

RALPH S. SAUL

3030 ONE LOGAN SQUARE
18TH & CHERRY STREETS
P.O. BOX 7716
PHILADELPHIA, PA 19192

215 523-5051

FAX 215 523-5055

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Office of the Secretary
PCAOB
1666 K Street NW
Washington, DC 2006-2803

RE: PCAOB Ruling Making Docket Matter #017

Dear Sir:

These comments are not addressed to the substance of the Board's Proposed Ethics and Independence Rules concerning Independence, Tax, Services and Contingent Fees released last December. My comments address the broader question of who should make independence determinations and how the Commission and the Board should relate to one another in deciding these issues.

The Sarbanes/Oxley Act expressly authorized the Board to establish such independence rules "as may be necessary or appropriate in the public interest or for the protection of investors". The Act backed up this grant of authority by giving the Board the power to inspect and enforce its standards with respect to public accounting firms. It is clear that the Board has the initial authority to establish independence rules and interpret them, all subject to Commission oversight and review.

At the same time, the Commission has maintained in place its Rule 2-01 under Regulation S-X despite the fact that this rule was adopted prior to the passage of the Sarbanes/Oxley Act and the explicit delegation to the Board to establish independence standards. In the Board's Release 2004-015, the Board seeks to reconcile its proposed independence requirements with the Commission's Rule 2-01. It does so by stating that "the Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately to lock in place any aspect of those requirements". The Board seeks to clarify the confusion that may result from two sets of independence requirements by stating

that a public accounting firm must comply with not only the Commission's rule but also with those requirements specifically established by the Board.

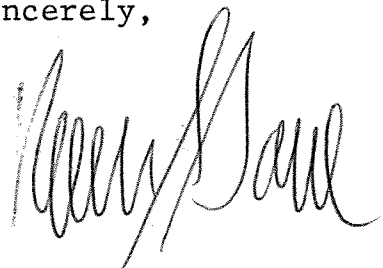
The Commission's Rule 2-01 represented a compromise and, as such, it was hurriedly drafted to deal with the non-audit service issue. The appearance based standard is not in the rule but in a preliminary note to the rule which would appear to give it less authority. Also, the appearance based standard with its "reasonable investor" test to determine whether a non-audit service compromises an audit contains a major flaw. The proxy statement disclosures do not reveal the complex facts that would explain why a client contracted with an auditor to provide a non-audit service. It is unreasonable to expect an investor - no matter how diligent - to obtain and analyze such facts. A reasonable investor can judge the overall quality of financial reporting but such an investor cannot be expected to make judgments about the business decisions that enter into retaining the auditor for a non-audit service. It is the responsibility of the Audit Committee, acting on behalf of investors, to make those judgments. In its Release, the Board acknowledges that applying Rule 2-01 is "a complex task" and "it is one that may change over time" signaling its problems with Rule 2-01.

Having two sets of independence requirements - one of which is flawed - cannot help but confuse the profession. As the Board's release indicates, there is already confusion between the Commission and the Board on the contingent fee issue and it is probable that further confusion will ensue as long as the Commission does not delegate exclusive authority to the Board to establish independence standards.

In my view, the Commission should abrogate Rule 2-01 and explicitly state that, with the Sarbanes/Oxley Act, the Board now has the authority to adopt independence standards, subject to Commission oversight and review. Such a step would demonstrate that the Commission can eliminate a rule when, in light of subsequent events, it is no longer appropriate to maintain it in place.

I would hope that the Board and the Commission, if they have not already done so, will work towards the resolution of an issue that now only creates duplication and confusion.

Sincerely,



cc: William J. McDonough