

**JULY 26, 2005 OPEN MEETING**

**RULES CONCERNING INDEPENDENCE, TAX SERVICES,  
AND CONTINGENT FEES**

**Statement of Daniel L. Goelzer**

I view the independence and tax services rules the Board is considering today as fundamentally an exercise in striking the right balance.

These rules would prohibit accountants from assisting their audit clients in egregious tax dodges that impair independence and undermine public confidence in auditor integrity. While the major firms have in recent years voluntarily adopted limits on this kind of activity, the outpouring of comment we received makes clear that this is an area in which it is nonetheless critical that we act. Prohibiting auditor participation in tax-motivated transactions that the IRS has already identified as problematic, that must be kept secret, or that don't meet the standard of having at least a 51 percent chance of being allowable are sensible steps to restoring confidence in auditor professionalism.

At the same time, the rules before the Board would preserve the ability of public companies to look to the expertise of their auditor for garden-variety tax planning advice and compliance assistance. Auditors have traditionally performed these services for their audit clients, and they are not incompatible with independence. This kind of support is particularly important to small and medium-sized businesses that lack extensive in-house tax resources.

While the Board's proposed limitations on tax services have captured most of the attention, it is worth noting that this rulemaking proceeding would also have broader ramifications. In particular, Rule 3520 would add to the Board's rules a general requirement, parallel to existing SEC requirements, that the audit firms and associated persons must be independent of their audit clients. Rule 3502 would prohibit associated persons from knowingly or recklessly causing their firm to violate Board or SEC rules, including those relating to independence. In the long run, these provisions -- which are likely to be important predicates to the Board's enforcement program -- may prove even more significant than the specific rules related to tax services.

While the basic principles reflected in these rules have not changed from the version published for comment, there have been several important refinements. I would like to mention three that I consider particularly significant:

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- First, Rule 3502 has been narrowed so that it will reach only associated persons who cause a firm violation by knowing or reckless conduct. In my view, violation-causing conduct that is only negligent can best be dealt with through our inspection program and our ability to require firms to strengthen their quality control and other internal procedures. I strongly support this change.
- Second, Rule 3524, which contains requirements for audit committee pre-approval of auditor tax services, will not require that the committee receive all engagement letters. Further, the release text that accompanies this rule will stress flexibility. I agree that we should not attempt to be overly prescriptive in the day-to-day relationship between auditors and audit committees.
- Third, the Board's staff has tailored more precisely the rule prohibiting the auditor from providing personal tax services to financial reporting oversight officers and has made explicit something that was implicit in the original proposal -- that the prohibition does not extend to independent directors. I agree that this prophylactic prohibition should be carefully targeted and that we need to be very careful to avoid creating disincentives to board service.

The rules before us, particularly with these changes, are a measured and practical response to a difficult and important problem. In my view, we have struck the right balance, and I support the rules as recommended by the staff.