014  
 ) July 26, 2005  
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 ) PCAOB Rulemaking  
 ) Docket Matter No. 017  
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Summary: The Public Company Accounting Oversight Board ("PCAOB" or "Board") is adopting rules to promote the ethics and independence of registered public accounting firms that audit financial statements of U.S. public companies. The rules treat a registered firm as not independent of a public company audit client if the firm, or an affiliate of the firm, provided any service or product to an audit client for a contingent fee or a commission, or received from an audit client, directly or indirectly, a contingent fee or commission. The rules also treat such a firm as not independent if the firm, or an affiliate of the firm, provided assistance in planning, or provided tax advice on, certain types of potentially abusive tax transactions to an audit client or provided any tax services to certain persons employed by an audit client. Further, the rules require registered public accounting firms to provide certain information to audit committees in connection with seeking pre-approval to provide non-prohibited tax services.

In addition to these rules relating to tax services, the Board also is adopting a general rule requiring registered public accounting firms and their associated persons to be independent of their audit clients throughout the audit and professional engagement period. Finally, the Board is adopting a rule on the responsibility of persons associated with registered public accounting firms not to cause registered public accounting firms to violate the Sarbanes-Oxley Act of 2002 (the "Act"), the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Securities



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and Exchange Commission issued under the Act, and professional standards.

### Public

Comment: The Board released for public comment proposed rules to promote the ethics and independence of registered public accounting firms on December 14, 2004. The Board received 805 letters of comment.

### Board

Contacts: Bella Rivshin, Assistant Chief Auditor (202/207-9180; rivshinb@pcaobus.org), or Greg Scates, Associate Chief Auditor (202/207-9114; scatesg@pcaobus.org).

\* \* \*

## I. Final Rules on Auditors' Provision of Tax Services

On December 14, 2004, the Board proposed certain rules related to registered public accounting firms' provision of tax services to public company audit clients. The proposal was designed to address certain concerns related to auditor independence when auditors become involved in marketing or otherwise opining in favor of aggressive tax shelter schemes and in selling personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients. The proposal was also based on the Board's recognition of the fact that accounting firms have long offered basic tax compliance services that have not raised significant questions about those firms' ability also to serve as independent auditors. The Board received 805 comment letters from investors, auditors, issuers, and others, most of whom, in general, supported the proposed rules.<sup>1/</sup>

In its release accompanying those proposed rules, the Board explained that its proposal was based on the foundation of existing auditor independence requirements established over time by the federal securities laws – and most recently by the Sarbanes-Oxley Act of 2002 (the "Act") – as well as by rules of the Securities and Exchange Commission (the "Commission" or "SEC") implementing such laws.

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<sup>1/</sup> Seven hundred forty of these comment letters were from individual investors expressing strong support for the proposal.



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Neither the federal securities laws nor the SEC's rules prohibit auditors from providing tax services to their audit clients, so long as such services are pre-approved by a company's audit committee (and so long as those services do not fall into one of several enumerated categories of expressly prohibited services).<sup>2/</sup> The SEC has recognized, however – most recently in connection with promulgating rules to implement the auditor independence provisions of Title II of the Act<sup>3/</sup> – that while it did not consider conventional tax compliance and planning to be a threat to auditor independence, the marketing of novel, tax-driven financial products raises more challenging auditor independence issues. On this basis, the SEC has cautioned that an audit committee should "scrutinize carefully" the retention of the company's auditor in a transaction initially recommended by the auditor "the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."<sup>4/</sup>

In addition to requiring the SEC to establish rules implementing the Act's prohibition of certain non-audit services, the Act vested in the PCAOB the authority to establish standards relating to ethics and independence in public company auditing. Specifically, Section 103(a) of the Act directs the Board, by rule, to establish "ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor

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<sup>2/</sup> On February 5, 2003, the Securities and Exchange Commission ("SEC" or "Commission") adopted rules to implement Title II of the Sarbanes-Oxley Act of 2002 (the "Act"). These rules address key aspects of auditor independence with special emphasis on the provision of non-audit services. The rules expressly prohibit ten categories of non-audit services, as required by Section 201 of the Act. Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11 (Jan. 28, 2003), 17 C.F.R. Parts 210, 240, 249, and 274.

<sup>3/</sup> See id.

<sup>4/</sup> Id. Moreover, the SEC's release accompanying its rules referred to the recommendation of the Conference Board's Commission on Public Trust and Private Enterprise that, as a "best practice," auditors not provide advice on "novel and debatable" tax strategies and products. Id. § II.B.11 at note 112.



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independence "as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act."<sup>5/</sup>

As discussed more fully in the Board's proposing release, since the SEC issued its new rules, two types of tax services have raised serious concerns among investors, auditors, lawmakers, and others relating to the ethics and independence of accounting firms that provide both auditing and tax services –

1. the marketing to public company audit clients of questionable tax transactions used improperly to avoid paying taxes or to manipulate financial statements in order to make such statements appear more favorable to investors, and
2. the provision of tax services, including tax shelter products, to executives of public company audit clients who are involved in the financial reporting process at such companies.

Indeed, in an April 2005 report issued since the Board's proposal, the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs (the "Subcommittee") found that some of the nation's largest accounting firms had in the past sold generic tax products to multiple corporate and individual clients despite evidence that some of those products were potentially abusive or illegal.<sup>6/</sup> In addition,

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<sup>5/</sup> Pursuant to this authority, in April 2003, the Board adopted as its interim, transitional, independence standards (PCAOB Rule 3600T) the American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct Rule 101 and related interpretations and rulings thereof, as they existed on April 16, 2003. PCAOB Rule 3600T notes that the interim standards do not supersede the Commission's auditor independence rules and, to the extent that a provision of the Commission's rules is more restrictive (or less restrictive) than the interim standards, the auditor must comply with the more restrictive rules. The PCAOB also adopted Independence Standards Board ("ISB") Standard Nos. 1, 2, and 3 and Interpretations 99-1, 00-1, and 00-2 as additional interim independence standards.

<sup>6/</sup> See Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, The Role of Professional Firms in the U.S. Tax Shelter Industry, S. REP. No. 109-54, at 6 (2005) (hereinafter "April 2005 Senate Report"). This report was based on a Subcommittee investigation that included



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the Internal Revenue Service ("IRS") and the U.S. Department of Justice have brought a number of cases against accounting firms in connection with those firms' marketing of tax shelter products and, specifically, those firms' alleged failures to register, or comply with list maintenance requirements relating to, their tax shelter products. Most recently, earlier this year, the IRS proposed a settlement initiative for executives and companies that participated in certain abusive tax avoidance transactions, at times with the assistance of the companies' auditors.<sup>7/</sup> At the time the initiative was announced, IRS Commissioner Mark W. Everson said that "[t]hese transactions raise[d] questions not only about compliance with the tax laws, but also, in some instances, about corporate governance and auditor independence."<sup>8/</sup> Specifically, the IRS concluded that "[r]eal or perceived conflicts of interest may exist where independent auditors certify to the public the accuracy and integrity of the company's financial statements and these auditors advise senior executives on their personal tax issues about abusive tax shelters they promoted, the same executives that oversee the relationship with the auditing firm."<sup>9/</sup>

The Government Accountability Office ("GAO") also has noted concerns about auditors' involvement in marketing abusive tax shelters to public companies. The GAO recently reported that 61 Fortune 500 companies obtained tax shelter services from

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hearings, in November 2003, in which the Subcommittee elicited testimony that described certain potentially abusive tax shelter products marketed through cold-call selling techniques by accounting firms and others. See also U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals: Hearings Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, 108th Cong. (2003) (hereinafter "U.S. Tax Shelter Hearings").

<sup>7/</sup> Announcement 2005-19, 2005-11 I.R.B. 1.

<sup>8/</sup> Internal Revenue Service ("IRS") News Release, Settlement Offer Extended for Executive Stock Option Scheme, IR 2005-17 (Feb. 22, 2005), available at <http://www.irs.gov/newsroom/article/0,,id=135596,00.html>. Commissioner Everson also said, "We believe a new climate under Sarbanes-Oxley, together with the tougher independence standards for auditors recently proposed by the Public Company Accounting Oversight Board make this sort of thing less likely going forward." Id.

<sup>9/</sup> Announcement 2005-19, 2005-11 I.R.B. 1.



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their external auditors during the period 1998 through 2003.<sup>10/</sup> The GAO also noted that the IRS considered some of these "transactions abusive, with tax benefits subject to disallowance under existing law, and other transactions possibly to have some traits of abuse."<sup>11/</sup>

While other organizations have focused on a variety of legal and ethical issues presented by the tax shelter business, the Board's proposal focused on whether tax services generally, or any class of tax services, impair an auditor's independent judgment, in fact or appearance, in its audit work. Thus, over several months, the Board considered a wide range of tax services, including routine tax return preparation and tax compliance; tax planning and advice relating to federal, state, local, and other tax laws; executive tax services; international assignment tax services; and tax shelter strategies and products. To assist the Board in its evaluation, the Board held a public roundtable discussion with individuals representing a variety of viewpoints, including investors, auditors, managers of public companies, governmental officials, and others.<sup>12/</sup>

Based on this evaluation, the Board developed a set of proposed rules designed to establish a framework for addressing the concerns that have arisen in connection with auditors' provision of tax services to their public company audit clients. Specifically, the proposed rules were designed, among other things, to prevent auditors from providing (1) certain aggressive tax shelter services to public company audit clients, (2) any other service to a public company audit client for a contingent fee, which is a fee arrangement often used in tax work, and (3) any tax service to certain persons who serve in financial reporting oversight roles at a public company audit client. The proposed rules also would implement the requirements of the Act and the SEC's

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<sup>10/</sup> See Tax Shelters: Provided by External Auditors, GAO-05-171 (2005) (hereinafter "GAO Tax Report").

<sup>11/</sup> Id.

<sup>12/</sup> The Board held the Auditor Independence Roundtable on Tax Services (the "Roundtable") on July 14, 2004. A list of Roundtable participants may be found at pages 2 and 3 of the transcript of the Roundtable. See Auditor Independence Roundtable on Tax Services (July 14, 2004), available at [http://www.pcaobus.org/Standards/Standards\\_and\\_Related\\_Rules/2004-07-14\\_Roundtable\\_Transcript.pdf](http://www.pcaobus.org/Standards/Standards_and_Related_Rules/2004-07-14_Roundtable_Transcript.pdf).



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independence rules when an auditor seeks audit committee pre-approval to provide tax services that are not prohibited by the Board's or the SEC's rules.

The Board also sought comment on whether additional types of tax services, such as tax compliance services, should be prohibited by a Board rule. After carefully considering the comments received on this issue, most of which supported the Board's preliminary determination to exclude certain kinds of tax services from the purview of its proposed rules, the Board has determined to adopt the rules, substantially as proposed, and not to restrict auditors' provision of other kinds of tax services. That is, auditors may continue to provide to their public company audit clients other kinds of tax services not expressly prohibited by the Board's rules, so long as such services are consistent with the Commission's independence requirements and so long as the auditor and audit committee have complied with the Act's and the Commission's requirements relating to audit committee pre-approval of such services.

There is some evidence that accounting firms already recognize the risks that involvement in clients' abusive tax shelters can pose, as well as the problems that can result from providing tax services to executives of audit clients. And, there is some evidence that such firms have made changes to their oversight of firm services in order to avoid such problems in the future. For example, in its April 2005 report, the Subcommittee found that, since the Subcommittee's investigation began, some of the largest firms had each committed to, among other things, "cultural, structural, and institutional changes to dismantle its tax shelter practice . . ."<sup>13/</sup> Moreover, some firms have announced significant internal reforms designed to restore confidence in the ethics and independence of their audit practices.

Against this backdrop, commenters generally supported the Board's proposal. In addition, the Subcommittee recommended in its April 2005 report that "the Public Company Accounting Oversight Board . . . strengthen and finalize proposed rules restricting certain accounting firms from providing aggressive tax services to their audit clients, charging companies a contingent fee for providing tax services, and using

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<sup>13/</sup> April 2005 Senate Report, supra note 6, at 6-7.

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aggressive marketing efforts . . . ."<sup>14/</sup> Also, the IRS noted its support for the Board's proposal in its response to the GAO's report on Tax Shelters.<sup>15/</sup>

Accordingly, today the Board is adopting final rules based on its December 2004 proposal. These final rules reflect modifications of the proposal in certain respects, largely due to insights derived from the Board's consideration of the comments received. Part II of this release describes the final rules, as well as modifications from the proposed version of the rules.

### II. Detailed Discussion of Rules and Consideration of Comments

The Board's final rules are intended to accomplish four objectives. First, the rules codify, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and standards. Second, the rules introduce a foundation for the independence component of the Board's ethics rules. That foundation includes a fundamental independence requirement and, as necessary and appropriate, additional rules addressing specific circumstances related to independence issues.

Third, the rules build on that foundation with provisions that identify certain impairments to an auditor's independence. Specifically, the rules treat a firm as not independent if it, or any of its affiliates, enters into a contingent fee arrangement relating to an audit client. Also, the rules treat a firm as not independent if it, or any of its affiliates, markets, plans, or opines in favor of certain types of aggressive tax transactions to or for public company audit clients. In addition, the rules treat a firm as not independent if it, or any of its affiliates, provides tax services to certain persons in a financial reporting oversight role at an audit client or to immediate family members of such persons.

Fourth, the rules require registered public accounting firms to provide audit committees certain information in connection with seeking pre-approval from such

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<sup>14/</sup> April 2005 Senate Report, supra note 6, at 8.

<sup>15/</sup> See GAO Tax Report, supra note 10, at 21 (in the IRS's official response to the GAO's report, IRS Commissioner Everson noted that "We support the December 2004 actions of the PCAOB on this problem!").



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committees, as required by the Act and the SEC's independence rules, to perform non-prohibited tax services for the audit client. The rules would require a firm seeking pre-approval to describe the terms of the tax services engagement to the audit committee and to engage in a substantive discussion with the audit committee about the potential effects of such services on the firm's independence.<sup>16/</sup>

### A. Responsibility Not to Cause Violations

Rule 3502, as proposed, provided that a person associated with a registered public accounting firm shall not cause that firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation. The Board proposed the rule to codify the ethical obligation of associated persons of registered firms not to cause registered firms to commit such violations. Proposed Rule 3502 also made clear that an associated person's ethical obligation is not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation.

The Board received a number of comments on proposed Rule 3502. Several commenters supported the rule as proposed and noted that they saw the rule as essential to the Board's ability to carry out its disciplinary responsibilities under the Act. Other commenters, however, including the largest accounting firms and an accounting trade association, did not support the rule as proposed. In general, these commenters objected to the proposed rule's use of a negligence standard in light of the complex regulatory requirements with which auditors must comply. Some of these commenters also questioned the Board's authority to adopt the proposed rule, or at least the proposed rule with a negligence standard.

The Board has carefully considered these comments and determined to adopt Rule 3502, with some modifications. The Board continues to believe that it is authorized to adopt the rule. Section 103(a) of the Act directs the Board to, "by rule, establish . . . such ethics standards to be used by registered public accounting firms in

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<sup>16/</sup> The rules also include several definitions that are integral to the operation of the rules.



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the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." The Board believes that the rule is an appropriate exercise of this authority to set ethical standards for accountants subject to the Board's jurisdiction.

Under the Act and Board rules, both registered firms and their associated persons must comply with PCAOB rules and standards, as well as related laws. When an associated person with such a responsibility causes the firm with which he or she is associated to violate such rules, standards or laws, this conduct operates to the detriment of the protection of investors and the public interest and may bear on the ethics of the responsible associated person. When such a person engages in this conduct with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to the firm's violation, the Board believes this conduct plainly reflects an ethical lapse by the responsible person and, therefore, is within the Board's authority – and indeed responsibility – to proscribe.

At least one commenter asserted that the proposed rule was not a proper exercise of the Board's ethics standards-setting authority because it reached a range of conduct, rather than delineating "particular impermissible conduct." The Board disagrees and believes the type of conduct addressed by the rule is plainly the type of conduct the Board's ethics rules can and should address. In fact, the accounting profession's existing ethical code at the time of enactment of the Act reaches any act that may "discredit[]" the profession – thereby reaching ranges of conduct, including violations of certain laws, rather than just specifying "particular impermissible conduct."<sup>17/</sup> When Congress vested the authority to set ethics standards in the Board, the Board believes it intended for this authority to be at least as broad as the scope of the existing ethics rules, at least as to matters within the Board's jurisdiction. This

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<sup>17/</sup> See AICPA Code of Professional Conduct, ET section ("sec.") 501, "Acts Discreditable" ("A member shall not commit an act discreditable to the profession."). Interpretations of this part of the ethical code provide that an accountant member will be considered to have committed a discreditable act if, among other things, he or she: "fails to comply with applicable federal, state or local [tax] laws or regulations," ET sec. 501.08, Interpretation 501-7; fails to follow applicable requirements of a governmental body, such as the SEC, in performing accounting services, ET sec. 501.06, Interpretation 501-5; or fails to follow government audit standards and rules in conducting a governmental audit, ET sec. 501.04, Interpretation 501-3.



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authority, in the Board's view, plainly includes the ability to require that persons subject to the Board's jurisdiction, as an ethical obligation, not cause a violation of relevant laws.

Commenters opposed to the proposed rule also sought to analogize the rule to a theory of liability that the Supreme Court rejected in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.<sup>18/</sup> In Central Bank, the Supreme Court held that that there is no private right of action for aiding and abetting a violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"). That decision turned on the fact that the text of Section 10(b) does not provide for aiding-and-abetting liability.<sup>19/</sup> The Board does not believe this decision affects the scope of the Board's explicit authority to set ethics standards under Section 103 of the Act.<sup>20/</sup> Again, the Board notes that the profession's existing ethics code also reaches what can be characterized as "secondary" conduct contributing to a violation.<sup>21/</sup>

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<sup>18/</sup> 511 U.S. 164 (1994).

<sup>19/</sup> See id. at 190 ("Because the text of § 10(b) does not prohibit aiding and abetting, we hold that a private plaintiff may not maintain an aiding and abetting suit under § 10(b).").

<sup>20/</sup> Rule 3502, of course, differs from an aiding-and-abetting cause of action in important respects. Among other things, the rule does not apply whenever an associated person causes another to violate relevant laws, rules and standards. Rather, Rule 3502 applies only when an associated person causes a violation by the registered firm with which the person is associated.

<sup>21/</sup> See AICPA Code of Professional Conduct, paragraph .02(2) of ET sec. 91, "Applicability" ("A member shall not knowingly permit a person, whom the member has the authority or capacity to control, to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the member, would place the member in violation of the rules. Further, a member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control."); see also ET sec. 102.02, Interpretation 102-1(c) (violation of ethics rules not just to sign, but to "permit[] or direct[] another to sign a document containing materially false and misleading information") (adopted as a Board interim ethics rule in Rule 3500T).



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The power to adopt Rule 3502 also is inherent in, and necessary to, the Board's authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons. Section 105 authorizes the Board to investigate and, when appropriate, discipline registered firms *and* their associated persons. Certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm. Such firms, however, can only act through the natural persons that comprise them, many of whom are "associated persons" subject to the Board's ethics standards and disciplinary authority. When one or more of those associated persons has caused that firm to violate PCAOB standards, rules, or related laws with the requisite state of mind, it is appropriate, and consistent with the Board's duty to discipline registered firms and their associated persons under Section 101(c)(4) of the Act, that the Board be able to discipline the associated person for that misconduct.<sup>22/</sup>

After carefully considering the comments received, the Board has determined, however, to modify the scope of Rule 3502 to apply only when an associated person causes the registered firm's violation due to an act or omission the person "knew, or was reckless in not knowing, would directly and substantially contribute to such violation." This revised formulation reflects two changes to the rule as proposed.

First, the Board has determined to change the state-of-mind requirement in the rule. Specifically, Rule 3502, as adopted, will apply to "an act or omission the [associated] person knew, or was reckless in not knowing," would cause the violation. While the Board believes it has the authority to adopt a negligence standard,<sup>23/</sup> the

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<sup>22/</sup> Some commenters suggested that the reference to "any act, or practice . . . in violation of this Act" in Section 105(c)(4) – the part of the Act authorizing the Board to impose certain sanctions – was inconsistent with the proposed rule. The Board notes, however, as it did in the proposing release, that Section 105(c)(5) expressly provides that the more severe of these sanctions may be imposed when intentional, knowing, or reckless conduct, or repeated instances of negligent conduct, "results in" violation of law, regulations, or professional standards.

<sup>23/</sup> A number of commenters argued that Section 105(c) of the Act prevents the Board from imposing discipline based on a negligence standard. The Board's determination to change the rule's state-of-mind requirement to recklessness moots these comments. The Board notes, however, that Section 105(c)(5) identifies a range of sanctions that the Board may not impose in the absence of knowing conduct,



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Board believes the revised standard strikes the right balance in the context of this rule. The Board believes that the phrase "knew, or was reckless in not knowing" is a well-understood legal concept, and the Board intends for the phrase to be given its normal meaning.

Second, the Board has determined to modify the phrase used to describe the connection between the associated person's conduct and the violation. Specifically, Rule 3502, as adopted, provides that the associated person's act or omission must "directly and substantially contribute to [the firm's] violation." In particular, "substantially" in this context means that the associated person's conduct (*i.e.*, an act or omission) contributed to the violation in a material or significant way. The term "substantially" also means, however, that the associated person's conduct does not need to have been the sole cause of the violation. "Directly" means that the associated person's conduct either essentially constitutes the violation – even though it is the firm and not the individual that actually commits the violation – or is a reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the violation. "Directly and substantially" does not mean that the associated person's conduct must be the sole cause of the violation, nor that it must be the final step in a chain of actions leading to the violation. In addition, the term "directly" should not be misunderstood to excuse someone who knowingly or recklessly engages in conduct that substantially contributes to a violation, just because others also contributed to the violation, or because others could have stopped the violation and did not. At the same time, the term does not reach an associated person's conduct that, while contributing to the violation in some way, is remote from, or tangential to, the firm's violation.

A number of commenters expressed concern that adoption of a negligence standard would allow the Board, or the SEC, to proceed against associated persons who in good faith, albeit negligently, have caused a registered firm to violate applicable laws or standards. For example, commenters suggested that the proposed rule could be used against compliance personnel within a firm who inadvertently design a firm's compliance system in a flawed manner. Commenters also expressed concern that, because the SEC can enforce PCAOB rules under Section 3 of the Act, the Board's rule could have the practical effect of altering the state-of-mind requirement applicable in SEC enforcement proceedings against accountants.

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reckless conduct, or repeated instances of negligent conduct. The Act does not similarly limit the Board's authority to impose certain other sanctions.



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It was not the Board's intention to establish a new standard for SEC enforcement of the securities laws and related applicable rules. The Board also recognizes that persons subject to its jurisdiction must comply with complex professional and regulatory requirements in performing their jobs. The Board does not seek to create through this rule a vehicle to pursue compliance personnel who act in an appropriate, reasonable manner that, in hindsight, turns out to have not been successful. Nor does the Board seek to reach those whose conduct, unbeknownst to them, remotely contributes to a firm's violation. At the same time, the Board continues to believe that it is necessary and appropriate for its ethics rules to apply when an associated person has engaged in an act or omission with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to a violation.<sup>24/</sup>

The Board also believes that, because the rule is essential to the functioning of the Board's independence rules, this rulemaking provides the appropriate forum to adopt the rule. For example, Rule 3521 provides, in part, that a registered firm is not independent of its audit client if the firm provides that audit client with a service for a contingent fee. When an associated person causes, in a manner consistent with the discussion above, the registered firm to provide that service for a contingent fee, Rule 3502 would allow the Board to discipline the associated person for that conduct.<sup>25/</sup>

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<sup>24/</sup> While the Board's proposed rule tracked some of the language of Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), the rule, as adopted, differs significantly from, and should not be interpreted in pari material with, that statutory provision.

<sup>25/</sup> Rule 3502, of course, is not the exclusive means for the Board to enforce applicable Board rules and standards against associated persons. Among other provisions, Rules 3100 and 3200T through 3600T directly require associated persons to comply with certain auditing and related professional practice standards. In addition, PCAOB standards generally contain directives to the "auditor." The term "auditor" is defined in PCAOB Rule 1001(a)(xii) to include both registered firms and their associated persons. Accordingly, an associated person of a registered firm that does not comply with such a directive may be charged with violations of such other standards, independent of any charges under Rule 3502.



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### B. Ethics and Independence

The final rules also create a foundation for the independence requirements of the Board's ethics rules. The rules introduce a new "Independence" subpart in the ethics rules. That subpart begins with Rule 3520, which articulates the fundamental independence requirement. The final rules also include additional rules that describe independence impediments in the particular context of contingent fee arrangements and tax services.

#### 1. The Fundamental Independence Requirement

Rule 3520 sets forth the fundamental ethical obligation of independence: a registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period. This requirement encompasses the independence requirements set out in PCAOB Rule 3600T and goes further, as a matter of the auditor's ethical obligation, to encompass any other independence requirement applicable to the audit in the particular circumstances. Accordingly, in the case of an audit client subject to the financial reporting requirements of the securities laws and the SEC's rules, the ethical obligation under Rule 3520 requires the firm and its associated persons to maintain independence consistent with the SEC's requirements.<sup>26/</sup>

By giving this scope to Rule 3520, the Board is not promulgating any new independence requirement. The Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately to lock in place any aspect of those requirements. Instead, Rule 3520 is based on the simple premise that ethical standards for auditors can and should encompass a duty by the auditor to maintain independence necessary to ensure compliance with independence requirements in the circumstances of the particular engagement.

A note to the rule emphasizes the scope of the obligation in the rule by pointing out that, even in circumstances to which the Commission's Rule 2-01 applies, a registered public accounting firm and its associated persons still may need to comply with other independence requirements, including those requirements separately

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<sup>26/</sup> 17 C.F.R. § 210.2-01.



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established by the Board. Using this foundation, the Board may adopt additional rules in the "Independence" subpart of the ethics rules that effectively set out additional requirements. As described below, with the new rules adopted today, the Board's independence rules include contingent fee arrangements and tax services.

After carefully considering the comments on proposed Rule 3520, the Board has determined to adopt the rule, with only one change. Most commenters supported the scope and content of the proposed rule. A few commenters, however, asked the Board to add text to the proposed rule to clarify or emphasize that the rule incorporates certain concepts in the existing independence requirements. While these comments are discussed in more detail below, the Board did not adopt these suggestions, as a general matter, because of the purpose of Rule 3520. Rule 3520 was simply intended to require, by Board rule, compliance with applicable independence requirements. The rule was not intended to, and does not, add to – or subtract from – these existing requirements. Nor is it intended to reflect the Board's conceptual approach to independence issues. Accordingly, while the Board does not necessarily disagree with the intent of the commenters who suggested adding text to the proposed rule, it does not believe it is necessary or appropriate to modify the rule to reflect their specific suggestions.

Three commenters suggested that Rule 3520 expressly require that auditors maintain independence from their audit client "both in fact and appearance." As proposed, the rule already requires auditors to maintain independence both in fact and appearance, because the SEC's independence rules – which are incorporated in Rule 3520, as discussed above – are "designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance."<sup>27/</sup> In addition, Statement on Auditing Standard ("SAS") No. 1, *Codification of Auditing Standards and Procedures*, adopted by the Board as an interim standard, requires that auditors "not only be independent in fact; [but also] avoid situations that may lead outsiders to doubt their independence."<sup>28/</sup> Therefore, the Board does not believe it is necessary to include this additional language in Rule 3520 to preserve these existing principles.

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<sup>27/</sup> 17 C.F.R. § 210.2-01, Preliminary Note 1; accord United States v. Arthur Young & Co., 465 U.S. 805, 819 n.15 (1984).

<sup>28/</sup> SAS No. 1, Codification of Auditing Standards and Procedures, paragraph .03 of AU sec. 220. The standard further states that "[p]ublic confidence would be impaired by evidence that independence was actually lacking, and it might also be



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Some commenters also recommended that Rule 3520 expressly include the SEC's four overarching independence principles that it will look to in determining whether a particular service or client relationship impairs the auditor's independence.<sup>29/</sup> Other commenters asked the Board to explicitly note in the rule that certain tax services are consistent with the SEC's four principles. For the reasons described above, the Board has decided not to change the rule in response to either of these suggestions. The Board notes, however, that the SEC's independence rules already refer to the four principles, and these rules must be complied with under Rule 3520.

Two commenters suggested that Rule 3520 include the text of the American Institute of Certified Public Accountants' ("AICPA") Ethics Rule 102, which provides, in pertinent part, that members of the AICPA should avoid any subordination of their judgment.<sup>30/</sup> Although the Board shares these commenters' view about the importance of this principle, the Board has already adopted Ethics Rule 102 as part of its interim ethics rule, Rule 3500T. Accordingly, this rule is already part of the Board's ethical standards and need not be separately repeated in Rule 3520 to be enforced by the Board.

Two firms suggested that Rule 3520, as proposed, might have the effect of precluding use of exceptions in the SEC's existing independence rules and asked the Board to avoid that result. Other than creating a requirement in a Board rule to comply with existing and applicable independence requirements, it does not add to, or detract from, the scope and substantive effect of these existing requirements in any respect.

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impaired by the existence of circumstances which reasonable people might believe likely to influence independence." Id.

<sup>29/</sup> See 17 C.F.R. § 210.2-01, Preliminary Note 2. Specifically, under those principles, the SEC looks to whether a relationship or the provision of a service: (a) creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in a position of being an advocate for the audit client.

<sup>30/</sup> See AICPA Code of Professional Conduct, ET sec. 102, "Integrity and Objectivity".

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The Board has, however, as suggested by a commenter, added "associated persons" to the rule. While the independence requirements added to the Board's rules through this rulemaking apply to the firm, other independence requirements covered by Rule 3520 are directed to individual accountants within auditing firms. Most notably, certain of the SEC's independence rules impose independence requirements directly on individual accountants.<sup>31/</sup> Accordingly, the Board believes it is appropriate for the rule to apply to associated persons, as well as registered firms themselves. At the same time, the Board has added a new note to the rule to make clear that the rule applies only to those associated persons of a registered public accounting firm that are required to be independent of the firm's audit client by standards, rules, or regulations of the Commission or other applicable independence criteria.<sup>32/</sup> Accordingly, the rule does not impose independence requirements on persons not already subject to them, and does not impose new independence requirements on any associated person. Rather, Rule 3520 only requires associated persons who are otherwise subject to independence requirements to comply, as an ethical obligation, with those requirements

### 2. Contingent Fees

The Board also has determined to adopt Rule 3521 as proposed. There was widespread support among commenters for the Board's view, expressed in the proposal, that certain fee arrangements used for the provision of tax services create per se conflicts of interest that impair auditors' independence from their audit clients. As discussed more fully in the proposing release, when an accounting firm provides a service to an audit client for a contingent fee, the firm's economic interests become aligned with the interests of its audit client in a manner that is inconsistent with the firm's role as independent auditor. The Board's rule was adapted from the SEC's rule prohibiting contingent fee arrangements<sup>33/</sup> and thus treats registered firms as not independent if they enter into contingent fee arrangements with audit clients.

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<sup>31/</sup> See, e.g., Rule 2-01(c)(1), 17 C.F.R. § 210.2-01(c)(1). See also PCAOB Rule 3600T.

<sup>32/</sup> Other applicable independence criteria include any rules of the PCAOB, other than Rule 3520, that contain independence requirements directly applicable to associated persons of the firm, such as Rule 3600T.

<sup>33/</sup> See 17 C.F.R § 210.2-01(c)(5).



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Specifically, Rule 3521 provides that a registered public accounting firm is not independent of its audit client<sup>34/</sup> if the firm, or any affiliate of the firm,<sup>35/</sup> during the audit and professional engagement period,<sup>36/</sup> provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission. The Board's definition of a contingent fee is "any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service."<sup>37/</sup>

Fees fixed by courts or other public authorities and not dependent on a finding or result are excluded from this definition to permit contingencies that do not pose a risk of establishing a mutual interest between the auditor and the audit client. In the proposing release, the Board cited, as an example of such a permissible fee, fees approved by a

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<sup>34/</sup> Rule 3501(a)(iv) defines "audit client" as "the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client."

<sup>35/</sup> Rule 3501(a)(ii) defines "affiliate of the accounting firm" as "the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)."

<sup>36/</sup> Rule 3501(a)(iii) adapts the definition of "audit and professional engagement period" from the definition of that term in the Rule 2-01 of the SEC's Regulation S-X, which includes both the period covered by the financial statements under audit or review and the period beginning when a registered public accounting firm signs an initial engagement letter (or when such a firm begins audit, review or attest procedures, whichever is earlier) and ends when the audit client notifies the SEC that the engagement has ceased. See 17 C.F.R. § 210.2-01(f)(5).

<sup>37/</sup> Rule 3501(c)(ii). As discussed in the Board's proposing release, the term "contingent fee" includes the aggregate amount of compensation for a service, including any payment, service, or promise of other value, taking into account any rights to reimbursements, refunds, or other repayments that could modify the amount received in a manner that makes it contingent on a finding or result.



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bankruptcy court, as required under U.S. federal bankruptcy law.<sup>38/</sup> The Board also sought comment on whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term "courts or other public authorities" is necessary.

In response to this request, several commenters noted that they are not aware of any such authorities and encouraged the Board to eliminate the reference to "other public authorities" from the proposed rule. Other commenters suggested that the Board retain the phrase, even though they did not identify other contexts in which fees that are not contingent on a result of a "product or service" are nevertheless subject to approval by a court or other public authority.<sup>39/</sup> After considering these comments, the Board has decided to retain the exception for fees that require approval of "courts or other public authorities." The Board envisions that there may be fee approval schemes outside the U.S. that are analogous to U.S. bankruptcy law.

Although Rule 3521 and the related definition of "contingent fee" are modeled on the SEC's independence rules, as discussed in the Board's proposing release, they differ from those rules in that the Board's rules do not include the SEC's exception for fees "in tax matters, if determined based on the results of judicial proceedings or the

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<sup>38/</sup> 11 U.S.C. § 328(a) (providing that, with a court's approval, a bankruptcy trustee may employ a professional person "on any reasonable terms and conditions of employment, including on a retainer, on a fixed or percentage fee basis, or on a contingent fee basis").

<sup>39/</sup> One commenter suggested that arbitration panels should be captured in the final rule as an example of "courts or other public authorities" that may approve auditor fees. The Board is not aware, and the commenter did not appear to suggest, that any arbitration panels currently have authority, by contract or law, to approve the payment of fees to accountants. Therefore, the Board has not expanded the exception to include fees fixed by arbitration panels. Nevertheless, if an arbitration panel were by contract given the authority to approve accountants' fees, such fees would be permissible under the Board's rule so long as the determination of the fee was not contingent on the result of a product or service.

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findings of governmental agencies."<sup>40/</sup> As discussed in the Board's proposing release, this exception may have been misinterpreted in the past and is largely redundant of the exception for fees fixed by courts or other public authorities.<sup>41/</sup> For these reasons, proposed Rule 3521 would eliminate this exception. The few commenters who addressed this issue agreed with the Board's reasoning and the elimination of this exception. Therefore, the Board's final rule does not include an exception for tax matters in which an auditor's fee agreement is based on the results of judicial proceedings or the findings of governmental agencies.

In addition, Rule 3521 treats a firm as not independent of an audit client if it receives a contingent fee or commission from that client "directly or indirectly." The rule's use of the term "indirectly" is meant to prevent arrangements for a fee from *any* person that is contingent on a finding or result attained by the audit client. The Board's determination to include such fees within the prohibition is based on the principle that, regardless of who pays the contingent fee, such a contingency gives an auditor a stake in the audit client attaining the finding or result. Accordingly, under Rule 3521, it does not matter who pays the contingent fee, if it is contingent on a finding or result attained by the audit client or otherwise related to the firm's services for the audit client. That is, while use of an intermediary to disguise an audit client's agreement to a contingent fee is certainly prohibited, the rule is not limited to circumstances in which a contingent fee may be traced (e.g., through an intermediary) to an agreement or payment by an audit client.

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<sup>40/</sup> 17 C.F.R. § 210.2-01(f)(10). By eliminating this exception from its rule, the Board expresses no view on any firm's compliance with Rule 2-01 of the Commission's Regulation S-X. See 17 C.F.R. § 210.2-01(c)(5).

<sup>41/</sup> As the SEC Chief Accountant has stated, the SEC's "tax matters" exception only permits fee arrangements where the determination of the fee is "taken out of the hands of the accounting firm and its audit client . . . , with the result that the accounting firm and client are less likely to share a mutual financial interest in the outcome of the firm's advice or service." Letter from Donald T. Nicolaisen, Chief Accountant, U.S. Securities and Exchange Commission, to Bruce P. Webb, Professional Ethics Executive Committee Chair, American Institute of Certified Public Accountants (May 21, 2004), available at <http://www.sec.gov/info/accountants/staffletters/webb052104.htm> (hereinafter "Nicolaisen Letter").



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Comparable to the SEC's independence rules, proposed Rule 3521 treats contingent fee arrangements between a registered firm's affiliates and the registered firm's audit clients as relevant to the firm's independence.<sup>42/</sup> The inclusion of such affiliates within the scope of those persons whose activities may impair the independence of a firm from an audit client is intended to prevent frustration of the rule's purpose through the use of firm subsidiaries and other affiliates.<sup>43/</sup> The rule is not intended to, and does not, impose any requirements on affiliates of firms per se. Nonetheless, the conduct of an affiliate of the firm can cause the registered firm not to be independent in the situations specified in the rules.

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<sup>42/</sup> The rule does so by providing that the firm is not independent if it "or any affiliate of the firm . . . provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission." The scope of the rule is intended to be the same as the scope of the Commission's rule, which defines the terms "accountant" and "accounting firm" to include such affiliates. Because registration with the Board is the basis for the Board's authority over an accountant, the rules would treat those persons that are related to a registered public accounting firm and satisfy the Commission's definition of "accounting firm," but are not registered firms themselves, as "affiliates of the accounting firm." Thus, Rule 3501(a)(i) would adapt the Commission's definition of the term "accounting firm" to define the term "affiliate of the accounting firm" as "the accounting firm's parents, subsidiaries, pension, retirement, investment or similar plans, and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2)."

<sup>43/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, Exchange Act Release No. 46,216 (July 17, 2002), available at <http://www.sec.gov/litigation/admin/34-46216.htm> (finding an auditing firm and an affiliate under the control of the firm in violation of Commission requirements because the affiliate performed investment banking services for the firm's audit clients for contingent fees); In KPMG, LLP v. Securities & Exch. Comm'n, 289 F.3d 109 (D.C. Cir. 2002), the D.C. Circuit Court declined to find KPMG in violation of the AICPA's rule against contingent fees, where KPMG only indirectly received a contingent royalty from an audit client, through an associated entity of the firm. The Board's rules should be understood, however, to treat such an arrangement as an impairment of a registered firm's independence.



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Finally, one accounting firm commented that Rule 3521 should prohibit value-added fees because such fees could be used in lieu of contingent fees to achieve a similar effect as contingent fees. Fees that function as contingent fee arrangements are already prohibited under the SEC's rule against contingent fees,<sup>44/</sup> and thus under the Board's final rule as well, whether such fees are labeled contingent fees, value-added fees, or otherwise. The SEC has indicated that it will closely monitor the use of value-added fees "to determine whether a fee labeled a "value added" fee is in fact a contingent fee, such as where there are side letters or other evidence that ties the fee to the success of the services rendered,"<sup>45/</sup> and the Board intends to do so as well before, if necessary, considering additional rulemaking.

### 3. Aggressive Tax Positions

Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence if the auditor markets, plans, or opines in favor of, such a transaction. As discussed in the Board's proposing release, such conduct has seriously damaged investors' confidence in the judgment, objectivity, and ethics of firms that engage in such transactions. Further, aggressive tax positions carry a high risk that taxing authorities will not allow the position taken by the auditor and the audit client. As the SEC Chief Accountant noted in

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<sup>44/</sup> See Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919, § IV.D.5 (Nov. 21, 2000), 17 C.F.R. Parts 210, 240. Indeed, the SEC staff has cautioned audit committees against approving –

any agreement – from a direct contract provision to "a wink and a nod" – that provides for the possible additional payment of a "value added" fee based on the results of an accounting firm's performance of a tax or other service [that] would be viewed as impairing the firm's independence. In addition, an audit committee should consider carefully the impact on an accounting firm's independence of the possibility of even a completely voluntary payment of a "value added" fee by an audit client to the firm.

Nicolaisen Letter, supra note 41.

<sup>45/</sup> See Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33-7919, § IV.D.5 (Nov. 21, 2000), 17 C.F.R. 210, 240.



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the context of contingent fees, "the fact that a government agency might challenge the amount of the client's tax savings . . . heightens . . . the mutuality of interest between the firm and client."<sup>46/</sup>

As proposed, Rule 3522 treated a firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to planning, or opining on the tax consequences of a transaction that is a listed or confidential transaction under U.S. Department of Treasury ("Treasury") regulations or that promoted an interpretation of applicable tax laws for which there is inadequate support. In order to describe such transactions in a manner that is clear and consistent with existing constructs for analyzing tax-oriented transactions, the rule is adapted from certain Treasury regulations and from the SEC's release accompanying its 2003 independence rules.

Commenters generally supported the notion that auditors should not provide tax services involving aggressive tax positions to their audit clients. They also supported the scope of Rule 3522, which as proposed covered listed transactions, confidential transactions, and other aggressive transactions. A number of commenters made suggestions to make the rule text clearer, however, and after considering such comments the Board has modified the rule in several respects.

First, several commenters suggested that the rule should make clear that it does not prohibit auditors from advising audit clients not to engage in an aggressive transaction. Rule 3522 was not intended to prevent such advice, so in response to these comments the Board has modified the rule to make clear the prohibition on opining on aggressive transactions is limited to "opining in favor of the tax treatment of" such transactions (emphasis added). Thus, auditors are permitted to advise against an audit client's execution of an aggressive tax transaction.<sup>47/</sup> However, Rule 3522 prohibits an opinion that a transaction does not satisfy the more-likely-than-not standard

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<sup>46/</sup> Nicolaisen Letter, supra 41.

<sup>47/</sup> In addition, a number of commenters asked for clarification of the scope of Rule 3522's prohibition against "opining" on an aggressive transaction. The Board does not intend the rule to encompass the auditor's opinion on the fairness of financial statements that reflect the accounting for a transaction that an audit client has executed. Rather, Rule 3522 is intended to prevent auditors from facilitating clients' execution of aggressive transactions by, among other things, providing auditors' written tax opinions that protect the audit client from the assertion of penalties by tax authorities or courts.

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but does satisfy a lower standard of confidence. Similarly, the rule prohibits advice that an audit client will "probably" lose an argument in favor of a tax treatment, because such advice can imply up to a 49-percent chance of success.

In addition, as recommended by one commenter, given recent concerns about accounting firms establishing marketing centers to sell tax shelter products, the Board has added the term "marketing" to the list of activities that compromise an auditor's independence. That is, under Rule 3522, as adopted, an auditor may not market an aggressive tax transaction to an audit client, in addition to being prohibited from "planning, or opining in favor of the tax treatment of," such a transaction.

Finally, proposed Rule 3522(a)'s prohibition on auditors' involvement in listed transactions has been moved to become a part of the prohibition on involvement in aggressive tax position transactions, in light of the overlap of the two provisions and also in light of questions regarding whether the prohibition on listed transactions could apply in the context of a non-U.S. tax regime. Accordingly, Rule 3522 now provides for two categories of prohibitions related to aggressive tax transactions, whereas, as proposed, it had provided for three such categories. These two categories, as well as modifications of their proposed versions, are discussed below.

### a. Aggressive Tax Position Transactions<sup>48/</sup>

Rule 3522(b) would treat a registered firm as not independent if the firm, or an affiliate of the firm, provided an audit client any service related to marketing, planning, or opining in favor of the tax treatment of, a transaction that satisfies three criteria –

- the transaction was initially recommended, directly or indirectly, by the firm;
- a significant purpose of the transaction is tax avoidance; and

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<sup>48/</sup> As proposed, this provision was entitled "aggressive tax positions." One commenter questioned whether this title was intended to expand the scope of this provision beyond transactions. In addition, the commenter noted that the term "transaction" was consistent with Treasury regulations. In response to this comment, the Board has re-titled this provision to be "aggressive tax position transactions."



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- the proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable tax laws.

Rule 3522(b) is adapted from the SEC's guidance to audit committees in its release accompanying its 2003 independence rules, which cautioned that audit committees should "scrutinize carefully" the retention of the auditor "in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."<sup>49/</sup> The rule builds on this guidance from the perspective of the auditor, by providing that a registered firm is not independent of its audit client if the firm, or an affiliate of the firm, participates in such a transaction.

The first prong of the rule's test looks for transactions that the auditing firm – directly or indirectly, e.g., through an affiliate, through or with another tax advisor with which the firm has an arrangement, or otherwise – initially recommended to the audit client. In this manner, the rule excludes from its scope those transactions that the audit client itself, or a party other than a tax advisor with which the firm has an arrangement<sup>50/</sup> (e.g., an acquiring corporation), initiated. The term "initially recommended" is intended to be a test based on fact. Thus, the prong would be satisfied, notwithstanding a representation from the audit client that the audit client initiated the development of the transaction,<sup>51/</sup> if the auditor had knowledge that the auditor, its affiliate, or another tax advisor with which the firm has an arrangement, initially recommended it. As proposed, the rule would have looked for transactions that were "initially recommended by the registered public accounting firm or another tax advisor." Some commenters expressed

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<sup>49/</sup> Strengthening the Commission's Requirements Regarding Auditor Independence, supra note 2, at § II.B.11 (Jan. 28, 2003).

<sup>50/</sup> The term "tax advisor" is not intended to denote a group with a certain license or professional status, but rather to cover any person, other than the client, that recommends a tax transaction to the client.

<sup>51/</sup> Two commenters indicated that, as they interpreted the term "transaction," an auditor's tax services in connection with, for example, a merger transaction that was initiated by the client or another company, would not come within the ambit of Rule 3522(b), because the auditor would not have recommended the merger transaction itself. This is not a fair interpretation of the rule and indeed would thwart its purpose.



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concern that an auditor might not be in a position to know whether another tax advisor with no relationship to the auditor had recommended a transaction. In response to these comments, the Board has modified the first prong of Rule 3522(b) to make clear that auditors are only responsible for ascertaining whether the firm, one of its affiliates, or another tax advisor with which the firm has a formal agreement or other arrangement related to the promotion of such a transaction, initially recommended the transaction.<sup>52/</sup>

The second and third prongs of Rule 3522(b) incorporate concepts that have existing meaning and relevance to tax advisors. The second prong of the test set forth in Rule 3522(b) uses the phrase "significant purpose of which is tax avoidance," adapted from the Internal Revenue Code.<sup>53/</sup> The term "tax avoidance" should be understood to include acceleration of deductions into earlier taxable years and deferral of income to later taxable years. A few commenters noted that the test whether a significant purpose of a transaction is tax avoidance appears to be a low threshold that could encompass any plan to reduce taxes, and some of those commenters suggested that the Board raise that threshold. The Board intends for the threshold to be low, however, and therefore has not used terms that might seem to establish a higher threshold, such as requiring an evaluation of whether the "sole purpose" of a transaction is tax avoidance.

In addition, the rule uses the term "more likely than not to be allowable under applicable tax laws," which is the standard certain taxpayers must meet, under Treasury regulations, to avoid penalties for substantial understatement of income tax in

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<sup>52/</sup> See Rule 3522(b), Note 2. The term "formal agreement or other arrangement" in Note 2 relates only to relationships a registered firm may have with a tax advisor that is not already an affiliate of the firm.

<sup>53/</sup> The Internal Revenue Code treats transactions with respect to which a "significant purpose . . . is the avoidance or evasion of Federal income tax" as tax shelters, for purposes of determining whether an adequate disclosure defense is available for the substantial understatement penalty. See 26 U.S.C. § 6662(d)(2)(C) (amended by the Jobs Act; see also 26 U.S.C. § 6662A(b)(2)(B) (imposing 20-percent penalty on understatements of tax in connection with "any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax").

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connection with a tax shelter.<sup>54/</sup> This test is based, in part, on the Board's observation of some firms' policies that rely on the "more likely than not" standard to approve the firm's involvement in providing tax services relating to a transaction initiated by the firm. The rule also uses this standard because a tax treatment that is not "more likely than not" to be allowed poses a significantly higher risk of being challenged by taxing authorities, such that a mutuality of interest between the auditor and the audit client could arise.<sup>55/</sup> Moreover, the rule uses this standard, as opposed to a higher standard, in recognition of the fact that tax laws may often be complex and subject to differing good faith interpretations.<sup>56/</sup>

In order to satisfy Rule 3522(b)'s "more likely than not" standard, a registered public accounting firm must establish, based on an analysis of the pertinent facts and authorities, that there is a greater than 50-percent likelihood that the tax treatment of the transaction would, if challenged, be upheld.<sup>57/</sup> To satisfy this test, an auditor's analysis

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<sup>54/</sup> See 26 C.F.R. § 1.6664-4(f).

<sup>55/</sup> Some commenters noted that, while the term "more likely than not" is well-understood in the context of evaluating U.S. tax advice, it has not been used in non-U.S. contexts. One of these commenters also noted that this standard may be hard to judge in jurisdictions in which the rule of law does not always prevail. After considering these comments, the Board has determined to maintain the "more likely than not standard," because it is an objective standard that may be applied in contexts outside the U.S. even where it has not applied to-date. Further, the Board notes that foreign private issuers ordinarily file U.S. tax returns and therefore are already expected to comply – and be familiar with – U.S. tax laws and regulations.

<sup>56/</sup> A few commenters recommended that the Board use a standard higher than "more likely than not," on the ground that there is some evidence that some accounting firms that used the "more likely than not" standard in the past have not adhered to it. While the Board is concerned about the record on this issue, the Board has determined not to use a higher standard at this time. The Board intends to monitor compliance with the rule through its inspections of registered public accounting firms and will consider revising the rule in the future, if that monitoring or other evidence reveals that the rule is not achieving its intended purpose.

<sup>57/</sup> Cf. 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(1) (incorporating by reference methodology set forth in 26 C.F.R. § 1.6662-4(d)(3)(ii) for analysis of whether a tax



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must be objectively reasonable and well-founded at the time the analysis is conducted. The Board would not, however, treat an auditor as not independent if the law changed after the service was provided or if the tax treatment simply turned out to be not allowed, despite the auditor's reasonable judgment before the ultimate resolution of a tax claim or other dispute.

Rule 3522(b) does not require a registered public accounting firm to obtain a third-party opinion that a tax treatment is "more likely than not" to be allowed under applicable tax laws. On the contrary, while a firm may decide for its own reasons to obtain a third-party opinion, such an opinion would not relieve the firm of its obligation to form its own judgment on the likelihood of a proposed tax treatment to be allowed.<sup>58/</sup>

Finally, although the SEC's release accompanying its 2003 independence rules cautioned audit committees to scrutinize situations in which a proposed tax treatment might not be supported "in the Internal Revenue Code and related regulations," the proposed rule would use the term "applicable tax laws" in recognition of the variety of tax laws and regulations, including federal, state, local, foreign, and other tax laws, that may be the subject of tax services. For this reason, and in response to questions from several commenters, the Board also incorporated its proposed prohibition on auditors providing tax services in connection with transactions that are listed by the IRS into Rule 3522(b). That is, IRS listing is one example of aggressive tax transactions covered by the rule.

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treatment has "substantial authority" or, in the case of tax shelters, is "more likely than not" the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax).

<sup>58/</sup> Treasury regulations permit corporations to avoid penalties for substantial understatement of income taxes in connection with tax shelters if they "reasonably rel[y] in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities . . . and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service." 26 C.F.R. § 1.6664-4(f)(2)(i)(B)(2). Rule 3522(b) would not permit registered public accounting firms, who themselves serve as tax advisors, to rely on other tax advisors to satisfy the rule's standard because registered firms that provide tax services are themselves in a position to perform such an analysis.

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Accordingly, the prohibition on advising in favor of listed transactions, which was proposed as Rule 3522(a), has been moved to a note to what is now Rule 3522(b). Specifically, Note 1 to Rule 3522(b) treats a registered public accounting firm as not independent of its audit client if the firm, or any affiliate of the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of, a listed transaction. Under Treasury regulations, a listed transaction is "a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction."<sup>59/</sup> The IRS uses its listing process to identify and publish a list of transactions that tax promoters and advisors have developed and sold to clients but that, in the IRS's view, do not comply with applicable laws. Thus, the Treasury's regulation on "listed transactions" identifies a class of transactions that, in the Board's view, carries an unacceptable risk of disallowance, which in turn create an unacceptable risk of establishing a mutuality of interest between the auditor and the audit client if the auditor participated in marketing, planning, or opining in favor of the tax treatment of a transaction that impairs independence. By referring to this class of transactions, Note 1 to Rule 3522(b) incorporates an existing framework that auditors who serve as tax advisors already follow in their tax practices and that is highly likely to remain current since the Treasury and the IRS regularly update guidance related to listed transactions.<sup>60/</sup>

As discussed above, the Board's proposed prohibition on auditor involvement in transactions that are "listed" by the IRS has been moved to a note to Rule 3522(b). By definition, a listed transaction is not "more likely than not to be allowable under applicable tax laws" at the time the auditor advises on it. Because the risk of IRS or

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<sup>59/</sup> See, e.g., 26 C.F.R. § 1.6011-4(b)(2).

<sup>60/</sup> The IRS updates the list of listed transactions by issuing a listing notice, both adding to and removing transactions from the list of listed transactions. See, e.g., IRS Notice No. 2004-67, 2004-41 I.R.B. 600. Some commenters questioned whether the Board should effectively incorporate the IRS's changes to its list into the Board's rule on aggressive transactions. This is, indeed, the Board's intention. To freeze the IRS's list as of the date of the Board's final rule, or to establish a system of reviewing the IRS's list as it is updated, might permit auditors to provide tax services in favor of listed transactions notwithstanding that the IRS had identified those transactions as potentially abusive. Such a system would thwart the underlying intent of the Board's rule.

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other scrutiny of listed transactions, including transactions that are substantially similar to listed transactions,<sup>61/</sup> is high, tax advisors and taxpayers tend not to enter into such transactions once they are listed. In light of this fact, when it proposed this rule, the Board sought comment on whether the rule should treat an auditor as not independent if a transaction planned or opined on by the auditor subsequently became listed. In general, commenters recommended against adopting a per se rule that subsequent listing of such a transaction impaired an auditor's independence with respect to either the period in which the transaction was executed or in subsequent periods. The Board agrees that such a per se rule would not be appropriate, but as discussed below, firms should nevertheless be cautious in participating in transactions that they believe could become listed.

Even if a firm were independent at the time a transaction was executed, because it reasonably and correctly concluded the transaction was not the same as, or substantially similar to, a listed transaction, once a transaction is actually listed (or a substantially similar transaction becomes listed), a firm that has participated in the transaction may find its independence impaired due to the mutuality of interest caused by the listing. That is, depending on the circumstances, a firm's independence may become impaired in some cases after a transaction planned or opined on by the firm becomes listed. In such cases, the auditor should carefully consider the potential impairment of its independence with the audit committee of its audit client.<sup>62/</sup> For example, once a transaction is listed, either the audit client or the firm, or both, may be required to defend the tax treatment of the transaction and, in some cases, pay

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<sup>61/</sup> By its terms, the Treasury regulation requiring reporting of listed transactions makes clear that the definition of "listed transaction" includes transactions that have been listed by the IRS as well as transactions that are "substantially similar" to such transactions. By expressly referring to the Treasury's regulation on listed transactions, the Board intends Rule 3522(b) to encompass such substantially similar transactions that are included in the Treasury's regulation.

<sup>62/</sup> According to ISB Standard No. 1, which is incorporated in the Board's Rule 3600T interim independence standards, at least annually, an auditor must "disclose to the audit committee of the company (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence."



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penalties. In addition, the firm may face liability to the audit client related to the firm's tax advice. The auditor's judgment regarding appropriate financial reporting and disclosure concerning a transaction that becomes listed could become biased by the auditor's vested interests in defending its tax advice.

Some auditors commented that they would prefer a bright-line rule providing that, so long as a transaction recommended by the firm was not listed at the time it was executed, subsequent listing cannot impair an auditor's independence later in time, when the auditor is called on to defend its earlier tax advice. Such a bright-line rule, however, would do little to address circumstances in which, because of IRS scrutiny after execution of the transaction, the auditor's interest in the client's successful defense of the transaction becomes heightened to the point where the auditor can no longer be impartial about the financial statement presentation of the transaction. That said, as some commenters noted, existing independence requirements address these kinds of circumstances, and thus the Board has determined not to expand Rule 3522(b) either to retroactively deem an auditor not independent upon subsequent listing of a transaction or to deem an auditor not independent per se in the period in which such a transaction becomes listed.

### b. Confidential Transactions

The Treasury has identified transactions with tax-advisor imposed conditions of confidentiality as potentially abusive. By regulation, the Treasury requires taxpayers to disclose to the IRS transactions in which a tax advisor "places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies."<sup>63/</sup> Tax-advisor imposed confidentiality may also be indicative of a tax product that a tax advisor intends to market to multiple customers, thus necessitating commitments by customers to treat the tax treatment or structure of the advisor's product as confidential.

As discussed in the proposing release, the Board is concerned that marketing, planning, or opining in favor of tax products that require confidentiality in order that they may be offered to multiple clients contributes to the erosion of public confidence in the ethics and integrity of such firms. A reasonable investor easily could infer that the auditor has a vested interest in advocating to the IRS the tax treatment it promoted, or

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<sup>63/</sup> 26 C.F.R. § 1.6011-4(b)(3)(ii).



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helped to promote, to multiple clients and perpetuating that treatment in the audit client's financial statements. Based on these concerns, Rule 3522(a) treats a registered public accounting firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of a transaction for an audit client under terms that satisfy the definition of "confidential transaction," as defined by Rule 3501(c)(i), which is adapted from the Treasury's regulation requiring tax advisors to report confidential transactions.<sup>64/</sup>

It should be noted that, Rule 3501(c)(i) defines confidential transactions in terms of confidentiality restrictions imposed by tax advisors generally, not specifically auditors. Therefore, whereas under Rule 3522(b) a transaction that is initially recommended by a

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<sup>64/</sup> 26 C.F.R. § 1.6011-4(b)(3) (2005). The proposed version of this rule incorporated the Treasury's definition of the term "confidential transaction" by reference. A number of commenters noted generally that incorporation of this Treasury regulation by reference could lead to unintended changes to the Board's rules if the Treasury amends those regulations (or the IRS amends its list of listed transactions). As discussed above, the Board intends for its prohibition on auditors' involvement as tax advisors in audit clients' execution of listed transactions to be kept current by changes to the IRS's list. Upon further consideration, unlike the Board's prohibition on listed transactions, the Board has determined that it may not be appropriate for any changes the Treasury may make to its definition of "confidential transaction" to automatically be reflected in the Board's prohibition on auditors' involvement in such a transaction. The definition of "confidential transaction" in Rule 3501(c)(i) is intended to be the same as the current Treasury regulation, except for the minimum fee requirement.

The proposed version of the rule did not incorporate the Treasury's minimum fee exception to its regulation on confidential transactions. That is, Treasury Regulation 1.6011-4(b)(3)(i) provides that "a confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee." 26 C.F.R. § 1.6011-4(b)(3) (2005). Under the regulation, the "minimum fee" is \$250,000 for corporate taxpayers (and partnerships and trusts in which all of the owners or beneficiaries are corporations) and \$50,000 for all other transactions. *Id.* 26 C.F.R. § 1.6011-4(b)(3)(iii). Although some commenters suggested that the Board should adopt the minimum fee exception, the Board understands the IRS disclosure rules to serve a different purpose than Rule 3522(a). Accordingly, the Board has not adopted a minimum fee exception in its final rule either.



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tax advisor other than the auditor or an affiliate of the auditor unless the tax advisor has an arrangement with the auditor does not fall within the first prong of the rule, Rule 3522(a) prohibits an auditor from marketing, planning, or opining in favor of a confidential transaction whether the applicable terms of confidentiality are imposed by the auditor or by another tax advisor, acting independently of the auditor.

Commenters generally supported the Board's proposed prohibition on confidential transactions. Although some commenters expressed the view that tax advisors might impose conditions of confidentiality for reasons other than the ability to market the proposed transaction to multiple clients, other commenters agreed that auditors should not become involved in transactions subject to tax-advisor imposed confidentiality restrictions. One accounting firm commenter also noted that, even if a transaction were not potentially abusive, the fact that there is a disclosure limitation is likely to create a negative impression concerning the objectivity of the auditor.

In addition, a few commenters suggested that the rule be limited to circumstances in which terms of confidentiality are imposed with respect to the U.S. tax treatment of a transaction. After carefully considering these comments, the Board has determined not to modify the scope of the rule. Tax-advisor imposed conditions of confidentiality facilitate aggressive selling of novel tax ideas that pose too great a risk of impairing the objectivity of auditors who market, plan, or opine in favor of them. Further, the rule continues to permit audit clients themselves to impose conditions of confidentiality in connection with transactions on which auditors may provide tax advice, and this fact appears to adequately serve audit clients' needs to maintain appropriate confidentiality. Finally, there does not appear to be a reasoned basis to limit the prohibition on confidential transactions to proposed tax treatments under U.S. tax laws.

#### 4. Tax Services for Persons in Financial Reporting Oversight Roles

Rule 3523 provides that a registered public accounting firm is not independent of an audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any tax service to a member of management in a financial reporting oversight role at the audit client.<sup>65/</sup> As discussed in the Board's proposing

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<sup>65/</sup> The rule's use of the term "financial reporting oversight role" is based on the Commission's definition of "financial reporting oversight role," which includes any person who has direct responsibility for oversight over those who prepare the issuer's financial statements and related information (for example, management's discussion



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release, this rule addresses concerns that performing tax services for certain individuals involved in the financial reporting processes of an audit client creates an appearance of a mutual interest between the auditor and those individuals.

The Board received varied comments on Rule 3523. Some commenters, including groups representing investors and issuers, as well as several large accounting firms, supported the proposed rule on the ground that it is necessary to preserve the objectivity, and the appearance of objectivity, of auditors. Other commenters, however, including a number of smaller accounting firms, accounting associations, and a few issuers, claimed that the rule is not necessary, that these services have long been provided, and that auditors should be allowed to provide senior financial management of issuers with the same types of tax services the auditor may provide the issuer. After carefully considering these comments, the Board has determined to adopt the rule, with a few modifications. The Board continues to believe that the provision of tax services by the auditor to the senior management responsible for the audit client's financial reporting creates an unacceptable appearance of the auditor and such senior management having a mutual interest.

The Board also received a number of comments on specific aspects of the proposed rule. For example, some commenters expressed confusion as to whether Rule 3523 is intended to apply to directors, in part because the definition of "financial reporting oversight role" includes directors. In response to these comments, the Board has modified the rule to exclude directors more explicitly. Thus, the rule no longer uses the term "officer" – which is how the proposed rule narrowed the scope to exclude directors – and instead includes an explicit exception for any person who serves in a

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and analysis) that are included in filings with the Commission. See Strengthening the Commission's Requirements Regarding Auditor Independence, supra note 2, at § II.A. The Commission uses the term "financial reporting oversight role" to describe those positions that are covered by the Act's "cooling off" period, during which a public company would not be independent from its audit firm if a member of the engagement team for the audit of that company assumed such a position. See Sarbanes-Oxley Act of 2002, § 206, 17 C.F.R. § 210.2-01(f)(3)(ii). The term "financial reporting oversight role" as defined in Rule 3501(f)(i) mirrors verbatim the SEC's definition of the same term in Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01(f)(3)(ii).



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financial reporting oversight role "only because he or she serves as a member of the board of directors or similar management or governing body of the audit client."<sup>66/</sup>

The Board also included a second exception in Rule 3523(b) in response to comments regarding whether the rule should apply to persons who serve in a financial reporting oversight role at an affiliate of an issuer. After considering these comments, the Board has determined not to restrict auditors' provision of tax services to employees in a financial reporting oversight role at an affiliate of an audit client, so long as the financial statements of the affiliate are not material to the financial statements of the audit client or are audited by an auditor other than the firm or an associated person of the firm. This exception is intended to exclude executives of affiliates that do not contribute to the consolidated financial statements of the audit client. The Board does not believe that auditors' relationships with executives of immaterial affiliates, or affiliates whose financial statements are audited by an auditor other than the firm or an associated person of the firm, pose as great a risk to auditors' impartiality regarding an audit clients' consolidated financial statements as do auditors' provision of tax services to executives involved in the consolidated financial reporting of the client.

The first part of this exception, Rule 3523(b)(i), excludes persons in a financial reporting oversight role at immaterial affiliates of the entity being audited. This exception would encompass, among others, executives of most affiliates within the same investment company complex as the audited entity and executives of up-stream affiliates of the audited entity. The second part of this exception, Rule 3523(b)(ii), excludes executives in financial reporting oversight roles of a subsidiary of an audit client that is not audited by the firm or any firm that is an associated person of the firm, as defined by PCAOB Rule 1001. On the other hand, executives in financial reporting oversight roles at a material subsidiary whose financial statements are audited by a firm that is an associated person of the registered firm would be subject to Rule 3523. For purposes of Rule 3523(b)(ii), the term "audited" should be understood to include audit procedures that contribute to the firm's preparation or issuance of an audit report on an audit client's consolidated financial statements, whether or not such procedures result in an audit opinion on the affiliate's financial statements.

Some commenters also expressed concern that the rule could impose an undue hardship on persons who become subject to the rule because they are hired or

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<sup>66/</sup> Rule 3523(a).



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promoted into a financial reporting oversight role at an audit client. To address that concern, the Board determined to create a time-limited exception to the rule to cover such situations. Specifically, the Board has determined to add a new exception to the rule that applies to a person who was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event, when the tax services are both: (1) provided pursuant to an engagement that was in process before the hiring, promotion, or other change in employment event;<sup>67/</sup> and (2) completed on or before 180 days after the hiring or promotion event.<sup>67/</sup> The Board will treat engagements as "in process" if an engagement letter has been executed and substantive work on the engagement has commenced; the Board will not treat engagements as "in process" during negotiations on the scope and fee for a service.

Some commenters also suggested that, as proposed, Rule 3523 could invite persons subject to the rule to evade the rule by using the auditor's tax services through an immediate family member or through an entity controlled by the person. In response to this comment, the Board has added to the scope of the rule immediate family members of persons who are covered by the rule.<sup>68/</sup>

In addition, some commenters suggested that the rule be expanded to cover all non-audit services, such as services involving investment, personal financial planning, and executive compensation, on the ground that any such services provided to those in a financial reporting oversight role create a perception of a mutuality of interest between auditors and those members of management who receive such services.<sup>69/</sup> Other

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<sup>67/</sup> Rule 3523(c).

<sup>68/</sup> The Board also has added a definition of "immediate family member," adapted from the SEC's definition in its independence rules. Compare Rule 3501(i)(i) with 17 C.F.R. § 210.2-01(f)(13). The Board has not included entities controlled by persons in financial reporting oversight roles, such as trusts and investment partnerships. The Board notes, however, that an auditor who provides services to an entity controlled by a person in a financial reporting oversight role of an audit client should consider whether, under ISB Standard No. 1, it is necessary to notify the client's audit committee of such services.

<sup>69/</sup> Some commenters asked for clarification of whether persons in a financial reporting oversight role could seek the assistance of the registered public accounting firm that prepared the original tax return to assist them in responding to an IRS or other



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commenters suggested that the rule be expanded to include persons who do not play a financial reporting oversight role but nevertheless play a key role in operations, such as vice presidents of sales.<sup>70/</sup> Other commenters recommended the rule cover audit committee members. Still other commenters, however, disagreed with these commenters and noted that applying the rule to audit committee members might serve as a practical disincentive to audit committee service.

The Board has determined not to expand the final rule to include all non-audit services, directors or persons outside the definition of "financial reporting oversight role." To date, the concerns that have arisen in this area have related to auditors' provision of tax services to executives of public companies. Accordingly, the Board believes it is appropriate, at this time, to limit the rule to address this problem. The Board intends to monitor implementation of the rule, however. In addition, to the extent that issuers pay for non-audit services provided to any individuals, audit committees can and should be scrutinizing the potential effects on the auditor's independence due to such services. Further, as discussed in the proposing release, although accounting firms are not now required to seek pre-approval for executive tax services paid directly by the employee, auditors should consider under Independence Standards Board ("ISB") Standard No. 1 whether it is necessary to notify the audit committee of these

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governmental agency examination regarding that specific tax return after Rule 3523 becomes effective. If a registered firm prepared such a tax return before the rule's effective date, the rule does not operate to prohibit that person from answering questions and providing assistance when that tax return is under examination by a taxing authority after the rule's effective date. Such assistance, of course, must be otherwise consistent with Board and SEC auditor independence rules, including the requirement the auditor not become an advocate for its audit client.

<sup>70/</sup> A few commenters suggested that the Board use the list of officers in section 16 of the Exchange Act, rather than relying on the defined term "financial reporting oversight role." The "financial reporting oversight role" term, however, includes those individuals at an audit client that, because of their oversight of the company's financial reporting process, raise special concerns when they have certain relationships with the auditor. For this reason, the Board continues to believe this is the appropriate group to include in this rule.



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services<sup>71/</sup> or whether it is otherwise advisable to inform audit committees of such services.<sup>72/</sup> In this regard, while the Board is reluctant to establish a per se prohibition on auditors' provision of tax services to directors of their audit clients, the Board notes that firms can – and some have – adopted procedures to notify the audit committee of such services so it may evaluate the potential effect of such services on the auditor's independence.<sup>73/</sup>

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<sup>71/</sup> See ISB Standard No. 1; see also Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission to William H. Donaldson, Chairman, Securities and Exchange Commission at 5 (June 24, 2003) (attached to letter from Chairman William H. Donaldson, U.S. Securities and Exchange Commission, to Five Consumer Groups) (July 11, 2003), available at <http://www.sec.gov/info/accountants/staffletters/taub071103.pdf> (hereinafter "Taub Memo").

<sup>72/</sup> For example, the SEC staff has recommended that audit committees scrutinize audit firms' provision of these services –

The provision of tax services to the executives of an audit client is not expressly addressed in the Act or in the Commission's rules. Nonetheless, an audit committee should review the provision of those services to assure that reasonable investors would conclude that the auditor, when providing such services, is capable of exercising objective and impartial judgment on all issues within the audit engagement.

Taub Memo, supra note 71, at 5.

<sup>73/</sup> See, e.g., Remarks of Scott Bayless, Deloitte & Touche LLP, Auditor Independence Roundtable on Tax Services (July 14, 2004) at 152 (indicating that even when "the company does not pay for those services . . . there is a notification procedure to ensure that the audit committee has the ability to take control of that relationship if they so desire").



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### C. The Auditor's Responsibilities in Connection with Audit Committee Pre-approval of Tax Services

Under Section 10A(h) of the Exchange Act, as amended by Section 202 of the Sarbanes-Oxley Act, all non-audit services that the auditor proposes to perform for an issuer client "shall be pre-approved by the audit committee of the issuer." The SEC's 2003 independence rules implemented the Act's pre-approval requirement by adopting a provision on audit committee administration of the engagement.<sup>74/</sup> Rule 3524 implements the Act's pre-approval requirement further by strengthening the auditor's responsibilities in seeking audit committee pre-approval of tax services. Specifically, Rule 3524 requires a registered public accounting firm that seeks pre-approval of an issuer audit client's audit committee<sup>75/</sup> to perform tax services that are not otherwise prohibited by the Act or the rules of the SEC or the Board to –

- Describe, in writing, to the audit committee the nature and scope of the proposed tax service;

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<sup>74/</sup> See 17 C.F.R. § 210.2-01(c)(7).

<sup>75/</sup> Proposed Rule 3524 used the term "audit committee of the audit client," which some commenters interpreted to mean that the rule would require auditors to make the required communications in connection with proposed tax services for affiliates of an audit client that are not consolidated as subsidiaries with the audit client for financial statement purposes. One commenter noted that the Commission's Rule 2-01(c)(7) requires only that "[b]efore the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render audit or non-audit services, the engagement [be] approved by the issuer's or registered investment company's audit committee." By using the phrase "in connection with seeking audit committee pre-approval," the Board intends Rule 3524 to apply only when the SEC's Rule 2-01(c)(7) requires such approval. Accordingly, the rule does not require registered firms to make the specified communications or to seek audit committee pre-approval in any situations in which audit committee pre-approval is not already required by the SEC's rules. Nor should the rule be understood to require pre-approval by any committee other than the committee required to provide pre-approval by the SEC's rules. To clarify this issue, the Board has also modified Rule 3524 to more clearly track the language of section 10A(h) of the Exchange Act and the SEC's Rule 2-01(c)(7).



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- Discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the audit committee.

These requirements are intended to buttress the pre-approval processes established by the Act and the Commission's rules. Whether an audit committee pre-approves a non-audit service on an ad hoc basis or on the basis of policies and procedures, the Commission staff has stated that "detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor" should be provided to the audit committee.<sup>76/</sup> Indeed, the SEC staff has indicated "[s]uch documentation should be so detailed that there should never be any doubt as to whether any particular service was brought to the audit committee's attention and was considered and pre-approved by that committee."<sup>77/</sup>

Rule 3524 implements the Act's pre-approval requirement further by requiring that registered firms provide the audit committee of an issuer audit client a description of proposed tax services engagements that includes descriptions of the scope of any tax

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<sup>76/</sup> Taub Memo, supra note 71, at 3; see also SEC Office of the Chief Accountant: Application of Commission's Rules on Auditor Independence Frequently Asked Questions, Audit Committee Pre-approval, Question 5, (issued August 13, 2003), available at <http://www.sec.gov/info/accountants/ocafaqaudind121304.htm> (hereinafter "FAQs").

<sup>77/</sup> Taub Memo, supra note 71, at 3; see also FAQs, supra note 76, Audit Committee Pre-approval, Question 5 (issued August 13, 2003). The SEC staff FAQ answer states that ("[p]re-approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to pre-approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. For example, if the audit committee is presented with a schedule or cover sheet describing services to be pre-approved, that schedule or cover sheet must be accompanied by detailed back-up documentation regarding the specific services to be provided").

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service under review and the fee structure for the engagement.<sup>78/</sup> Some commenters suggested significant changes to the scope of the proposed rule. One group of commenters recommended that the rule be broadened to apply to all non-audit services, rather than only tax services. Other commenters expressed concern that the rule appeared to impose restrictions on audit committee pre-approval in excess of the SEC's requirements and, for that reason, recommended that the Board narrow or eliminate the rule. The Board has determined not to change the scope of the rule in response to these comments. While auditors and audit committees may find the procedures in Rule 3524 to be useful for purposes of considering non-audit services generally, the Board adopts these rules only after having engaged in a substantial effort to obtain facts and views of interested persons on appropriate procedures for considering proposed tax services. Before considering broadening the rule, the Board would seek additional information, based, among other things, on experience with this rule, inspections of registered firms, and additional public input. On the other hand, notwithstanding the concerns of some commenters that Rule 3524 requires more than the parallel SEC rule, the Board has determined not to narrow or eliminate the rule. The Board continues to believe that the rule is an appropriate complement to the SEC's pre-approval rule. Rule 3524 supports the procedure under the SEC rule, by requiring the auditor – who is in the best position to describe a proposed engagement – to gather the information required to be presented to the audit committee by the SEC rule. Indeed, it is the SEC rule and staff interpretations of what information audit committees need that have informed the Board's development of the rule.

The Board has made certain modifications to the proposed rule, however. As proposed, the rule would have required auditors to provide audit committees copies of all engagement letters for proposed tax services. While some commenters supported this proposal as a way to ensure that audit committees received adequate information on which to base their judgments, other commenters expressed concern that the rule could result in audit committees being provided voluminous stacks of engagement letters – some in foreign languages – that would obscure rather than elucidate the nature of the tax services proposed. On the basis of this information, and because the

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<sup>78/</sup> See Rule 3524(a)(1). Audit committees may ask auditors for other materials not identified in the rule, to assist them in their determinations whether to pre-approve proposed tax services. Rule 3524 should not be understood to limit the information or materials that an audit committee may request, or that a registered firm may decide to provide, in connection with the pre-approval of tax services.



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underlying purpose of the proposed requirement was to establish a manageable collection of information on which audit committees could make their determinations to pre-approve tax services, the Board has determined to eliminate the proposed rule's requirement to supply the audit committee a copy of each tax service engagement letter. Instead, the rule requires auditors to describe for audit committees, in writing, the scope of the proposed service, the proposed fee structure for the service, and the potential effect of the service on the auditor's independence. The Board believes requiring such a description of a proposed service better meets the Board's goal to improve the quality of information auditors provide audit committees about proposed tax services.

The rule also requires the auditor to describe for the audit committee any amendment to the engagement letter or any other agreement relating to the service (whether oral, written, or otherwise) between the firm and the audit client.<sup>79/</sup> While the Board does not expect or encourage auditors to enter into side agreements relating to tax services, the Board understands that, in the past, some accounting firms have entered into such agreements.<sup>80/</sup> To the extent firms do so, they must disclose those agreements to the audit committee.

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<sup>79/</sup> Id. One commenter expressed concern that Rule 3524(a)'s requirement to describe an "other agreement" could be understood to require the auditor to submit to the audit committee documentation concerning "essentially every communication with the audit client." The Board believes this comment is misplaced. Rule 3524 does not require that the auditor describe all communications with the audit client, but rather all agreements with the audit client that relate to the proposed service.

<sup>80/</sup> See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, supra note 43 ("through side letters or oral understandings, the parties created contingent fee arrangements"). In addition, some commenters have expressed concern that Rule 3524 requires disclosure to the audit committee of fee arrangements that are prohibited by Rule 3521 (or by professional association membership requirements, such as certain referral agreements and fees). Those commenters have asked the Board to clarify that Rule 3524 does not operate to permit such fee structures that are otherwise prohibited by the Board's rules or to endorse fee structures that are prohibited or discouraged by professional ethics rules. It is the case that Rule 3524 does not permit or otherwise endorse such fees.



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In addition, to the extent that a firm receives fees or other consideration from a third party in connection with promoting, marketing, or recommending a tax transaction, Rule 3524 requires the firm to disclose those fees or other consideration to the audit committee. Specifically, Rule 3524(a)(2) requires that the firm disclose to the audit committee "any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service." This provision is adapted from the IRS's rules of practice, which require tax advisors to disclose such arrangements to taxpayer clients.<sup>81/</sup>

Rule 3524(b) also requires registered public accounting firms to discuss with audit committees of their issuer audit clients the potential effects of any proposed tax services on the firm's independence. Even if a non-audit service does not per se impair an auditor's independence, the Commission's independence rules nevertheless deem an auditor not to be independent if –

the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.<sup>82/</sup>

Rule 3524(b) is intended to provide audit committees a robust foundation of information upon which to determine whether to pre-approve proposed tax services. Some commenters have asked for guidance as to the scope of the discussions intended by the rule. The Board intends that the scope of such discussions remain flexible, to address the matters that are pertinent in the judgment of the audit committee, as informed by Commission requirements. While the Act's legislative history makes clear that the Act "does not require the audit committee to make a particular finding in order to pre-approve an activity,"<sup>83/</sup> the Commission's staff expects a robust review of proposed non-audit services –

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<sup>81/</sup> See 31 C.F.R. § 10.35(e)(1) (2005), available at <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

<sup>82/</sup> 17 C.F.R. § 210.2-01(b).

<sup>83/</sup> S. REP. No. 107-205, at 19 (2002).



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The audit committee must take its role seriously and perform diligent analyses and reviews that allow the committee to conclude that reasonable investors would view the auditor as capable of exercising objective and impartial judgment on all matters brought to the auditor's attention.<sup>84/</sup>

To be clear, the rule does not prescribe any test for audit committees or require audit committees to make legal assessments as to whether proposed services are prohibited or permissible. Nor is the rule intended to limit an audit committee's discretion to establish its own more stringent pre-approval procedures. Rather, the rule directs registered firms to present detailed information and analysis to audit committees for audit committees' consideration, in their own judgment, of the best interests of the issuer and its shareholders.

In addition, through the discussion required by Rule 3524(b), the Board expects registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence and those that would be unlikely to have a detrimental effect. Some commenters expressed concern that an example of such a distinction that the Board provided in the proposing release could be understood to suggest that audit committees should not permit an auditor to provide any tax services unless the company had an internal tax department and/or a tax director who could make sound management decision in the best interest of the company. The Board did not intend to suggest that particular functional departments or managers must exist at a company before its auditor may provide it tax services. Rather, the inquiry the auditor should engage in when proposing to provide tax services to an audit client is whether, in the particular case, the company has the capacity to make its own decisions regarding the proposed tax matter, such that the auditor would not be in the position of performing management functions or making management decisions for the company.<sup>85/</sup> The resolution of this inquiry will vary

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<sup>84/</sup> Taub Memo, supra note 71, at 7-8; see also FAQs, supra note 76, Audit Committee Pre-approval, Question 5 (issued August 13, 2003).

<sup>85/</sup> See PCAOB Rule 3600T (adopting AICPA Code of Professional Conduct, paragraph .05 of ET sec. 101, "Independence", Interpretation No. 101-3, "Performance of Other Services," as of April 16, 2003) ("care should be taken not to perform management functions or make management decisions for attest clients the



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depending on the nature of the tax matter at issue and the sophistication of the company, among other things.

Rule 3524, both as proposed and as adopted, is intentionally silent as to when a registered public accounting firm should provide the required information about a proposed tax service to an audit committee. This is because, under the SEC's 2003 independence rules, audit committees themselves may have policies that establish a procedure and schedule for audit committee review of non-audit services, including tax services.<sup>86/</sup> Some commenters expressed concern that the rule might favor one approval method (ad hoc) over another (approval pursuant to policies and procedures). This is not the case. Similar to the SEC's 2003 independence rules, Rule 3524 does not dictate, or even express a preference as to, whether the documentation and discussions required under Rule 3524 should take place pursuant to an audit committee's policies and procedures on pre-approval or on an ad hoc basis. Many issuers have adopted policies that provide for pre-approval in annual audit committee meetings. The Board understands that such an annual planning process can include as robust a presentation to the audit committee as a case-by-case pre-approval process, and Rule 3524 is designed to be flexible enough to accommodate either system and to encourage auditors and audit committees to develop systems tailored to the needs and attributes of the issuer.

The timing and method by which auditors describe for, and discuss with, audit committees proposed tax services will necessarily vary depending on different audit committees procedures. For those audit committees that hold an annual meeting to consider proposed non-audit services for the upcoming year, often by reviewing a proposed annual budget for non-audit services, it would be appropriate for auditors to provide their disclosures pursuant to Rule 3524(a), and hold their discussions pursuant to Rule 3524(b), about proposed tax services that are known at the time of the meeting in connection with or at that meeting. In addition, some audit committees' policies delegate authority to pre-approve non-audit services to one committee member and require reporting of any services approved by delegated authority at the next scheduled audit committee meeting, on a quarterly basis, or otherwise, in order for the audit

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responsibility for which remains with the client's board of directors and management.") (Interpretation No. 101-3 was later amended by the AICPA in December 2003).

<sup>86/</sup> 17 C.F.R. § 210.2-01(c)(7)(i)(B).



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committee to review an updated forecast or other summary of non-audit services. In such cases, it would be appropriate for auditors to provide the member holding delegated authority to approve a tax service a description of the service that complies with Rule 3524(a). Also, although the auditor may discuss the service with the member holding delegated authority when the member is considering the service, in order to comply with Rule 3524(b), the auditor ought to discuss the service with the audit committee as a whole when the audit committee considers the updated forecast or other summary.

Finally, Rule 3524(c) requires a registered public accounting firm to document the substance of its discussion with the audit committee under subparagraph (b). The few commenters who addressed this provision supported it.<sup>87/</sup>

### III. Effective and Transition Dates

The Board intends that the rules become effective at varying times.

In light of pre-existing legal and regulatory requirements, Rules 3502 and 3520 do not, in any practical sense, create new criteria for appropriate conduct. Accordingly, no transition period is called for, and therefore the Board intends that Rules 3502 and 3520, as well as the definitions in Rule 3501, become effective 10 days after the date that the SEC approves the rules.

Rule 3521 is based on the SEC's existing contingent fee rule, although it differs from that rule in certain respects. Accordingly, the Board will not apply Rule 3521 to contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise unwound before the later of December 31, 2005, or 10 days after the date that the SEC approves the rules. Of course, as noted above, the Commission's Rule 2-01 on auditor independence treats an auditor as not independent if it enters into a contingent fee arrangement with an audit client today.<sup>88/</sup>

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<sup>87/</sup> One commenting auditor suggested that the Board consider requiring specific forms or occasions for auditor documentation of audit committee discussion. After considering this suggestion, the Board has determined that such forms or required timing of discussions could unnecessarily limit the scope of the discussions that, in the judgment of the auditor and audit committee, are appropriate.

<sup>88/</sup> 17 C.F.R. § 210.2-01(c)(5).



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Rules 3522, 3523, and 3524 establish new criteria for appropriate conduct by registered public accounting firms and their associated persons. The Board believes it is appropriate to allow a reasonable period of time for such firms to prepare internal policies and procedures, and train their employees to ensure compliance with these new requirements. In addition, the Board understands that engagements covered by these rules may be in progress and that firms will need to terminate or complete these engagements in a professional manner. Accordingly, the Board believes it is appropriate to allow transition periods for these rules.

The Board understands that Rule 3523 will, in practical effect, lead to some registered firms terminating recurring engagements to provide tax services and may require certain members of public companies' senior management to find other tax preparers. Accordingly, the Board has determined that it will not apply Rule 3523 to tax services being provided pursuant to an engagement in process at the time the SEC approves the rules, provided that such services are completed on or before the later of June 30, 2006 or 10 days after the date that the SEC approves the rules. As discussed above, the Board will treat engagements as "in process" if an engagement letter has been executed and work of substance has commenced; the Board will not treat engagements as "in process" during negotiations on the scope and fee for a service.

Although the Board does not expect them to require the same transition as Rule 3523, Rules 3522 and 3524 also impose new legal requirements. Accordingly, the Board has determined that it will not apply Rule 3522 to tax services that were completed by a registered public accounting firm no later than the later of December 31, 2005, or 10 days after the date that the SEC approves the rules. Rule 3524 will not apply to any tax service pre-approved before the later of December 31, 2005, or 10 days after the date that the SEC approves the rules, or, in the case of an issuer that pre-approves non-audit services by policies and procedures, the rule will not apply to any tax service provided by March 31, 2006.



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On the 26th day of July, in the year 2005, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

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J. Gordon Seymour  
Acting Secretary

July 26, 2005

APPENDIX –

Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees



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### Appendix – Rules

#### SECTION 3. PROFESSIONAL STANDARDS

##### Part 5 – Ethics

#### **Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules**

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

##### **(a)(i) Affiliate of the Accounting Firm**

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

##### **(a)(ii) Affiliate of the Audit Client**

The term "affiliate of the audit client" means –

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.



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### **(a)(iii) Audit and Professional Engagement Period**

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

### **(a)(iv) Audit Client**

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

### **(c)(i) Confidential Transaction**

The term "confidential transaction" means –



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(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

### **(c)(ii) Contingent Fee**

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in



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which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

### **(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

### **(i)(i) Immediate Family Member**

The term "immediate family member" means a person's spouse, spousal equivalent, and dependents.

### **(i)(ii) Investment Company Complex**

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and



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(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

### **Rule 3502. Responsibility Not to Cause Violations**

A person associated with a registered public accounting firm shall not cause that registered public accounting firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew, or was reckless in not knowing, would directly and substantially contribute to such violation.

#### **Subpart 1 – Independence**

### **Rule 3520. Auditor Independence**

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.



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Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Commission or other applicable independence criteria.

### **Rule 3521. Contingent Fees**

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 service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

### **Rule 3522. Tax Transactions**

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 non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction –

(a) **Confidential Transactions** – that is a confidential transaction; or

(b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011.1-4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which the firm has a formal agreement or other arrangement related to the promotion of such transactions, recommends engaging in the transaction.



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### **Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles**

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 a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless –

(a) the person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited –

(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are –

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

### **Rule 3524. Audit Committee Pre-approval of Certain Tax Services**

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall –

(a) describe, in writing, to the audit committee of the issuer –



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(1) the scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and

(2) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;

(b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and

(c) document the substance of its discussion with the audit committee of the issuer.