



February 14, 2005

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

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

Dear Sir/Madam:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the Public Company Accounting Oversight Board's ("PCAOB's") proposal to establish rules relating to the independence of registered public accounting firms. The proposal would build on the auditor independence rules adopted by the Securities and Exchange Commission ("SEC") in 2003.

The Sarbanes-Oxley Act of 2002, which created the PCAOB, gave the PCAOB the authority to oversee and regulate the public company auditing profession. It also established independence requirements for public accounting firms, which were implemented by the SEC's 2003 rulemaking. That rulemaking limited the types of non-audit services that public auditors could provide to audit clients. After reviewing public comments on a proposed rule, the SEC did not include in the final rule specific prohibitions on the ability of an auditor to provide tax services to an audit client. However, the SEC said that certain proposed tax services should receive increased scrutiny by a company's audit committee before the services are approved.

The PCAOB proposal would specifically prohibit a public accounting firm registered with the PCAOB from providing certain types of tax services to audit clients. The specific services would include providing planning, or opining on the tax treatment of, a transaction that is a listed or confidential transaction under the Internal Revenue Code. These are transactions that the Internal Revenue Service has identified as likely to violate tax law. The accounting firms also would not be permitted to provide tax services for a transaction initially recommended by the firm or another tax advisor if a significant purpose of the transaction is tax avoidance, unless the tax treatment is at least more likely than not to be allowable under tax law. Finally, the proposal

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<sup>1</sup> America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

would prohibit a registered public accounting firm from providing services for a contingent fee or commission and from providing any tax services to an officer who is in a financial reporting oversight role at the audit client.

The proposal would continue to allow a registered public accounting firm to provide routine tax return preparation, tax compliance, and general tax planning and advice provided such services are consistent with the SEC's independence requirements. The rule would require the auditing firm to provide specific information to the audit committee with regard to the proposed tax services before the audit committee approves the services. The rule also would allow the firm to provide tax services to employees of the audit client other than those officers performing in a financial reporting oversight role.

### **ACB Position**

ACB is pleased that the PCAOB proposal would allow auditing firms to continue to provide basic tax preparation and advisory services to their audit clients. It is a more efficient and less burdensome approach than requiring companies to retain a second firm to provide these services. This is especially true for the smaller companies who already are working to comply with stringent internal control standards and have seen significant increases in auditing costs. The PCAOB's reasoned approach in letting the external auditor continue to provide certain tax services will help prevent further burden without jeopardizing the public's interest in accurate and complete financial statement reporting.

As the PCAOB explains in its release, there is little indication that the provision of these services impairs the auditing firms' ability to provide an independent audit of financial statements. Adding further assurance that independence will be preserved, the PCAOB and the SEC both require that these non-audit services first get approved by the audit committee. The committee must receive specific information about the services and weigh all of the facts and circumstances before determining that the services will not impact the auditor's independence and can be approved.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via e-mail at [cbahin@acbankers.org](mailto:cbahin@acbankers.org), or Diane Koonjy at (202) 857-3144 or via e-mail at [dkoonjy@acbankers.org](mailto:dkoonjy@acbankers.org).

Sincerely,



Charlotte M. Bahin  
Senior Vice President, Regulatory Affairs