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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

We appreciate the opportunity to comment on the PCAOB's proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees. We respect the difficult job that the PCAOB has in assuring the independence of auditors to assist in protecting the public interest. At the same time, allowing the auditors and their firms the ability to work with clients to legally and properly minimize their tax liability is also in the best interest of the investing public.

The comments below are focused on public companies that are "small business issuers," as defined by Regulation S-B. Most of the public companies that we serve are in this category. We understand some of the issues related to tax shelters and other tax positions taken by large public companies, but the public interest issues impacting small business issuers are different as they relate to tax services. Small business issuers are much more limited in their access to professionals and expertise in tax planning. In fact, many small business issuers are start-up companies that desperately need tax planning advice, but their capacity for hiring professional advisors is extremely limited because investors apply pressure to minimize expenses in order to become profitable as soon as possible. Our small business issuer clients desire to obtain tax planning advice in a very economical manner in order to remain in compliance with the tax law while taking full advantage of the common benefits and deductions that are available. Whenever possible, we believe the PCAOB's rule-making process should provide allowances for small business issuers that avoid costly burdens that limit their growth.

1. The PCAOB's Proposed Rule 3522 (c) includes a provision that would treat a registered public accounting firm as not independent if the firm provides services related to planning or opining on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations. While independence of the auditor is essential to the confidence of the public investors, those same investors are concerned that the value of their investments continue to grow. They also hold the officers and board of directors in a somewhat fiduciary capacity to assure that the company and its finances are properly managed.

   Part of the proper financial management by the board of directors, audit committee and the officers of any company is the duty to consult in those situations where their own knowledge is not sufficient to allow them to make the best decisions on behalf of their employees and their investors. In any publicly held company, the minimization of taxes is an important part of the financial management of the company. It is not illegal for a company, its officers and its board of directors to arrange the financial affairs for the company in such a manner to minimize its tax liability, even to the extent of taking an aggressive position of tax matters. In fact, it might be argued that these persons had violated their responsibility to the shareholders and investing public if they did not work to minimize the taxes as well as other significant costs to the company.

To prohibit the firm that audits a company from also working with that same company regarding its tax planning, is to take away one of the major tools that the company has to work with in meeting its financial goals. The proposed rule would require that the audited company go to another firm - that is not auditing its financial statements - for its tax planning. We believe that it is more hazardous to the investing public to have a second or third firm involved in planning or opining on an isolated transaction. These firms are not already familiar with the total company operations as the auditor's firm would be. In addition, requiring that another firm provide this tax planning is an unnecessary risk for the company; and would require further financial outlay for the company and its investors because of the time that would be required by the second or third firm to learn all it needed to know about the company before it could adequately assist the firm in its planning for tax issues.

This proposed rule would also give companies an excuse to go outside the firm performing their audits to another firm to structure transactions that they do not wish to bring to the auditor's attention. We believe that anytime a company starts fragmenting its auditing and tax services among firms that there is an increased audit risk to their financial statements. This fragmentation should cause every auditor concern that the management of the company has availed itself of a means to handle certain transactional planning away from the eyes of the auditor who might view the transaction differently and, potentially, require reserves or disclosure of contingent liabilities in the audited financial statements.

We therefore request that the PCAOB reconsider this proposed rule in its present form. We suggest that more clarification of "aggressive interpretation" is needed. For small business issuers, good business and tax planning advice from auditing firms that are familiar with their operations is essential for their future survival.

2. The PCAOB's Proposed Rule 3523 would set a new requirement to treat a registered public accounting firm as not independent if the firm provided tax services to officers in a financial reporting oversight role of an audit client. This proposed rule appears to require that all financial officers, the chief executive officer and the board of directors have their income tax returns prepared by a firm or person other than the firm auditing the financial statements of the company they represent since it could be construed that all of these individuals have financial reporting oversight.

Rules presently in effect require that the selection of the audit firm and determination of its independence of judgment is no longer a decision by the management of the public company, but is now the responsibility of the company's audit committee or board of directors. The members of the audit committee are to be independent and certified as such by the company's board of directors. The stated intent of these rules are to establish a relationship between the audit committee and the audit firm above the relationship between management and the audit firm. The burden is on the audit committee to act independently of management and in accordance with its fiduciary responsibility. With these rules and relationships already in place, it seems the proposed new rule seeks to correct a presumption of influence from a party truly relegated to the outside of the decision making process. The audit committee is charged with watching for undue influence by management over the audit firm.

We find this particularly interesting since we think that the auditor for the company is in the best possible position to assist the board and officers of the company in accurately filing their own income tax returns. The taxability and amount to be included in taxable income from various fringe benefits, and the correct reporting of these fringe benefits by the company to the IRS as well as to the officers and board of directors, is best addressed by the auditor with his or her awareness of the various benefits being earned by these individuals.

Example: If the company owns an airplane, it would not be unusual for the higher-level executives to have the opportunity to use the airplane for personal trips, but the IRS regulations are specific in their direction regarding the computation of the amount of compensation to be reported to the executive who uses the company airplane for personal purposes. The auditing firm is in position to know about the company airplane as a result of its review of the company's fixed assets whereas the firm that does not perform the audit would not necessarily be aware that the compensation of the executive should include any amounts for the personal use of the company airplane.

Because so much of the executive compensation package in many companies is <u>not</u> in the form of bank deposits to the executive's checking account, it is even more important that the tax returns for the executives are prepared by the firm that has a clear understanding of the company and its various compensation and benefit plans. Prohibiting the auditing firm from preparing the individual income tax returns of the officers and members of the board of directors in essence allows those persons more opportunity to commit errors in reporting their taxable income, which is contrary to the interests of another government agency, the IRS.

In addition, Proposed Rule 3523 would require that auditing firms make determinations of which executives are in "a financial reporting oversight role." This determination could be subject to some interpretation. In many companies, it may not be clear whether some employees would come within that definition. This would also require the auditing firm to determine each year if a change in title or duties has occurred that would affect the auditing firm's eligibility to serve as an executive's tax preparer. Again, this would

> seem to undermine compliance with the tax laws and IRS regulations in that changing preparers increases the risk that tax attributes such as carryover items and basis adjustments to assets will be lost in the transition, which further undermines tax compliance.

Again, we request that the PCAOB reconsider this proposed rule and withdraw it from its final passage.

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Representatives from our firm would be pleased to discuss these comments with you if you desire. Please contact Charles L. Carlson at 423-362-3800 if you have any questions.

Very truly yours,

JOHNSON, MILLER & CO.

Charles L. Carlson, CPA
Director

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