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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, DC 20006

Re: PCAOB Rulemaking Docket Matter No. 017
Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees

Dear Mr. Secretary:

BDO Seidman, LLP respectfully submits our comments on the Board's Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees ("the Proposal" or "Release").

Summary of Our Views

The financial reporting scandals of recent years have demonstrated that behavior by some participants in all sectors of the financial markets can be driven by a form over substance mentality, where painstaking rationalization of what is permissible can take priority over the essence of what is right. While most market participants will act responsibly regardless of the rules, there is a clear *perception* that certain services may be more susceptible to undesirable influences. In that environment, the goal of reliable financial statements can only be achieved with an unfettered trust in auditor independence. Clearly such trust is based on a financial statement user's belief that the auditor's behavior is not influenced by factors that impair his or her objectivity or that *reasonably could be perceived* as doing so.

Accordingly, we strongly support the broad objectives of the Proposal that would classify services related to listed transactions, confidential transactions, and aggressive tax positions as impairing auditor independence. While a listed transaction is not necessarily indicative of whether the tax treatment is correct, there is a general perception in the marketplace that such transactions create an aura of a substantial risk of disallowance. In our view, such perceptions must be recognized. However, we believe there are certain elements of the Proposal relating to tax services for issuers that require additional clarity to limit their current broad sweep in order to avoid unintended and undesirable consequences.

We also support the portions of the Proposal that would continue to permit auditors to provide other tax services to issuers provided they are pre-approved by the audit committee. We agree with the Board that these other "non-controversial" services have not raised independence concerns in the past. In that regard, we agree with the Proposal's continued permissibility of international assignment tax services and tax services to most employees.

In contrast, we do not agree that all tax services for executives in a financial oversight role should impair independence *per se*. It would seem logical to apply the same restrictions to these individuals as to issuers. Accordingly, routine tax return preparation and tax planning should continue to be permitted for these individuals, subject to audit committee pre-approval.

In evaluating the effect of certain services on independence, we support the use, as *general guidelines,* of the four overarching principles of the SEC referred to in footnote 6 of the Proposal. However, we would caution against a literal application of these principles because, taken to an extreme, this could prohibit even some audit-related services, as illustrated in a subsequent section of our letter.

We also support the prohibition on contingent fees since it would substantially conform with the recent SEC staff interpretation and add clarity to a troublesome area. In addition, we agree with the portion of the Proposal relating to the fundamental independence requirement.

Finally, we generally agree with the proposed additional information required to be provided to the audit committee, although some minor elements of the proposed rule might be impractical. In that connection, we suggest that the Board place significant emphasis in the final Release on the important role played by the audit committee in evaluating independence. A strong audit committee that is knowledgeable of all relevant facts and circumstances is in the best position and should be allowed sufficient flexibility to act on behalf of investors in making the tough calls on independence matters. While certain tax services are appropriately deemed to impair independence *per se* (e.g., listed transactions), the perception caused by other services may not be so clear.

Our more specific comments on the proposed rules and various other recommendations are set forth below.

Application of the Four Overarching Principles

In applying its independence rules, the SEC looks in the first instance to four factors or overarching principles:

1. The auditor cannot function as management or employee.

2. The auditor cannot audit his or her own work.

3. The services cannot create a mutual or conflicting interest with the client.

4. The auditor cannot be an advocate for the client.

At the July 14, 2004 Auditor Independence Tax Services Roundtable leading to the Proposal, there appeared to be virtual unanimity that these principles should apply to tax services. However, there was a range of views as to how to apply the principles to different situations—from a literal reading to practical guidelines dependent on the nature of the services.

As stated in Section 602.01 of the SEC Codification of Financial Reporting Policies:

> "These factors are general guidance and their application may depend on particular facts and circumstances. Nonetheless, we believe that these four factors provide an appropriate framework for analyzing auditor independence issues. We had proposed to include these four factors in the general standard of Rule 2-01(b). While some commenters agreed with including the four principles in the rule, others did not. Some commenters believed that the principles were too general and difficult to apply to particular situations. Others suggested that the principles should more appropriately be used as 'guide posts' and included in a preamble instead of in the rule text.
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> While the principles were derived from current independence requirements, because of these concerns, we are including them in the Preliminary Note. In the context of this Preliminary Note, the four factors play a role comparable to that of the Ethical Considerations in the American Bar Association's Model Code of Professional Responsibility. The Model Code contains three separate but interrelated parts. Ethical Considerations 'represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.' Like those Ethical Considerations, the four principles constitute a body of principles to which accountants and audit committees can look for guidance when an independence issue is raised that is not explicitly addressed by the final rule.
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> The Preliminary Note states that 'these factors are general guidance only and their application may depend on particular facts and circumstances.' The Preliminary Note also reflects the notion that the influences on auditors may vary with the circumstances and, as a result, Rule 2-01 provides that the Commission will consider all relevant facts and circumstances in determining whether an accountant is independent."

In our view, the above quoted section makes it clear that the four principles should be used as ideals or goals, rather than definitive criteria for evaluating independence. As applied to tax services, this approach is not inconsistent with the Senate Report preceding the Sarbanes-Oxley Act of 2002 ("the Act"). The report states that Congress intended "to draw a clear line around a limited list of non-audit services." The list of prohibited services in the Act does not include tax services, which are expressly permitted under Section 201 of the Act. The report goes on to explain how the "simple principles" apply. Nowhere in this explanation does it state that these principles lead to a prohibition on providing tax services. However, as mentioned earlier in our letter, the intense public focus on implementation of overly aggressive tax strategies in the last few years has contributed to the diminution of the public's perception of auditor independence. Therefore, these types of services need to be evaluated based on the four principles, and they clearly fail at least three of these criteria: mutuality of interests, auditing one's own work, and advocacy. When it comes to other tax services, however, the line is not quite so clear, as exemplified by the following analysis:

- *Functioning as Management* – When an audit firm suggests a tax saving idea to a client (not involving one of the services proscribed by the Proposal), it is providing professional advice, similar to when it suggests improvements in internal controls or other cost savings ideas. It is not acting as management. Even when the tax planning ideas are complex, management is responsible for obtaining sufficient understanding of the issues to enable it to decide its course of action. Under a recent revision to AICPA standards (Rule 101-3), management must acknowledge this responsibility in the terms of engagement with the auditor.

- *Auditing One's Own Work* – While this principle might seem non-controversial, its literal application could create problems, particularly for auditors of smaller issuers. Such companies frequently do not have sophisticated in-house expertise and must turn to others (often their auditors) for advice on routine but essential issues, such as new accounting pronouncements and the accounting and systems characteristics of potential acquisitions. In addition, auditors of smaller companies are more likely to propose adjusting journal entries. If the client records such entries, is the auditor deemed to be auditing his or her own work? As another example, while routine tax return preparation and compliance work would clearly be permitted by the Proposal and have not raised independence issues for the reasons cited in the Release, completion of the annual tax returns and related tax compliance work after release of the audited financial statements may produce results that require subsequent period adjustments to the tax accruals reflected in those financial statements. These types of services have been an integral part of the relationship between auditors and their clients for many decades and are simply not perceived as auditing one's own work. Based on this analysis, this principle should be applied with sensitivity so that it does not cause auditors to refrain from providing these services, to the detriment of issuers and their stockholders.

- *Creating a Mutual or Conflicting Interest with the Client* – The clearest examples of situations that could create a mutual or conflicting interest with the client are contained in Section 602.02e of the SEC Codification of Financial Reporting Policies. This section refers to direct and material indirect business relationships other than as a consumer in the normal course of business. Among the examples of such relationships are "sales by the accountant of *items other than professional services*" (emphasis added). If professional services were not excluded, a literal application of this principle could construe an audit in accordance with PCAOB standards to impair independence since both the auditor and the client have a mutual interest—reliable financial statements. By rightfully excluding professional services from this prohibition, the SEC clearly views this not to be an issue with respect to this principle. We recognize, however, that professional services provided under contingent fee arrangements would create a mutuality of interest, but it is the fee arrangement that causes the problem, not the nature of the services.

- *Serving as an Advocate* – The advocacy principle is reflected in the SEC's independence rules in the prohibition on providing expert opinions or being a legal representative of the client. It does not preclude the auditor from providing factual accounts of work performed or explaining the positions taken or conclusions reached during the performance of any service. Therefore, the SEC recognizes that the general prohibition on advocacy should not be taken literally so as to prohibit an audit firm from explaining how it concluded that the client's accounting for a transaction is in conformity with GAAP or with applicable tax laws and regulations (e.g., participating in a conference call with the SEC staff to discuss the client's accounting issues, or providing assistance in connection with tax audits).

Role of the Audit Committee

The Act and the resulting SEC rulemaking recognized the significant benefit that an effective audit committee can bring to the financial reporting process by vesting the audit committee with additional responsibilities, enhancing auditor communications, and providing more detailed disclosures relating to services performed. In doing so, however, certain non-audit services were prohibited *per se* and, as such, were not left to the judgment of the audit committee.

We agree with the PCAOB that the types of "aggressive tax positions" discussed in the Proposal can have an adverse effect on the perception of auditor independence and, thus, should be prohibited *per se*. However, we believe that other tax services, including those for executives with financial oversight responsibility, do not create the same level of concern and should be left to the audit committee for evaluation and approval. There are many important issues that are subject to the judgment of the audit committee, such as the appropriateness of the company's accounting and disclosures. It would be entirely consistent with this role to permit the audit committee to pre-approve all tax services, except for those prohibited by Rule 3522. To do otherwise could prevent the audit committee from approving services it legitimately believes are in the best interests of the company and its investors.

As an additional safeguard, the PCAOB inspectors could speak directly with audit committee chairs to discuss how they evaluated the effect on independence of any tax services performed by the auditors.

Services to Issuers

Aggressive Tax Matters – (Rule 3522)

As we stated earlier, we strongly support the broad objectives of the Proposal that would classify services related to listed transactions, confidential transactions, and aggressive tax positions as impairing independence. While a confidential transaction, for example, is not necessarily indicative of an unacceptable risk of disallowance, the public's general perception is that there is such a risk and, therefore, it must be dealt with as such.

Our specific comments on this aspect of the Proposal are as follows:

1. <u>Listed Transactions</u>

In determining where to draw the line as to unacceptable tax services to issuers, we believe the Board has taken a reasonable approach by focusing on specific areas of major concern (e.g., listed transactions). In our view, these transactions may involve the mutuality of interest principle. While this bright line approach is useful in providing clear guidance to auditors and issuers, there is an aspect of the "listing" definition that can lead to practical implementation issues. In that regard, determining whether a transaction is "the same as or substantially similar to" is extraordinarily vague and difficult to ascertain. The transactions described in an IRS Notice are typically broadly described and have many elements or facts. There is minimal guidance as to how many features must be shared by two transactions in order for them to be substantially similar, or how to weigh the importance of various facts that are presented in the notice. This vagueness has been noted by many tax commentators, and the IRS has tried to be more precise in its pronouncements, but substantial vagueness still exists. However, there seems to be no "good faith" exception to the loss of independence. Thus, if an audit firm and the client separately and in good faith reach the conclusion (perhaps even supported by the advice of special outside advisors) that some transaction is *not* substantially similar to a listed transaction, and if the IRS later determines that it *was* substantially similar, the audit firm would have apparently violated this rule, impairing its independence.

In order to provide relief in appropriate cases, we suggest that the rules provide that independence would not be impaired by the past provision of services if the original determination by the auditor was made in good faith. In that regard, "good faith" could be evaluated based on planning or opining on a transaction that was not inconsistent with or in violation of Circular 230 (as recently revised by the Treasury Department) and any anti-shelter provisions of the American Jobs Creation Act of 2004.

The Board has requested comments on the possible impairment of independence if the auditor advised on a transaction that becomes listed after it is executed. While, theoretically, we believe that this may create the same independence concern in the year of the listing as it would had the transaction been listed at the time of its execution, from a practical perspective, we do not believe that it should impair independence *per se*. Instead, the audit committee of the issuer should evaluate the situation, including the reason why the transaction was listed, and implement appropriate safeguards. One such safeguard could be obtaining an independent third party opinion on the issuer's tax treatment in order to evaluate the appropriateness of the related financial reporting and disclosure. Moreover, if a transaction is subsequently listed, it may have been an aggressive tax position, which should be covered by Rule 3522(c), rather than in this section of the rule.

2. Confidential Transactions

We agree that confidential transactions should be treated as *per se* impairments of independence. Even if the underlying transactions were not potentially abusive, the mere fact that there is a disclosure limitation is likely to create a negative impression concerning the objectivity of the auditor.

3. Aggressive Tax Positions

We agree with the thrust of the proposed rule with respect to services relating to planning or opining on a transaction that is based on an "aggressive tax position" for the reasons cited in the Release. While the proposed rule comprises a 3-pronged test, we assume that the first two prongs, for all practical purposes, will virtually always be met, leaving the last prong (i.e., the "more likely than not" criterion) as the only judgmental area that we believe should contain a "good faith" component. Our analysis is as follows:

- The first prong places the onus on the auditor to determine that the transaction was not initially recommended by the audit firm or another tax advisor, notwithstanding a representation from the client that it initiated the transaction. An issuer can learn of transactions from a variety of sources, including seminars; presentations by outside firms; magazines, newspapers, and other media; its own staff of experts; and unsolicited advice. Given the practical difficulties in ascertaining the sources of ideas that were not initiated by the audit firm itself, even through exercise of "reasonable, good faith diligence by the auditor," it is likely that most auditors will (to be conservative) assume that the idea was recommended by another tax advisor.

- The second prong (the significant purpose test) is also extremely broad and easily satisfied. The Proposal states that the types of transactions covered include those to accelerate deductions into earlier years or defer income to later years. Since many tax planning techniques do just that, this broad standard will also likely cause the auditor to assume the second prong is satisfied in virtually all of those situations.

- The final prong ("more likely than not" test) would require the audit firm to form its own conclusion, without sole reliance on a third party opinion. We agree that "more likely than not" is the right line to be drawn in determining potentially prohibited services and that an audit firm should not recommend or opine on transactions where it believes there is a 50% or less chance that the tax treatments will be upheld. However, determining that the "more likely than not" criterion is met is extremely judgmental and, as such, brings with it the potential for second-guessing initial judgments made in good faith. For example, if the IRS asserted a penalty based on *its* belief that the "more likely than not" test was not met or a court ultimately upheld such an assertion, would the auditor's independence for the year of the services automatically be impaired even if the audit firm could demonstrate *its own* reasonable, good faith determination that it was more likely than not that the tax effect of the transaction in question would be upheld?

  Through its knowledge of the clients' businesses and its knowledge of the tax laws, an audit firm is generally in a unique position to suggest tax planning ideas to clients. However, unless a good faith safe harbor is incorporated in the proposed rule, the potential for the PCAOB or SEC to have a different view in the event that the ultimate tax treatment is not upheld may discourage audit firms from bringing tax planning ideas to their clients' attention unless they are virtually certain to be upheld, an obviously much higher threshold than "more likely than not." We would suggest that the good faith safe harbor require, among other things, that an independent third party opinion be obtained in support of the tax treatment.

The background behind proposed Rule 3522 clearly appears to apply to situations where the auditor is an integral part of the planning or opining on a tax transaction. However, it is not clear from the language of the proposed rule whether "services, other than auditing services, related to the planning or opining…" includes situations where the client asks the audit firm's tax department to review a transaction brought to it by an outside tax advisor with respect to which the audit firm concludes that the recommended tax treatment will not likely be upheld and advises the client not to enter into the transaction. It would seem that, in this case, the audit firm has performed a valuable service for both the client and the public and should not be prohibited from performing such services. While these services would literally seem to fit the phrase "opining on a transaction," it does not seem that they are of the type addressed by the rationale for this provision. Accordingly, we recommend that the Board clarify in the final rule that such services are permitted.

International Assignment Tax Services

The Release states that where an accounting firm provides international assignment tax services ("IATS") for an audit client, these are permissible services as long as they are limited to "routine tax preparation services" and do not include "bookkeeping services" or "(holding or transferring) funds for the company or its employees." IATS can comprise not only the preparation of foreign and domestic country tax returns for the assignee, but typically can also involve additional services such as calculation of "hypothetical" taxes that are then withheld by the company from an assignee, and calculation of advances to be made to an employee or to a foreign payroll provider to fund foreign taxes (where these are a contractual liability of the company, e.g., where the employee is "tax equalized" or "tax protected"). We believe that this typical range of IATS does not create an appearance that independence is impaired, because they are tax driven mechanical computations related solely to compliance work. However, in view of the arguably close similarity of some elements of IATS to prohibited payroll services, we believe the final rule should provide further clarification in this regard.

Other Tax Services

We are extremely supportive of the Board's efforts to draw a bright line around specific services to issuers that would be deemed to impair independence and to permit other tax services, such as those described on pages 14-16 of the Release, subject to audit committee pre-approval. We agree that these permitted services have not caused independence concerns and are clearly not one of the catalysts for eroding ethics that have caused so much concern in the financial marketplace.

As mentioned in the Release, the SEC made it clear in its adopting release accompanying its 2003 independence rules "that it did not consider conventional tax compliance and planning to be a threat to auditor independence." In addition to the general perception that these services do not impair independence, one should also consider the environment and constraints under which such services are performed.

Traditional tax planning and compliance services are ultimately subject to the rigor of review and enforcement by the taxing authorities and are required to be performed under regulations and professional ethics rules that drive professional behavior. This is similar in some respects to an audit of financial statements in a filing that is subject to SEC review.

The Treasury Department and IRS have recently issued final regulations amending Treasury Department Circular 230, which applies to tax professionals practicing before the IRS. These amendments reflect current best practices for written tax advice that are intended to ensure that tax professionals provide adequate advice and to disclose whether the advice is incomplete. In that regard, for written advice in areas of greater potential concerns, the amendments prohibit rendering advice that relies on incorrect factual assumptions or representations, does not consider all relevant facts, or fails to analyze important legal issues. IRS Commissioner Mark W. Everson has stated that "[t]hese new provisions give us more tools to battle abusive tax avoidance transactions and to rein in practitioners who disregard their ethical obligations." Circular 230 also describes penalties prescribed by federal and state laws.

In addition to the Treasury Department/IRS regulations, the AICPA has developed its own enforceable standards governing members' responsibilities to taxpayers, the public, the government, and the accounting profession. These standards are contained in Statements on Standards for Tax Services ("SSTS") and related Interpretations. The courts, the IRS, and professional organizations have recognized and relied on the predecessor standards (Statements on Responsibilities in Tax Practice) that are largely embodied in the SSTS as the appropriate articulations of professional conduct in a CPA's tax practice. Most of the standards to date deal with tax planning and tax return positions. Paragraph 6 of SSTS No. 1, which provides ethical standards, states as follows: "In addition to a duty to the taxpayer, a member has a duty to the tax system." In that regard, for example, Interpretation 1-2 of SSTS No. 1 requires an AIPCA member to do all of the following when issuing an opinion on the results of tax planning:

- Establish the relevant background facts
- Consider the reasonableness of the assumptions and representations
- Apply the pertinent authorities to the relevant facts
- Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction
- Arrive at a conclusion supported by the authorities

In addition to these regulatory and professional constraints, there are other factors that should be considered in understanding the environment in which these "other" tax services are provided:

- Tax has become an increasingly complex area, particularly for multi-national companies. Because of the significant interplay between tax law and financial accounting standards, it is essential for an auditor to be able to draw upon the resources within his or her firm to be able to gain a thorough understanding of the tax and financial statement consequences of a myriad of transactions. In that regard, not only is the audit more efficient (and less costly) if the source of the tax knowledge is within the audit firm, but it is likely to be more effective as well. In that regard, a study produced by William Kinney and others at the University of Texas and University of Kansas demonstrated that there was an inverse relationship between the number of financial statement restatements and the amount of tax service fees paid to the auditors, providing evidence that audit quality can be enhanced when the auditor provides tax services to the client.

- All permitted tax services to be provided by the audit firm require pre-approval by the audit committee. However, tax services performed by others do not require such pre-approval. Not only does audit committee oversight provide a significant control over independence concerns relating to tax services, but the absence of such mandatory oversight with respect to services performed by other parties increases the potential for troublesome tax positions to be taken by issuers.

We believe the discussion of permitted services contained in the Release is generally sufficiently comprehensive. However, we suggest that to clarify what is intended to be covered in that discussion, the Board include the following services, which, if performed in accordance with professional ethics standards, are examples of those that should be acceptable under the proposed rules:

- Representing a client in an examination by the IRS or other tax authority (excluding representation in tax court)

- Transfer pricing services (specifically permitted by SEC Release No. 33-8183)

- Cost segregation services (specifically permitted by SEC Release No. 33-8183)

- Representing a client seeking to obtain relief for an overlooked tax election

- Preparing or submitting a ruling request to the IRS or other tax authority in connection with providing advice on the tax structure of a proposed business combination

- Assistance in applying for tax incentives

Audit Committee Pre-approval of Certain Tax Services (Rule 3524)

We agree with the communications proposed in Rule 3524 that provide more transparency to implications of the tax advisory process and greater substance to allow audit committees to evaluate the effect of tax services on independence. In addition to the proposed elements of the rule, we recommend that the communications to the audit committee include a discussion of the quality of the tax positions taken by the company—both those suggested by the audit firm and those suggested by others or originating from within the company's tax department. This would be similar to the required communication regarding the quality of accounting principles used by the company. This discussion would help the audit committee to evaluate the risks related to the company's tax positions and their implications for the financial statements and related disclosures.

The proposed rule indicates that "compliance services that, in effect, made up for the absence of a competent tax department" could be detrimental to the firm's independence because of the risk of "placing the firm's personnel in the position of making decisions that should be made by management." This view seems biased against a smaller issuer situation, where tax departments are normally not required because of the size and nature of the business. Accordingly, in our view, the guidance provided in this quoted section may unduly pressure audit committees of smaller issuers not to engage auditors for tax compliance services, to the detriment of the issuer and its shareholders. Moreover, this guidance does not recognize the recent revision to AICPA Ethics Rule 101-3 under which, as previously mentioned, management must acknowledge its responsibility for obtaining a sufficient understanding of the issues involving non-attest services to enable it to decide its course of action. This responsibility would be relatively easy to fulfill with respect to tax compliance services.

There is one element of the proposed rule that we believe requires excessive detail and hence may become impractical to implement on a timely basis. In describing the extent of documentation that should be sufficient to provide the audit committee information about preparation of tax returns, the Release refers to an example that indicates that the information provided to the audit committee should include each jurisdiction where a return is filed, the types of tax owed to each, and how often each return is prepared and filed. For a multi-national issuer doing business in many jurisdictions, the composition of its worldwide locations (and consequent tax jurisdictions) may be subject to frequent change, apparently necessitating frequent (and often minor) updates to the information to be communicated. This would create logistical issues around the need to gather the information on a timely basis. Moreover, this degree of specificity goes beyond the provisions of the Act. It seems to us that more flexibility could be built into this example such that it would be acceptable for the communication to simply indicate that tax returns are to be prepared for subsidiaries, without listing the specific jurisdictions or the types of tax returns. These are, after all, true compliance services and this type of disclosure should provide the audit committee a sufficient basis on which to pre-approve the services.

Services for Senior Officers in a Financial Reporting Oversight Role (Rule 3523)

The basis for proposed Rule 3523 apparently is that these services create "an appearance of a mutual interest between the auditor and those individuals." We do not agree with this rationale. As previously discussed in this letter, the mutuality of interest principle is exemplified in

Section 602.02e of the SEC Codification of Financial Reporting Policies, which refers to direct and material indirect business relationships and specifically excludes professional services. Therefore, the underpinning of this proposed rule does not seem to be related to the principle on which it is based. As we previously discussed, performance of tax services is covered by specific governmental and professional rules, which constrain the tax persons from acting in an unprofessional manner.

It also seems to us that a complete prohibition of tax services to these senior officers is over-reacting to the highly publicized abuses relating to personal tax shelters. As such, we believe it is appropriate to place the same constraints on personal tax services as the Board is proposing for issuer-related services (i.e., listed and confidential transactions and aggressive tax positions). This would result in consistent application of the rules in all cases and would permit the audit committee to exercise its judgment in evaluating the impact of the services on independence. If such judgments are appropriate in the corporate arena, they should similarly apply to personal tax services. In that regard, we recommend that proposed Rule 3524 require audit committee pre-approval of "permitted" tax services to be performed for such executives, regardless of who pays for the services.

If the Board decides to adopt Rule 3523 as proposed, it would seem logical to include members of the client's audit committee among those affected by the rule because they have significant responsibility for oversight of the financial reporting process. In addition, if the proposed rule is adopted, we suggest that it apply only to individuals who were already functioning in their positions prior to the time that tax planning/preparation services commence for the ensuing tax year. Otherwise, newly appointed or hired persons would be required to change tax advisors at an inconvenient time. This one-time provision for what are routine services should not have an appreciable effect on the appearance of independence.

The Fundamental Independence Requirement (Rule 3520)

We agree with the proposed fundamental ethical obligation for a firm to be independent of its audit client throughout the audit and professional engagement period. We also agree that it is appropriate to make it clear that the auditor's independence obligation is governed by the rules of both the PCAOB and the SEC.

Contingent Fees (Rule 3521)

A contingent fee is a prime example of a mutuality of interest that can impair independence. Therefore, we agree with the proposed rule prohibiting contingent fees since it would substantially conform to the existing SEC rule, as recently interpreted by the SEC Chief Accountant, and would apply to affiliates of the firm and indirect contingent fees through intermediaries.

Responsibility Not to Cause Violations (Proposed Rule 3502)

We have no comments on this aspect of the Proposal, at least until we can see how the Board intends to proceed with this enforcement policy.

Effective Date

We generally agree with the proposed effective date provisions, since they reflect practical consideration of the timing relating to the filing of personal tax returns and the need to complete other transactions or modify or resolve contingent fee arrangements. However, we recommend that the rules permit the auditor to continue to represent officers in a financial reporting oversight role in connection with IRS examinations of their tax returns prepared by the auditor prior to the effective date. To require officers to retain a new tax advisor in these circumstances could adversely affect them and should not have an appreciable effect on the appearance of independence.

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We appreciate your consideration of our comments and suggestions, and would be pleased to communicate or meet with the PCAOB and its staff to clarify any of them.

Please direct any questions to Wayne Kolins, National Director of Assurance at 212-885-8595 or wkolins@bdo.com.

Very truly yours,

BDO Seidman, LLP

BDO Seidman, LLP