Center for
Public Company
Audit Firms
AICPA
Committed to Audit Quality

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February 14, 2005

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

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

Members and Staff of the Public Company Accounting Oversight Board:

The Center for Public Company Audit Firms (the "Center") respectfully submits the following written comments on the Public Company Accounting Oversight Board's ("PCAOB" or the "Board") Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees (the "Proposed Rules"). The Center was established by the American Institute of Certified Public Accountants ("AICPA") to, among other things, provide a focal point of commitment to the quality of public company audits and provide the PCAOB and the Securities and Exchange Commission, when appropriate, with comments on their proposals on behalf of Center member firms. There are approximately 1,000 firms that are members of the Center. All of the Center's member firms are U.S. domiciled accounting firms. The AICPA is the largest professional association of certified public accountants in the United States, with more than 340,000 members in business, industry, public practice, government and education.

Due to the subject matter of the Proposed Rules, the Center has received significant input from the Professional Ethics Executive Committee and the Tax Executive Committee of the AICPA. Accordingly, this letter is being issued jointly by the three AICPA committees.

The Center recognizes the enormous effort made by the PCAOB's members and staff to implement the provisions of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act" or the "Act"). As part of that effort, the Board has proposed rules to promote the ethics and independence of registered public accounting firms that audit and review financial statements of U.S. public companies. The Center is committed to working with the PCAOB to develop fair and effective ethics and independence rules. To that end, we appreciate the opportunity to comment on the Proposed Rules.

The Center is supportive of the Board's efforts to strengthen the profession's ethics and independence rules as they relate to financial statement audits of public companies. Throughout its history the AICPA has been deeply committed to auditor independence. It is a core tenet of the accounting profession, which has a more than 100-year history of working to uphold auditor independence.

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Overall, we support the majority of the Board's Proposed Rules and believe the Board has taken a reasonable approach in addressing and differentiating between the types of tax services and transactions that pose an unacceptable threat to the auditor's independence from those that do not. We also applaud the Board for recognizing that there are many types of tax services that the firm could perform for an audit client that do not impair the firm's independence. By virtue of the independent accountant's involvement in understanding the financial activities of an audit client, as well as his/her expertise in understanding the tax accounting and financial accounting guidance, CPAs have been the logical professionals on whom audit clients rely for tax reporting to governmental authorities as well as for advice on the tax effects of alternative business decisions. Audit quality, and the quality of the resulting financial statements, are enhanced when auditors have access to the deeper understanding of a client's financial transactions that can be gained from providing certain tax services.

However, we have identified a number of issues that we believe require further consideration or clarification by the Board. Accordingly, we offer the following comments, observations and recommendations regarding the Proposed Rules.

Proposed Rule 3502: Responsibility not to cause violations

The AICPA supports the PCAOB's efforts to enforce legal requirements and professional standards that apply to individual accountants and believes that the PCAOB can – and should – hold accountable individual accountants who have violated their professional obligations. Indeed, the PCAOB has already adopted rules that make clear that various Board requirements apply directly to "associated persons" of registered public accounting firms, and the AICPA believes that the PCAOB should continue to adopt such rules in the future, as warranted in particular circumstances. As discussed below, however, Proposed Rule 3502 would establish a new basis for the PCAOB to impose "secondary liability" on individual accountants for "causing" violations of the Act, the rules of the Board, certain provisions of the federal securities laws, or professional standards. It is unclear what Rule 3502 is specifically intended to achieve or whether the Board has authority to adopt a rule that would establish a new basis for imposing "secondary liability" on individual accountants for "contributing" to a firm's violation.

The Board's Authority to Impose Secondary Liability on "Associated Persons"

The Sarbanes-Oxley Act clearly empowers the PCAOB to investigate and bring disciplinary actions against registered public accounting firms and their associated persons for violations of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports, or professional standards. This authority is embodied in numerous provisions of the Act, including Sections 101(c)(4), 105(a), 105(b)(1) and 105(c)(4). Accordingly, the PCAOB has adopted a series of rules clarifying that associated persons of registered public accounting firms are required to comply with applicable professional standards. In particular:

- Board Rule 3100 provides that associated persons of a registered public accounting firm "shall comply with all applicable auditing and related professional practice standards;"

- The Board's current interim auditing, attestation, quality control, ethics and independence standards (Rules 3200T, 3300T, 3400T, 3500T and 3600T) all require compliance with such standards by associated persons of a registered public accounting firm; and

- Board Rule 1001(a)(xii) defines the term "auditor," for purposes of the PCAOB's rules generally, to include associated persons as well as the registered public accounting firms with which they are associated.

The AICPA supports the PCAOB's adoption of these rules, as well as the Board's obligation under the Act to impose appropriate sanctions on associated persons of registered public accounting firms who have violated applicable standards. In light of the PCAOB's current authority, however, it is unclear what additional purpose would be served by adopting an additional rule that would create a new general standard of secondary liability for individual accountants who have in some manner "caused" or "contributed" to a firm's violation of the Act, the Board's rules or various provisions of the federal securities laws.

Moreover, the AICPA respectfully submits that the Act does not permit the PCAOB to expand the scope of an associated person's liability through such a general rule. In this regard, the concept of secondary liability is not discussed in, or apparently contemplated by, the Act. The determination of congressional intent with respect to the scope of liability created by a particular statute rests primarily on the language of that statute.[1] In *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A,* the Supreme Court held that there was no private right of action for "aiding and abetting" primary violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, because the text of the Exchange Act could not be read to reach persons who aid and abet Section 10(b) violations.[2] Moreover, recognizing that the Court's rationale would apply equally to aiding and abetting actions brought by the SEC itself, the SEC thereafter requested and received express authority from Congress to bring charges against those who aid and abet other persons' violations of the Exchange Act.[3]

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1 *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 175 (1994) (*citing Pinter v. Dahl,* 486 U.S. 622, 653 (1988)).

2 *Id.* at 177.

3 *See id*. at 200 ("The majority leaves little doubt that the Exchange Act does not even permit the SEC to pursue aiders and abettors in civil enforcement actions under § 10(b) and Rule 10b-5.") (Stevens, J., dissenting); Testimony of Arthur Levitt, Chairman, United States Securities and Exchange Commission Concerning Litigation Reform Proposals Before the Subcommittee on Telecommunications and Finance, Committee on Commerce, United States House of Representatives (February 10, 1995), *available at* http://www.sec.gov/news/testimony/testarchive/1995/spch025.txt. *See also* Section 20(e) of the Exchange Act.

Proposed Rule 3502 is modeled not on the concept of "aiding and abetting" liability, but instead on another theory of secondary liability expressly provided for under Section 21C of the Exchange Act. Section 21C permits the SEC to institute cease-and-desist proceedings against any person who violates the Exchange Act and any other person who is a "cause" of the violation "due to an act or omission the person knew or should have known would contribute to such violation…" Thus, the SEC's authority to bring a proceeding against a person for "causing" another person's violation of a statutory or regulatory requirement is expressly authorized by statute. In addition, the language of Section 21C suggests that the SEC may only bring an action against a person for "causing" another person's violation if the SEC has made a specific finding that a primary violation has occurred and entered an order requiring the primary violator to cease and desist from future violations.

In comparison, no provision of the Act authorizes the imposition of secondary liability on associated persons of registered public accounting firms generally, nor does any provision specifically contemplate the imposition of liability on such persons for contributing to violations by firms. In addition, it is unclear from the language of the PCAOB's proposed rule whether the Board would make a finding of a primary violation before alleging that an associated person contributed to such violation. Instead, the Board's Proposing Release asserts that the proposed rule merely codifies an existing ethical obligation of associated persons and that the proposed rule is "inherent in, and necessary to, the Board's authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons."

In support of this assertion, however, the Proposing Release cites only the Board's general authority to conduct disciplinary proceedings and impose appropriate sanctions on registered public accounting firms and their associated persons. The Release offers no other support for the imposition of secondary liability upon associated persons, and no evidence of any intent by Congress to expand the scope of liability under the Act to include secondary liability. Accordingly, Proposed Rule 3502 appears to be an overly expansive application of the PCAOB's rulemaking authority.

The Proposing Release also suggests that Rule 3502 is "essential to the proper functioning of the Board's independence rules." However, there are other, more targeted means available to the Board that would make clear that associated persons of a registered public accounting firm are expected to comply with the Board's independence standards, without raising the concerns posed by Rule 3502. For example, the Board could provide that its independence rules apply to "auditors," which Rule 1001(a)(xii) defines to include both registered public accounting firms *and* their associated persons. This approach would be consistent with the SEC's independence rules, which apply to "accountants" (a term defined in Rule 2-01(f)(1) of Regulation S-X to include both registered public accounting firms and individual accountants).

Requisite State of Mind under the Proposed Rule

The Proposing Release also solicits comments as to whether, in a situation where a firm was found to have committed a violation that required that the firm knowingly or recklessly engage in the misconduct, it would be appropriate to find a violation under Proposed Rule 3502 by an associated person who negligently contributed to the primary violation.

We believe that, even if the PCAOB is not prepared to revise its proposed rules as suggested above, it would be unfair to discipline an associated person for negligently contributing to a "scienter-based" violation by a firm. If the underlying violation required a finding that the firm had engaged in knowing or reckless misconduct, members of the public almost certainly would assume that the PCAOB believed that the individual had acted with a similar mental state. Indeed, it is difficult to see how the individual's conduct fairly could be characterized as a "cause" of the firm's violation unless there was such a similar mental state.

Accordingly, the AICPA believes that the state of mind required to find that a primary violation occurred should apply to any finding that an associated person was the cause of such violation. This is consistent with several proceedings that discuss the standards applicable to SEC actions under Section 21C alleging that a person "caused" another party's violations of the federal securities laws.[4]

Proposed Rule 3522 – Tax Transactions

Proposed Rule 3522(a) – Listed Transactions

Numerous layers of statutory, regulatory, and ethical safeguards already apply to the provision of tax services by CPAs. For example, sections of the Internal Revenue Code impose penalties and other sanctions for failure to meet specific standards for tax compliance, advisory and representation services. Practice before the IRS is regulated by Circular 230, a statutorily authorized set of Treasury regulations, violation of which can lead to sanctions including disbarment from representing taxpayers before the IRS. In addition, the AICPA has promulgated its enforceable ethical tax practice standards, the Statements on Standards for Tax Services, which are enforced under Rule 201, *General Standards*, and Rule 202, *Compliance with Standards* of the AICPA Code of Professional Conduct. Violating these rules of tax practice can subject CPAs to ethics investigations and possible sanctions by the AICPA and state CPA societies and potential license revocation by state boards of accountancy.

Notwithstanding these safeguards, we believe it is entirely appropriate to promulgate prohibitions with regard to those services that "pose special challenges" with regard to independence. The AICPA also believes that "listed transactions" are within a class of transactions that have the potential to impair an auditor's independence. However, we believe, that to provide more certainty to the application of the rules, a number of issues require additional elaboration.

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[4] *See, e.g., In the Matter of Robert W. Armstrong, III,* Administrative Proceeding File No. 3-9793 (Apr. 6, 2004) ("It is assumed that scienter is required to establish secondary liability for causing a primary violation that requires scienter."); *In the Matter of KPMG Peat Marwick*, Exchange Act Release No. 43862 (Jan. 19, 2001) ("We hold today that negligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a), at least in cases in which a person is alleged to 'cause' a primary violation that does not require scienter").

(1) The phrase "if the auditor participates in them [certain classes of transactions] in any capacity other than as auditor" needs clarification. Presumably, the "special challenge" with regard to a listed transaction relates to situations where the auditor has also recommended the transaction to an audit client, or where the auditor positively opines on such a transaction and the transaction is implemented. There are a number of situations where the auditor may be considered to have "participated" but "the mutuality of interest between the firm and client" would not exist. For example, (a) the firm recommends a transaction and before the engagement is finalized, the transaction becomes listed and the firm withdraws its recommendation of the transaction; (b) the firm recommends a transaction and before the engagement is finalized, the firm realizes the transaction may be substantially similar to a listed transaction and the firm withdraws its recommendation of the transaction; and (c) the firm is asked by its audit client to opine on a transaction, the firm identifies the transaction as a listed transaction or believes it is substantially similar to a listed transaction, and recommends that the client not enter the transaction. The regulations should clarify that these situations would not impair independence.

(2) The phrase "in all material respects" should be added to the term "substantially similar" to avoid inadvertent independence impairment where the auditor recommended a transaction where material *components* of it are substantially similar to material *components* of a transaction that happens to be listed.

(3) Proposed Rule 3522(a) indicates that the operative timing for per se impairment is "at the time [the listed transaction, including transactions that are substantially similar,] is executed" but requested comment on situations where the transaction becomes listed after execution. The Proposing Release indicates that, "*Proposed Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence.*" From an ethics perspective, we believe a transgression can only take place where an auditor knows, or should have known, a rule is being violated. From a fairness perspective, we believe the proposed rule may be unworkable unless the timing of per se impairment is fixed at the time the transaction is executed. Retroactively challenging the auditor's independence during "the audit and professional engagement period," and certainly beyond that period, would cause irreparable harm to the audit client. Conversely, there have been recent situations where courts have found in the taxpayer's favor regarding listed transactions challenged by the Internal Revenue Service, or the Service has included and subsequently removed a transaction from its list. Nevertheless, if at the time the transaction was executed, it was a listed transaction, per se impairment is appropriate as both parties were on notice.

    The Department of the Treasury recognized the need for certainty in timing when it recently promulgated final regulations (REG-122379-02) revising the regulations governing practice before the Internal Revenue Service (Circular 230). § 10.35 indicates that a practitioner who provides written advice regarding certain transactions ("covered opinions") must comply with a specific list of requirements relating to the development of the opinion (§ 10.35(c)). The first item described as a "covered opinion" indicates: "A transaction that is the same as or substantially similar to a transaction that, *at the time the advice is rendered* (emphasis

added), the Internal Revenue Service has determined to be a tax avoidance transaction and identified by published guidance as a listed transaction under 26 CFR 1.6011-4(b)(2)."

Proposed Rule 3522(c) - Aggressive Tax Positions

Proposed Rule 3522(c) indicates that independence would be impaired if the auditor provided any service related to planning or opining on any transaction (1) not initially recommended by the audit client; (2) the transaction has a significant purpose of tax avoidance; and (3) the proposed treatment of the transaction does not meet the "more likely than not" standard. As described above with regard to listed transactions, we believe that advising the audit client that a transaction recommended by a third party would *not* meet the "more likely than not" standard is in the public interest and should not be considered problematic. In fact, we concur with Ms. Rivshin who indicated at the Board's December 14, 2004 meeting on the Proposed Rules, that "a mutuality of interest between the firm and client" would not exist under this circumstance and, indeed, such an outcome would serve to enhance independence. Accordingly, we suggest that the Final Release be clarified that it is appropriate for the auditor to act in such a fashion.

We request clarification regarding the scope and meaning of the term "initially recommended." For example, there are many instances where audit clients have made a decision, or are considering a proposed transaction, to acquire or dispose of assets and ask their auditors, or other tax advisors, for assistance in structuring the acquisition or disposition. For purposes of maintaining independence under Proposed Rule 3522(c), we request clarification that the "transaction" (for purposes of evaluating whether or not it was recommended by the audit firm), is the decision to acquire or dispose of assets, not the identification and evaluation of alternative tax treatments performed by the audit firm.

There are also many smaller transactions within the larger context of the business decision made by the audit client. We believe that the overall transaction should be used to determine whether the "initially recommended" test has been met.

With respect to the "more likely than not" standard, there may be situations where a third-party tax advisor brings a tax transaction to an attest client, and the auditor is asked to review the transaction in order to obtain an objective opinion on the appropriateness of the transaction. As part of the review, the auditor may determine that the transaction does not meet the more likely than not standard, but can offer tax advice to alter the transaction so that it does meet or exceed the more likely than not standard. We believe that if the auditor is not directly or indirectly related to the third party tax advisor, the auditor should be able to consult on the transaction without impairing his or her independence. This type of advice is intended to enhance compliance with the tax laws, which is clearly in the public's interest. Additionally, the requirement that the auditor has an affirmative duty to ascertain who recommended the transaction is unclear and burdensome. We suggest that the Rule be amended to allow the auditor to be able to rely on representations from their client as to whether or not the transaction was "initially recommended" by a tax advisor, unless the auditor has knowledge that such representation is contradicted by other evidence.

Proposed Rule 3523 – Tax Services for Senior Officers

The Board's proposal prohibits the performance of *all* tax services for senior officers (i.e., those in a financial reporting oversight role) of the audit client. From a conceptual level, we cannot support the proposal as drafted because we do not believe that the performance of routine tax return preparation and compliance services or general tax planning and advice for the audit client's senior officers result in a threat to the auditor's independence. Tax services to senior officers have been a mainstay of the tax practices of the majority of the Center's member firms without creating independence problems for many years.

We would, however, support a prohibition with respect to tax services for senior officers involving listed transactions, confidential transactions and aggressive tax positions (as defined in Rule 3522) but believe that tax compliance and routine planning should be permitted. As a further control, we suggest that the services provided to senior officers be disclosed to and require the approval of the audit committee under the procedures of Rule 3524 whether the services are paid for by the officer or by the audit client.

The Proposing Release states that the "*proposed rule would address concerns that performing tax services for certain individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and those individuals.*" Conceptually, we do not see how the performance of certain types of tax services that the Board has proposed to *permit* for the audit client itself (e.g., tax compliance services) would create a mutuality of interests when performed for the client's senior officers. In fact, under the Board's discussion of *General Tax Planning and Advice* in the Proposing Release, the Board concluded that (with respect to the audit client) "*...these types of routine services do not appear to create the mutuality of interest that exists with regard to aggressive tax transactions."* We agree with the Board on this point and further believe that there is no mutuality of interest created when the same types of routine services are provided to the senior officers of the audit client. Furthermore, the Board has concluded that *"in preparing a tax return, the auditor is not acting as an advocate for its client.*" We agree with the Board on this point as well and further believe that the auditor would not be acting in an advocacy role when preparing the tax return of an audit client's senior officers. We simply don't see how the same activity creates a mutuality of interest (or advocacy) for the senior officers of a client, when it does not create such a threat for the client itself.

Proposed Rule 3524 – Audit Committee Pre-approval of Certain Tax Services

Proposed Rule 3524 would require significant audit committee involvement in the pre-approval of permitted tax services and is intended to ensure that the auditor provides the audit committee with sufficient information to make its own informed judgments about the potential effects a tax service may have on the firm's independence. We believe that the audit committee's involvement in approving the firm's tax services is an excellent safeguard to preserve auditor independence and we support greater audit committee participation in the evaluation and approval of permitted tax services as an alternative to greater proscriptions. However, we believe that certain clarification is necessary in order for the audit committee's involvement to be most effective.

Rule 3524 (a)(i)

Proposed Rule 3524 requires that the auditor provide the audit committee a copy of the engagement letter, which would include a description of the scope of the service and the fee structure. In order to comply with this requirement, the Proposing Release states that the backup documentation provided to the audit committee for tax compliance services, such as preparation of federal, state, local and other tax returns, "*must identify clearly each return and provide sufficient information for the audit committee to evaluate the impact of the filing of that return on the auditor's independence. This would require information on each jurisdiction where a return is filed, the type or types of tax (income, property, real estate, etc.) owed in each jurisdiction, how often each return is prepared and filed, and any other appropriate information.*"

For certain audit clients, the volume of information provided to the audit committee could be significant and its evaluation of that information may not be the best use of its resources. Additionally, in many situations it may be impractical or unnecessary for the audit committee to receive overly detailed information on *each* jurisdiction where a return is filed. Furthermore, the auditor may not be able to identify each jurisdiction that requires a filing at the time he or she is engaged to perform the services. We suggest that a more flexible model be established that would allow the auditor to describe the type(s) of tax return(s) or other tax services in sufficient detail to provide the audit committee with a sufficient understanding of the nature of the services that will be performed.

Rule 3524 (a)(ii)

Proposed Rule 3524(a)(ii) requires that the firm provide the audit committee "*any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service.*" We are unclear as to the specific requirements of this provisions and request clarification on the specific types of fee arrangements the Board is proposing to cover under this proposal. For example, the AICPA Code prohibits a member from accepting a fee from a third-party for referring or recommending to an audit client any product or service from such third-party (see AICPA Rule 503 – *Commissions and Referral Fees*). We are concerned that as drafted, the Board's proposal could be interpreted to permit such arrangements provided disclosure is made to the audit committee. Accordingly, we recommend that the Board clarify what types of fee arrangements are specifically being contemplated under this proposal.

Rule 3524(b) and (c)

Proposed Rule 3524(b) requires that the auditor discuss the potential effects of permitted tax services on the firm's independence and Proposed Rule 3524(c) requires documentation of the substance of that discussion. While we support enhanced communications with the audit committee and believe that the audit committee is in the best position to evaluate and approve such services, we believe the Board should provide additional guidance regarding the substance of these discussions in order to make them practical and meaningful.

The Proposing Release states that, "*…the Board would expect registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence – such as compliance services that, in effect, made up for the absence of a competent internal tax department and risked placing the firm's personnel in the position of making decisions that should be made by management – and those that would be unlikely to have a detrimental effect – such as compliance services for a competent tax director who is capable of exercising sound judgment in the best interest of the company.*"

We find the aforementioned example to be confusing and are concerned that it may be misinterpreted by auditors and audit committees. Specifically, we do not believe it should be the Board's intent to require all issuers to employ a tax director (or equivalent), or for that matter, an internal tax department. In fact, most small public companies do not have such tax departments or personnel in place. However, there are still individuals at the company who can make an informed judgment on the tax services, make all decisions regarding the tax positions taken, and take responsibility for the work of the accountant. We recommend that the Board eliminate this example, or if the example is included in the Final Release, clarify that it would not be necessary, in all cases, for an issuer to employ a tax director.

Effective Date

The Board proposes that the rules become effective on the later of October 20, 2005, or 10 days after the date that the SEC approves the rules. Specifically, the Board will not consider a firm as not independent due to –

> *(a) tax services, in connection with a transaction described in proposed Rule 3522, that were completed by the registered public accounting firm no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later; and*
> *(b) tax services provided to audit client officers described in proposed Rule 3523 that were provided by the registered public accounting firm in connection with original returns filed no later than October 20, 2005, or 10 days after SEC approval of the rule, whichever is later.*

While the proposed effective date would permit the auditor to perform tax services for senior officers of the audit client in connection with those officers' 2004 federal income tax returns, it does not contemplate the provision of follow-up services that may be necessary in connection with the 2004 tax returns or any other previously filed tax returns, such as assisting with an examination of the subject tax returns. We believe that the Board should permit the auditor to perform such follow-up services for the audit client and its senior officers and therefore, recommend that the effective date allow for the provision of follow-up tax services related to tax services rendered prior to the effective date.

We also recommend that the Board provide for a transition period to allow for the completion of tax services for senior officers in cases when an employee who is not in a financial reporting oversight role is promoted to or hired into such a role. In cases where the firm was in the process of performing tax services for the employee prior to the promotion or hiring, there could be a

significant hardship to the employee if the firm had to immediately discontinue the tax services. Accordingly, we recommend that the firm be permitted to complete the tax services for the employee provided they were commenced prior to the employee's promotion or hiring. Furthermore, if the services are related to the filing of a tax return, we would recommend that such services be completed no later than the extended due date of the return. In addition, this transitional rule date should allow for the provision of follow-up tax services related to permitted tax services.

Editorial Comments

Audit and Professional Engagement Period

We support the proposed definition of "audit and professional engagement period" and agree that the professional engagement period should begin when the firm either signs the initial engagement letter or begins the audit, review, or attest procedures (whichever is earlier). However, footnote 45 in the Proposing Release states that the proposed rule "*includes both the period covered by the financial statements under audit or review and the period beginning when a registered public accounting firm signs, or submits to the audit client, an engagement letter…*"

If the Board includes the footnote in the Final Release, we recommend that it delete the words "or submits" since we believe it is the signing of the engagement letter that triggers the professional engagement period, not when the firm *submits* the engagement letter to the audit client. In addition, this deletion would conform the discussion in the Release to the language used in the proposed rule and eliminate any potential confusion.

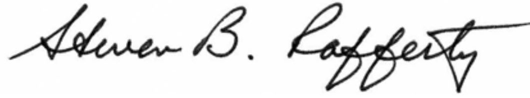
Financial Reporting Oversight Role / Board of Directors

The Proposing Release states that, "*…proposed Rule 3523 would apply only to tax services provided to officers in a financial reporting oversight role at an audit client; directors whose only role at an issuer audit client is to serve on the board would not be covered by the rule.*"

However, the definition of financial reporting oversight role specifically includes "a member of the board of directors" and Proposed Rule 3523 states that "*A registered public accounting firm is not independent of its audit client if the firm...provides any tax service to an officer in a financial reporting oversight role at the audit client.*" We recommend that the Board clarify in the rule itself that the auditor is not prohibited from providing tax services to members of the board of directors who are not officers.

We appreciate the opportunity to comment on the Board's Proposed Rules. We are firmly committed to working with the PCAOB and would welcome the opportunity to meet with you to clarify any of our recommendations.

Sincerely,



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