

**Pennsylvania Institute of Certified Public Accountants**

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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

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

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>

PCAOB  
February 4, 2005  
Page 4 of 4

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 initial 'S'.

Susan E. Howe, CPA  
PICPA President