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May 12, 2003

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. 003
Proposal of Ethics Code For Board Members, Staff and Designated Contractors and
Consultants

Deloitte & Touche LLP is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on its *Proposal of Ethics Code for Board Members, Staff and Designated Contractors and Consultants*, PCAOB Rulemaking Docket Matter No. 003 (April 18, 2003). We commend the Board for developing a Code of Ethics under which the members of the Board, its staff, designated contractors and consultants will be required to serve the Board.

Our comments below relate to the areas of the proposed Code of Ethics that we believe could have an impact on the accounting profession either through participation on the Board's advisory group or through post-employment restrictions. Additionally, included as an Appendix to this letter are some additional observations that the Board may wish to consider in order to strengthen its proposed Code of Ethics.

Application of the Disqualification Provisions to the Advisory Group

Section EC8(a) of the proposed Code of Ethics requires that “if a Board member or professional staff believes that he or she, or a member of his or her immediate family, may have a financial interest or other similar relationship *which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to Board’s function or activities*, then he or she shall, at the earliest possible date (1) disclose such circumstances and facts...; and (2) recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.”¹ This provision of the Code also applies to the Board’s advisory group under the Board’s proposed *Statement Regarding the Establishment of Auditing and Other Professional Standards*, PCAOB Rulemaking Docket Matter No. 004 (April 18, 2003).

Based on the discussion in the Board’s proposed release *Statement Regarding the Establishment of Auditing and Other Professional Standards*, it is the intention of the Board to include practicing auditors among the constituencies in its advisory group. We believe that participation on the advisory group by active members of the profession is essential to the development of meaningful standards. We also agree that the members of the advisory group should be required to adhere to an appropriate code of ethics in carrying out their advisory activities for the Board. While we do not believe adhering to the provisions of EC8(a) would be problematic for members of the accounting profession serving on the advisory group, we are concerned that the language in EC8(a) could be used to criticize the Board for placing practicing auditors on the advisory group, simply because they are subject to the Board’s oversight, and, on

¹ PCAOB Release No. 2003-004, at A1-vii (emphasis added).

that basis alone, do not have the necessary “appearance of independence and objectivity with respect to the Board’s function or activities.”² Therefore, we recommend that the Board revise the language in EC8(a) so that it is clear that those who practice in a registered public accounting firm and serve on the advisory group would not be considered to lack the “appearance of independence and objectivity” merely because they are subject to the oversight of the Board.

Post-Employment Restrictions and Negotiating Prospective Employment

Section EC12(a) of the proposed Code of Ethics would require that “Board members and professional staff may not negotiate prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.”³ We are concerned that this provision of the Code is only triggered once “negotiations” begin. A significant amount of employment discussions, including receiving an offer, could occur well before any negotiations begin. In fact, some job acceptances occur without any substantive negotiations. Additionally, it is not clear what would happen if negotiations take place and a job is not accepted. We believe these aspects of the proposed Code of Ethics should be clarified and suggest that the Code include relevant provisions of Independence Standard No. 3 *Employment with Audit Clients* (ISB No. 3), which has been adopted as part of the Board’s interim independence standards to be followed by registered public accounting firms. ISB No. 3 includes “pre-change in employment” safeguards that are initiated at the point conversations with a prospective employer take place rather than waiting for

² *Ibid.*

³ PCAOB Release No. 2003-004, at A1-viii.

negotiations to begin. Also under ISB No. 3, once negotiations begin with the prospective employer, not only is the professional removed from work associated with the prospective employer, but also, upon such removal, the professional's work is reviewed. The Board should also consider more restrictive requirements when the professional is in a policy making position and has the ability to directly impact the prospective employer and the accounting profession in general based on decisions made regarding matters of policy.

Conclusion

We believe the recommendations included herein as well as the additional observations in the Appendix would enhance the Board's proposed Code of Ethics. We appreciate the opportunity to comment. If you have any questions or would like to discuss these issues further, please contact Robert J. Kueppers at (203) 761-3579.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Charles Niemeier, Acting Chairman of the PCAOB
Kayla Gillan, Member
Daniel Goelzer, Member
Willis D. Gradison, Jr., Member

Appendix

The following summarizes our additional observations with respect to the Board's proposed Code of Ethics.

Clarification of Applicability of the Code

Section EC1 states that the Code applies to (1) Board members and staff, (2) the immediate family of Board members and staff, and (3) designated contractors and consultants to the Board. However, sections EC3 to EC14 of the proposed Code generally refer only to Board members and staff. Only Sections EC5(a) and EC8 refer to the immediate family of Board members and staff. There are no references to designated contractors and consultants within the Code. The Board should clarify which sections of the proposed Code apply to each of these three groups of individuals. Additionally, we believe that senior staff should be required to meet the same ethics standards as Board members due to their ability to make significant decisions and impact policy.

Definition of Designated Contractors and Consultants

Section EC2(c) defines "designated contractors and consultants" as those persons or business organizations with whom the Board enters into contracts for services, including contracts that provide for both goods and services. The Board may want to consider whether this definition is too broad. As currently written, if one person in a large organization provided services to the Board, the entire organization may be required to comply with the Code. To illustrate, it could be read that the Board's cleaning contractors be required to comply with the Code.

Definition of Immediate Family

Section EC2(e) defines immediate family to include a spouse, all dependent children, and any other person whom the Board member or staff has enrolled in any of the Board's employee benefit plans, excluding life insurance, whose financial interests and investments (as specified in the Code) are known, or in the exercise of reasonable care, should have been known, by the Board member or staff.

We believe the definition of immediate family should be modified so that it is consistent with the independence standards that auditors are required to follow. We believe it is appropriate that the Board be subject to similar standards as those that are subject to Board oversight. As drafted, the definition excludes spousal equivalents as well as other persons who might be deemed a dependent (e.g., a parent, grandparent, or other person) based on their circumstances. Additionally, the Board should clarify what constitutes an exercise of reasonable care. As proposed, the reasonable care standard appears to provide the ability to exclude certain people (e.g., even a spouse) from being considered immediate family. For example, the Board should consider whether it would be in the public interest for a spouse's use of a blind trust for investments to be a valid basis for excluding him or her from being immediate family.

Restrictions on Financial and Employment Interests

Section EC4 proposes restrictions on financial and employment interests that apply only to Board members and professional staff. We believe the Board should apply restrictions on financial and employment interests to immediate family. For example, should it be acceptable for a Board member's spouse to be a partner in a registered public accounting firm?

Definition of Routine Banking and Other Commercial Relationships

Section EC4(a)(1)(A) proposes that Board members and staff are permitted to have “routine” banking and other commercial relationships. The Board should provide guidance on what is deemed routine. For example, are relationships routine if they are fully insured under FDIC or SIPC insurance, the transactions are part of the entity’s normal business operations with the general public, and the transactions are made on normal procedures, terms, and requirements?

Outside Activities of the Board

Section EC6 proposes that no Board member or staff of the Board shall engage in any outside activity, whether or not for compensation, which affects or reasonably creates the appearance of affecting his or her independence or objectivity. As currently proposed, it is not clear who makes the determination regarding the appearance of affecting independence or objectivity. The Board should clarify who decides whether this perception question has been considered and mitigated.

Disclosure of Waivers, Monitoring of the Code, and Discipline for Violations

Section EC13 proposes procedures for requests for waivers. Consistent with Section 406 of the Act which requires issuers to disclose waivers of code of ethics, the Board should disclose to the public all waivers granted with respect to provisions of the Board’s Code. Issuers are also required under Item 10 of the instructions to Form 8-K to describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver. We believe the Board should consider making similar disclosures. We also believe, to ensure accountability to the Code, that the Board should establish procedures for monitoring compliance with the Code and institute disciplinary practices for violations of the Code.