



February 14, 2005

Mr. William J. McDonough  
Chairman  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006

***Re: PCAOB Rulemaking Docket Matter No. 017***

Dear Chairman McDonough,

On behalf of Financial Executives International's (FEI) Committee on Taxation (COT) and Committee on Corporate Reporting (CCR), we are writing to express our support for PCAOB Release No. 2004-015, *Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*. As drafted, the proposed rules would ban non-audit tax services related to certain potentially abusive tax transactions; establish additional requirements regarding audit committee pre-approval; codify the ban on contingent fees; and ban auditor provided tax services to officers in a financial reporting oversight role. The proposed rules correctly identify services which audit firms should not provide to their audit clients. However, we believe some clarifications in the final rulemaking are in order.

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives, and other financial executives. CCR and COT are technical committees of FEI, which review and respond to research studies, statements, pronouncements, pending legislation, proposals, and other documents issued by U.S. and international agencies and organizations. This document represents the views of CCR and COT and not necessarily those of FEI.

Proposed Rule 3522 provides that the auditor or an affiliate shall not be considered independent if it provides any non-audit service to an audit client related to planning or opining on potentially abusive tax transactions. Such transactions are defined as transactions either listed by the IRS under Treas. Reg. sec. 1.6011-4(b)(2) or transactions substantially similar to the listed transactions; confidential transactions as defined in Treas. Reg. sec. 1.6011.1-4(b)(3), irrespective of fee size; and transactions initially recommended

by a registrant's auditor or another tax advisor, a significant purpose of which is tax avoidance, unless the proposed tax treatment's allowance under applicable laws is at least more likely than not. We strongly agree that audit firms should not provide aggressive tax advice or planning schemes to their audit clients since doing so could call into question the veracity of the audit report.

Proposed Rule 3524 codifies a variety of requirements around the pre-approval process, including provision of the engagement letter relating to the service; discussion with the audit committee of the potential effects of the services on the independence of the firm; and documentation, by the auditor, of the substance of its discussion with the audit committee. While the rule's requirements will ensure a fruitful dialogue with the audit committee regarding the provision of tax services, we would encourage the PCAOB to craft a *de minimis* exception to this rule. We suggest that routine tax consulting and tax compliance projects with fees of less than 1% of the annual audit fee should not require the audit committee to review the engagement letter. Companies would continue to follow their pre-approval policies and provide summary-level information to their audit committees for those services. These matters would not include significant tax planning projects or major transactions that would require a full tax opinion. Requiring an engagement letter from the audit firm and then pre-approval of that engagement letter by the audit committee for routine day-to-day tax matters would prove extremely burdensome to all concerned. It could effectively eliminate the use by a company of the audit firm's tax team to assist with these routine tax matters, which is a service that has always been considered a fundamental part of an accounting firm's service to its clients.

On a related note, large, multinational companies have routine tax consulting and compliance services being provided in hundreds of countries. The pre-approval requirement would force these companies to move their tax work since it would be entirely counterproductive to attempt to review detailed engagement letters for all of this work with the audit committee. Implementing a *de minimis* exception to the rule as discussed above would alleviate these concerns.

Proposed Rule 3521, adapted from the Commission's rule on contingent fees, would treat registered public accounting firms as not independent of their audit clients if they enter into contingent fee arrangements with those clients. We believe this restriction fits well with the overall purpose of the rulemaking, which is to maintain the audit firms' independence from their clients.

Proposed Rule 3523 provides that a registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, provides any tax service to an officer in a financial reporting oversight role. The proposed rule addresses valid concerns that performing tax services for individuals involved in the financial reporting process may create an appearance of a mutual interest between the auditor and those individuals.

Lastly, the PCAOB proposes that the proposed rules become effective on the later of October 20, 2005 or 10 days after the date that the SEC approves the rules. We believe the fourth quarter effective date (October 20, 2005) is somewhat troubling as it starts in the

middle of the quarter. Instead, we suggest that the rules should be effective for the first fiscal year or first reporting period beginning after the current October 20 start date.

We applaud the PCAOB for narrowing the focus of this rulemaking to the critical areas discussed above. We fully support the Board's mission to ensure the integrity of the work performed by the audit firms, and believe this rulemaking correctly identifies those tax services which audit firms should not be permitted to provide to their clients. Should you have any questions or concerns regarding this submission, please contact either Mark Prysock at (202) 626-7804, or Christine DiFabio at (973) 765-1071.

Sincerely,

M.P. Reilly

Handwritten signature of M.P. Reilly in black ink.

Chair  
FEI Committee on Taxation

Frank H. Brod

Handwritten signature of Frank H. Brod in black ink.

Chair  
FEI Committee on Corporate Reporting