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Via e-mail: comments@pcaobus.org

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

Re: PCAOB Release No. 2012-002, Rulemaking Docket Matter No. 039, *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*

Dear Members of the Board and Staff of the Public Company Accounting Oversight Board:

Rothstein Kass welcomes this opportunity to comment on the Public Company Accounting Oversight Board's (the "PCAOB" or the "Board") *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications* (the "Proposed Amendments"). Rothstein Kass supports the PCAOB in its efforts to appropriately tailor certain of its rules that will impact the audits and auditors of broker-dealers.

For this reason, we welcome the discussion about how best to tailor such rules in relation to the broker-dealer industry without placing undue restrictions or hardships on both independent registered public accounting firms and broker-dealer institutions registered with the U.S. Securities and Exchange Commission (the "SEC"). We clearly see from the onset the need to, at a minimum, to appropriately reconsider certain aspects of the proposed rules relating to independent registered public accounting firms who audit "introducing" or "non-carrying" broker-dealers from the PCAOB's oversight since such broker-dealers have no or very limited access to their client's funds and often times have no or only limited outside investors. As a result these broker-dealer entities do not pose the same level of risk to investors or to our nation's capital market system which many of the current regulatory enhancements were enacted to mitigate or eliminate.

Overall Views

We understand that certain changes may be necessary to the rules of the Board in order to carry out its mission and responsibility to oversee independent registered public accounting firms who audit broker-dealers.

In addition, the Board, along with the SEC, should alternatively consider a process to evaluate whether certain independent registered public accounting firms possess the appropriate level of expertise and qualifications (as well as strong quality control systems) to audit those "carrying" broker-dealers who may pose the greatest risk to our nation's capital market system.

Section 1 – General Provisions – Rule 1001

We believe the Board should further clarify the terms "audit services" and "other accounting services" to conform to the services typically performed by independent registered public accounting firms for the broker-dealer community. For example, the Board should add a new term titled "other attestation services" for those independent registered public accounting firms who provide anti-money laundering ("AML") agreed-upon procedures services under the AICPA professional standards (typically performed annually or bi-annually).

Section 3 – Professional Standards

General Requirements

We're in agreement with the Board regarding the applicable changes proposed to the general requirements in Rules 3100, 3200T, 3300T and 3400T.

Auditor Independence

We agree regarding the overall concept of compliance with the PCAOB and SEC's independence and ethics rules by all independent registered public accounting firms who audit certain broker-dealers who pose a certain level of risk to the investment community. In addition, we respectfully request the Board to carefully consider giving independent registered public accounting firms sufficient time to transition and train their professional staff and update their quality control systems to appropriately reflect these proposed changes once they become effective. Additionally, the PCAOB should have future dialogue with the SEC for consideration to be given to extend the audit filing deadline for broker-dealers which will need to comply with the PCAOB standards to mirror the deadlines effective for issuers, namely 75 or 90 days.

The Board has proposed to apply Rule 3523 – *Tax Services for Persons in Financial Reporting Oversight Roles* - to independent registered public accounting firms of broker-dealers to the same extent that it currently applies to the audits of issuers. If enacted, effectively an independent registered public accounting firm of any broker-dealer would be prohibited from rendering any tax service to any person who is deemed to be in a "financial reporting oversight role" at such broker-dealer (or others depending upon the existence of certain enumerated or proscribed relationships or material financial interests). In its proposal, the Board acknowledged that *"the auditor independence implications of an auditor providing such tax services to an officer of a broker or dealer may not be the same as those associated with an auditor providing tax services to an officer of a public company."* Rothstein Kass strongly agrees with this statement issued by the Board.

Audits of issuers serve primarily to protect the general investing public, either directly or indirectly, to a much greater extent than audits of privately-held companies, a conclusion that is evidenced by the myriad and complex rules and disclosure requirements applicable to audits of issuers that are not applicable to audits of privately-held companies. Conversely, audits of privately-held companies, more often than not, serve to protect those persons in non-equity based contractual privity with such entities and investors who are closer and have greater access to management and relevant financial information pertaining to the entity.

Where in cases of broker-dealer entities that are in possession of their clients' funds for which segregation and accountability are mandated, there may be a greater overlap with or similarity to issuers rather than privately-held companies and, therefore, a greater need to protect those individuals who are financially tied to such broker-dealer entities. Brokerage clients can have significant assets controlled by the broker-dealer but may have little or no access to management personnel or financial information beyond what is included in typical regulatory filing requirements that is available to the investing public. However, if no client funds are held, the application of more stringent rules and imposition of greater restrictions are not warranted, since there would not be any individuals resembling public investors in need of greater protection. Rather, the contractual and equity relationships would more closely resemble that of privately-held entities.

Under such circumstances, the cost of increased regulation and scrutiny for broker-dealer entities to retain additional professionals on top of the relationship with their current independent registered public accounting firm would far exceed the minimal benefit potentially obtained, thus reducing profitability of privately-held entities that are frequently small businesses. Such downward pressure on profitability hinders their ability to compete against issuers and larger entities that may operate on larger margins. It should also be noted that the majority of the broker-dealer entities, whether subject to SEC Rule 15(c)3-3 or exempt from Rule 15(c)3-3, are fundamentally different from issuers in that their structure usually requires the owners of the business to reflect on their personal tax filing the taxable income attributable to the broker-dealer entity. Prohibiting the independent registered public accounting firm from preparing the personal income tax filing for broker-dealer individuals deemed to be in a financial reporting oversight role will increase the cost of compliance as additional professionals will be involved potentially creating inefficiencies.

We believe there is a difference between broker-dealer professionals in a financial reporting oversight role as compared to the same individuals at an issuer organization; in that those professionals who perform financial reporting oversight roles in the privately-held entity business setting typically own large stakes in the organization and perform multiple functions. As such, their interests and motivations are different from their issuer counterparts. The interests of creditors and other users of privately-held companies' financial statements are similarly aligned. Accordingly, there is less risk of appearance of mutual benefit between a person in a financial reporting oversight role and an independent registered public accounting firm providing such individual various tax services. We highly encourage the PCAOB to gather additional data from various constituents to determine whether they perceive providing tax services to individuals in a financial reporting oversight role of a broker-dealer an impairment of independence and objectivity. Additionally, we suggest that the PCAOB have future dialogue with the American Institute of Certified Public Accountants to determine whether their Professional Ethics Executive Committee ("PEEC") has noted any instances of providing such tax services have actually compromised the independence and objectivity of a public accounting firm.

Moreover, unlike issuers, executive compensation in privately-held entities, such as broker-dealers, often has little to do with the reported earnings of the organization. Instead, these professionals are often incentivized to take less compensation so that they can invest the earnings into growing their organization. This, in turn, creates jobs and promotes growth in our economy. Furthermore, executive compensation in privately-held entities is typically paid in cash, while the compensation to issuer executives in a financial reporting oversight role is often paid in large part with the issuer's own securities. As a result, executives of issuers have a greater incentive to try to increase the value of the issuer's stock. This incentive simply is not there for the broker-dealer owner or executives as the ownership units are not publically traded and typically have restrictions prohibiting them from being transferred.

According to recent PCAOB statistics (as of December 31, 2010), approximately 6.7% of all Financial Industry Regulatory Authority ("FINRA") broker-dealers are "clearing" brokers that hold client funds and, therefore, are not SEC Rule 15(c)3-3 exempt, while approximately 93.3% of FINRA broker-dealers are either "introducing" broker-dealers or broker-dealers that neither clear nor carry or execute customer transactions or funds and, therefore, are exempt from SEC Rule 15(c)3-3. Of the 93.3% exempt broker-dealers, approximately 7.65% are subsidiaries of issuers and, accordingly, are already subject to Rule 3523 of the Board. The remaining 92.35% or 86.16% of all SEC Rule 15(c) 3-3 exempt FINRA broker-dealers that do not hold client funds are privately-held entities with equity and contractual relationships most closely resembling the vast number of privately-held entities that are not subject to increased regulation and the application of Rule 3523.

The Board should carefully examine the applicability of Rule 3523 to further clarify the definition of one who is in a "financial reporting oversight role" and what that definition truly means to those individuals employed at "carrying" broker-dealers whether independence would be impaired if the independent registered public accounting firm provided such individuals with certain tax services, as well as whether there would be an appearance of mutuality of interest. From a broker-dealer industry perspective, such non-attest service would not have the same impact as it would towards individuals in similar capacity at an issuer organization. From our perspective, we do not see a conflict of interest between privately-held broker-dealer entity and the individuals in a financial reporting oversight role. Such individuals are typically owners of the pass-through broker-dealer organization so their interests are completely aligned with their organization. Based on our experience, a vast majority of broker-dealer organizations are limited liability companies ("LLCs") and are effectively treated as "flow through entities" for income tax purposes. It makes logical sense for the independent registered public accounting firm to take the audited information of the broker-dealer entity and prepare both the broker-dealer entity's income tax return as well as the individuals' (in a financial reporting oversight role) income tax returns. This in turn reduces cost for the broker-dealer organization and eliminates inefficiencies. We believe that reasonable investors in the broker-dealer community would not perceive a potential impairment of independence as a result of providing tax services to individuals at a privately-held entity, as they might do if such services are provided to those individuals employed at an issuer entity.

Lastly, we are in agreement with (a) the Board's proposal not to apply the pre-approval requirements for services to be performed by an independent registered public accounting firm to broker-dealers as well as (b) redefining the term "audit committee" regarding the required communications with audit committees concerning independence (Rule 3526) by independent registered public accounting firms to accommodate those broker-dealers who do not have a formal audit committee structure in place.

In Summary

We are committed to participating in future discussions with the Board and its staff about how to best implement appropriate provisions that would further enhance audit quality with respect to broker-dealers and reduce or eliminate risk to an acceptable level in the U.S. capital markets.

We would be pleased to discuss our comments with you at your convenience. Please direct any questions to Timothy Jinks, Quality Control Principal, at (973) 577-2312 (tjinks@rkco.com), John Cavallone, Principal In-Charge of National Broker-Dealer Group, at (973) 577-2306 (jcavallone@rkco.com) or Salvatore Collemi, Quality Control Senior Manager, at (973) 577-2266 (scollemi@rkco.com).

Very truly yours,

/s/ Rothstein Kass

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