

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