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CERTIFIED PUBLIC ACCOUNTANTS
AND BUSINESS ADVISORS

January 17, 2005

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

Re: PCOAB Rulemaking Docket Matter No. 017

We appreciate the opportunity to comment on the PCAOB's proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. We respect the difficult job that the PCAOB has in assuring independence of auditors to protect the public interest while at the same time allowing the auditors and their firms the ability to work with clients to legally and properly minimize their tax liability which is also in the best interest of the investing public.

The comments below are focused on public companies that are "small business issuers," as defined by Regulation S-B. All of the public companies that we serve are in this category. We understand some of the issues related to tax shelters and other tax positions taken by large public companies, but the public interest issues impacting small business issuers are different as they relate to tax services. Small business issuers are much more limited in their access to professionals and expertise in tax planning. In fact, many small business issuers are start-up companies that desperately need tax planning advice, but their capacity for hiring professional advisors is extremely limited because investors apply pressure to minimize expenses in order to become profitable as soon as possible. Our small business issuer clients desire to obtain tax planning advice in a very economical manner in order to remain in compliance with the tax law while taking full advantage of the common benefits and deductions that are available. Whenever possible, we believe the PCAOB's rule-making process should provide allowances for small business issuers that avoid costly burdens that limit their growth.

1. The PCAOB's Proposed Rule 3522(c) includes a provision that would treat a registered public accounting firm as not independent if the firm provides services related to planning or opining on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations. While independence of the auditor is essential to the confidence of the public investors, those same investors are concerned that the value of their investments continue to grow and hold the officers and board of directors in a somewhat fiduciary capacity to assure that the company and its finances are properly managed.

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Part of the proper financial management by the board of directors and the officers of any company is the duty to consult in those situations where their own knowledge is not sufficient to allow them to make the best decisions on behalf of their employees and their investors. In any publicly held company, the minimization of taxes is an important part of the financial management of the company. It is not illegal for a company, its officers and its board of directors to arrange the financial affairs to the company in such a manner to minimize its tax liability, even to the extent of taking an aggressive position on tax matters. In fact, it might be argued that these persons had violated their responsibility to the shareholders and investing public if they did not work to minimize the taxes as well as other significant costs to the business.

Another issue might be in interpreting when a transaction has been based upon "aggressive" interpretation of applicable tax laws and regulations. If no aggressive positions were ever taken, we would not need the tax courts and other courts of appeal. However, many of our tax laws are subject to interpretation. In fact, one of the major problems that businesses and tax practitioners face every day is the continuing tax legislation that is passed every year by Congress without having the corresponding regulations which provide the IRS interpretation of those laws. It is often two to three years after the laws are effective before the IRS issues its regulations. During that time, tax practitioners review the law and the Committee Reports to ascertain applicability and limitations. The IRS later issues its regulations which may reach further than the law itself and the intent of Congress as expressed in the Committee Reports. The IRS also has the benefit of reviewing or examining the tax returns up to three years after the returns have been filed during which time it may have issued far-reaching regulations. Interpretations that may have not been viewed as aggressive when looking at the actual law and Committee Reports may be considered aggressive when viewed in light of subsequently issued regulations.

To prohibit the firm that audits a business from also working with that same business regarding its tax planning is to take away one of the major tools that the business has to work with in meeting its financial goals. The proposed rule would require that the audited business go to another firm that is not auditing its financial statements for its tax planning. We believe that it is more hazardous to the investing public to have a second or third firm planning or opining on an isolated transaction that is not already familiar with the total company operations as the auditor's firm would be. To require that another firm provide this tax planning for the audited company is an unnecessary risk for the business and would require further financial outlay for the firm and its investors in the time that would be required by the second or third firm to learn all it needed to know about the business before it could adequately assist the firm in its planning for tax issues.

This proposed rule would also give businesses an excuse to go outside the firm performing their audits to another firm to structure transactions that it did not wish to bring to the auditor's attention. We believe that anytime a business starts fragmenting its auditing and tax services among firms that there is an increased audit risk to their financial statements. This fragmentation should cause every auditor concern that the management of the business has availed itself of a means to handle certain transactional planning away from the eyes of the auditor who might view the transaction differently and require reserves or disclosure of contingent liabilities in the audited financial statements.

We therefore request that the PCAOB reconsider this proposed rule in its present form. We suggest that more clarification of "aggressive interpretation" is needed. For small business issuers, good business and tax planning advice from auditing firms that are familiar with their operations is essential for their future survival.

2. The PCAOB's Proposed Rule 3523 would set a new requirement to treat a registered public accounting firm as not independent if the firm provided tax services to officers in a financial reporting oversight role of an audit client. This proposed rule would seem to require that all financial officers, the chief executive officer and the board of directors have their income tax returns prepared by a firm or person other than the firm auditing the financial statements of the business they represent since it could be construed that all of these individuals have financial reporting oversight.

We find this particularly interesting since we think that the auditor for the business is in the best possible position to assist the board and officers of the business in filing their own income tax returns accurately. The taxability and amount to be included in taxable income from various fringe benefits and the correct reporting of these fringe benefits by the business to the IRS as well as to the officers and board of directors is best addressed by the auditor with his or her awareness of the various benefits being earned by these individuals.

Example: If the business owns a company airplane, it would not be unusual for the higher-level executives to have the opportunity to use the airplane for personal trips, but the IRS regulations are specific in their direction regarding the computation of the amount of compensation to be reported to the executive who uses the company airplane for personal purposes. The auditing firm is in position to know about the company airplane as a result of its review of the corporation's fixed assets whereas the firm who does not perform the audit would not necessarily be aware that the compensation of the executive should include any amounts for the personal use of the company airplane.

Because so much of the executive compensation package in many companies is <u>not</u> in the form of a bank deposit to the executive's checking account, it is even more important that the tax returns for the executives are prepared by the firm that has a clear understanding of the business and its various compensation and benefit plans. Prohibiting the auditing firm from preparing the individual income tax returns of the officers and board of directors in essence allows those persons more opportunity to commit errors in reporting their taxable income, which is contrary to the interests of another government agency, the IRS.

During the year, there are also various elections being made such as IRC Section 83(b) elections regarding stock transfers that require documentation to the IRS within 30 days and also require both the business and the individual to attach such documentation to their returns.

Requiring the splitting of these returns between firms providing tax services would increase the possibility of noncompliance through omission of these documents from all required returns. Taking this example one step further, preparation of the officer's return by the firm handling the planning and documentation relative to the Section 83(b) election allows the preparer to inspect the detail of the officer's compensation to ascertain that the transaction was included on the officer's Form W-2 for the year of the transaction.

In addition, Proposed Rule 3523 would require that auditing firms make determinations of which executives are in "a financial reporting oversight role." This determination could be subject to some interpretation. In many companies, it may not be clear whether some employees would come within that definition. This would also require the auditing firm to determine each year if a change in title or duties has occurred that would affect the auditing firm's eligibility to serve as an executive's tax preparer. Again, this would seem to undermine compliance with the tax laws and IRS regulations in that changing preparers increases the risk that tax attributes such as carryover items and basis adjustments to assets will be lost in the transition, which further undermines tax compliance.

Again, we request that the PCAOB reconsider this proposed rule and withdraw it from its final passage.

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Representatives from our firm would be pleased to discuss these comments with you if you desire. Please contact Warren E. McEwen at 423-785-1353 if you have any questions.

Very truly yours,

HAZLETT, LEWIS & BIETER, PLLC

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