

# NASBA

National Association of State Boards of Accountancy  
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February 2, 2005

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

Via e-mail to: [comments@pcaobus.org](mailto:comments@pcaobus.org)

Re: PCAOB Release No. 2004-015 December 14, 2004:  
PCOAB Rulemaking Docket Matter No. 17

Dear Board Members:

We appreciate the opportunity to offer comment to the Public Company Accounting Oversight Board (“Board”) on the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (“Proposal”). The National Association of State Boards of Accountancy’s (NASBA’s) ongoing primary focus is to increase the effectiveness of US state boards of accountancy. Our Professional & Regulatory Response Committee (“Committee”) offers the following comments on the proposed rules:

In the Proposal, the Board invites comments about the perception of independence if a registered public accounting firm (Registered Firm) were to offer tax services to members of an audit committee or to other of the audit client’s board of directors. The Proposal’s Rule 3523 would permit such services to be performed unless a board member was also in the class of senior officer described in the proposed rule.

The Committee agrees that the exclusion of audit committee members and other board members from proposed Rule 3523 is appropriate. They believe audit committee members have significantly different responsibilities from those of the chief executive officer and other senior officers in financial reporting oversight roles, who have a direct role in the preparation of financial statements. Our suggestion is that the wording of Rule 3523 be changed from “an officer in a financial reporting oversight role” to state “the chief executive officer and other officers in a financial reporting oversight role.”

Audit committee members are (usually) independent of the company. Although they have significant interaction with the Registered Firm with regard to the audit, audit committee members do not have responsibility for either the oversight of the preparation or the preparation of financial statements. It is appropriate, therefore, to exclude members of the audit committee from proposed Rule 3523. Excluding other members of a board of directors who do not have the responsibility for the oversight of the preparation of financial statements is also appropriate.

The background information for proposed Rule 3522 states that [the rule] would, in effect, prohibit auditors from providing services, other than auditing services, related to planning or opining on the tax consequences of certain transactions that pose special challenges to an auditor’s independence<sup>1</sup>. The background material further states that [the rule] is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor’s independence if the auditor participates in the transaction in any capacity other than as auditor.<sup>2</sup>

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<sup>1</sup> See page 25 of the Proposal.

<sup>2</sup> See page 26 of the Proposal.

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The Committee agrees that the Board's exclusion from Rule 3522 of Registered Firms acting solely in the capacity of auditors is the proper approach to take. Auditors are commonly (and should be) consulted by clients prior to the consummation of major transactions so that clients are made aware of the reporting effect of the transactions on the client's financial statements. Many discussions of the income tax consequences of a transaction take place in the planning stage of a transaction. The parties involved in the discussion may include third parties interested in the consummation of a transaction and their consultants, some of whom may be other tax advisors or another Registered Firm. (The proposed Rule does not prohibit Registered Firms from providing tax services to non-audit clients, including those services that would be prohibited if the tax services were to be provided to a client.)

In addressing the possible impact of tax transactions on financial statements, the auditor would normally consider the standards of the Financial Accounting Standards Board, particularly FAS 109 and FAS 5. The reasoning processes of the auditor about the tax transaction might very well parallel those of a tax consultant looking at the transaction from purely a tax standpoint, and their conclusions about the validity of the tax transaction could be the same. The auditor is not "planning" or issuing a "tax opinion" when the auditor expresses the auditor's view of the impact of a tax transaction on the financial statements of a client, even if the transaction is one that would be considered (or ultimately considered) to be "aggressive." If issues ultimately arise regarding a tax transaction reported in audited financial statements, the auditor might be held to have failed to exercise due professional care in the performance of professional services, but the auditor's independence would not be the issue.

The Committee believes that readers of the release would benefit from the Board's inclusion in the background information in the final release of a stand-alone statement(s) about the exclusion of auditing services from Rule 3522.

In the Proposal, the Board invites comments on whether a Registered Firm should be required to obtain a third-party tax opinion in support of the tax treatment if the potential effect of the treatment could have a material effect on the audit client's financial statements. There are countless tax transactions that may have a material effect on financial statements considering the relationship of income taxes to pre-tax earnings. The Committee believes that any such requirement would be prohibitively expensive and that the cost of such a requirement would far exceed any benefits.

We hope these comments will assist the Board in its work.

Very truly yours,



Michael D. Weatherwax, CPA  
NASBA Chair



David A. Costello, CPA  
President & CEO