



Reznick Group, P.C.  
7700 Old Georgetown Road  
Suite 400  
Bethesda, MD 20814-6224

Tel: (301) 652-9100  
Fax: (301) 652-1848  
www.reznickgroup.com

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

Delivered via email to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Rulemaking Docket Matter No. 017

*Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees*

We appreciate the opportunity to comment on the above referenced "Proposed Rule." As always, we are supportive of any rule making that further demonstrates the profession's resolve in its commitment to independence and objectivity.

Much of our practice is focused on the Real Estate industry, specifically tax credit favored properties. The industry is structured primarily to derive benefit from tax credit eligible properties and the related amortization and depreciation for tax purposes. We, as do many others who practice in this industry, provide non-attest tax services to the clients for which we provide audit, review and attest services. Those services include tax compliance as well as tax planning.

We believe the guidance provided in the Proposed Rule will greatly limit the extent to which we can serve our clients. Not because of our involvement in "listed" or "confidential" transactions or due to tax services to certain executives, but rather because clients will have a difficult time justifying the services from a Firm that cannot provide services beyond simply "checking the box" for fear that it may become involved in an "aggressive transaction." Additionally, many of our clients are not Issuers, however we believe this type of rule making will influence other regulatory bodies to adopt similar rules and thereby inhibit our ability to serve those clients as well. This industry, and most likely many others, is highly efficient in delivery of tax compliance reporting as well as financial reporting due to the knowledge that a single service provider possesses. We believe the Proposed Rule related to tax services will cause clients to turn from the attest service provider due to the complications of the restrictions and the limitation on behalf of the tax professional to be able to first identify, then evaluate and then eliminate "aggressive" transactions. We believe the cost of complying with this rule, as proposed, in terms of the diminished quality of services or the inefficiency in delivery far outweighs the perceived benefit. Our recommendations and other observations are discussed more fully below.

#### **Rule 3522 - Aggressive Tax Positions**

We believe "listed" and "confidential transactions" are well understood as to their attributes and that association with such transactions should be prohibited in order to maintain independence. We believe such guidance is sufficient to address the public's concern as to the integrity of the



practitioner serving the audit client. However, should the final Rule retain a prohibition against other aggressive tax positions as it is currently proposed, we believe that guidance is problematic. Our observations follow.

The criteria of “any service related to the planning, or opining on the tax” is too broadly stated. This could be construed as any component of the routine tax procedures which are specifically permitted under this Proposed Rule. We believe this restriction should be confined to services provided specifically for the implementation of the “aggressive transaction” itself.

We believe the criterion that “the transaction was initially recommended by the registered public accounting firm or another tax advisor” is also too broadly defined and virtually impossible to monitor. Absent a client that is willing to represent that the idea was initiated by them, the default assumption as to the facts would be that the idea was initiated from a third party. We believe this prohibition of being associated with such “aggressive” tax positions would greatly limit the services the practitioner is willing to provide. Additionally, without exploring all reasonably possible options related to a given transaction, the client and its tax professional may not adequately comply with IRS regulations. We believe the cost to the client of its tax practitioner ‘not thinking’ for fear of violating this ruling and thereby losing its independence would be prohibitive. The consequences would be to significantly increase the cost and clearly decrease the quality of the compliance services delivered to a client. The additional cost of that to the IRS in terms of the quality of compliance due to lower quality services should be apparent.

We believe the second criteria “a significant purpose of the transaction is tax avoidance,” again, is much too broadly worded. Words such as primary or principal purpose would more adequately capture the types of abusive transactions that call into question the integrity of the practitioner.

The final criteria, “the proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable laws” may be objectively applied after the fact but will have unintended consequences. We believe this criterion limits the practitioner from creatively evaluating transactions to reach a conclusion of the most appropriate treatment under the Code. We believe this prohibition causes delivery of substandard services to the client. As a result, if the intended consequence of this rule was to allow routine tax services to be provided, then the quality of those services will surely diminish.

#### **Rule 3523 - Tax Services for Senior Officers in a Financial Reporting Oversight Role**

We believe that if the Proposed Rule has substance that it certainly should be applied to members of the Audit Committee and the Board. The Audit Committee relationship to the auditor is clearly identified and there is no question that the Audit Committee plays a key role in financial oversight. Additionally the members of the Board are also in a position to significantly influence the financial reporting process.



However, we believe the restriction should be placed upon the same services that we believe should be prohibited for the Company itself; the "listed" and "confidential" transactions addressed in Rule 3522(a) and (b). That is, we believe that providing tax services to any of the members of management does not draw into question the independence of the firm, provided those services do not include the prohibited services of Rule 3522 (a) and (b).

#### **Approval for Non-Prohibited Tax Services**

We appreciate the emphasis placed in the Proposed Rule on the four principles set forth in the preliminary note to the SEC's Rule 2-01. As we continue through this significant transition of the accounting profession, we believe identifying principles that are then coupled with examples of reasoned application of those principles to specific circumstances should provide adequate guidance for making a rational decision. Additional rules quite often raise further concerns and questions, requiring further interpretation and, of course, more rules.

#### **Other Matters**

We noted in the transcript of the Roundtable held by the Board in July of 2004 that comments were made to the effect that all tax planning has an impact on the audited financial statements. Specifically Ms. Walters put it quite succinctly, "Every tax strategy, every tax decision, has a financial-reporting effect." While we agree that every tax strategy and every tax decision has an economic effect, that impact is not always reflected in the financial statements. As is common practice in the Real Estate industry, many of the entities are pass through structures for tax purposes. The most commonly recognized publicly traded structure is that of a Real Estate Investment Trust ("REIT"). Those entities do not reflect the tax consequences on their financial statements because they are not obligations of the entity but rather obligations of the individual investors. It is the tax attributes of transactions along with the individual investor's tax profile that determines the actual economic results of a given transaction. Other than the specific tax attributes, the impact that those transactions have to an individual investor is not known to the Issuer, the tax advisor or to the auditor. Finally, as the tax consequences are not reflected in the financials of these pass through entities, the audit services may be provided at a significantly different point in time relative to when the tax services for the same entity are provided. This becomes problematic when assessing the criteria under Rule 3522(c) – Aggressive Tax Positions. We believe consideration should be given to the uniqueness of the bifurcation of the tax consequences and financial reporting of transactions for these pass through entities.

We would be pleased to discuss our comments. Please contact Kurtis Wolff at (404) 250-4148 or Mark Einstein at (301) 652-3777.

*Reznick Group, P.C.*

Bethesda, Maryland  
February 14, 2005