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February 22, 2005

Office of the Secretary  
PCAOB  
1666 K Street, N.W.  
Washington, DC 20006-2803

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

In re: PCAOB Release No. 2004-015 – **Proposed Ethics and Independence Rules concerning Independence, Tax Services, and Contingent Fees**

To Whom It May Concern:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, is pleased to submit the attached comments on PCAOB Release 2004-015.

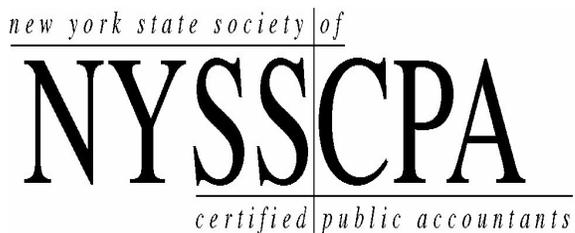
The NYSSCPA's Auditing Standards and Procedures Committee drafted the attached comments. If you would like additional discussion with us, please contact the committee chair, Mark Mycio at (212) 371-1421, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,



John J. Kearney  
President

Attachment



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**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON PROPOSED PCAOB RULE**

**PCAOB RELEASE No. 2004-015**

**PROPOSED ETHICS AND INDEPENDENCE RULES CONCERNING  
INDEPENDENCE, TAX SERVICES, AND CONTINGENT FEES**

**February 22, 2005**

**Principal Drafter**

**Elliot A. Lesser**

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Robert H. Colson

**The New York State Society of Certified Public Accountants  
Auditing Standards and Procedures Committee  
Comments on PCAOB Release No. 2004-015  
Proposed Ethics and Independence Rules Concerning Independence, Tax Services,  
and Contingent Fees  
February 22, 2005**

**Proposed Ethics and Independence Rules and NYSSCPA Responses**

*Proposal:*

Rule 3521: Would treat registered public accounting firms as not independent of their audit clients if they enter into a contingent fee arrangement with those audit clients.

*Response:*

The NYSSCPA endorses proposed rule 3521 as consistent with existing independence principles.

*Proposal:*

Rule 3522(a) and (b): Would treat a registered public accounting firm as not independent from an audit client if the firm provides services related to planning or opining on the tax consequences of a transaction that is a listed or confidential transaction under treasury regulations. In addition, 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.

*Response:*

The NYSSCPA endorses proposed rule 3522(a) and (b). Opinions and advice by audit firms to their public audit clients about tax matters related to the financial statements under audit would be an independence violation in those cases where the client has no independent means to evaluate the opinions and advice and where the client relies solely upon the audit firm's advice in making its decision(s). In such situations the audit firm is in the position of auditing its own work with respect to the audit client's financial statements.

The PCAOB commentary about proposed rule 3522(c) states that "tax avoidance" should be understood to include "acceleration of deductions into earlier taxable years and deferral of income inclusion to later taxable years." There are numerous acceptable tax methods in the U.S., including LIFO inventory, accelerated cost recovery, and installment sales recognition, however, which would fall under the commentary's characterization as "tax avoidance." To avoid confusion, the commentary could qualify its use of "tax avoidance" to those situations not allowed under applicable tax laws and regulations.

*Proposal:*

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.

*Response:* In some cases, “officers in a financial reporting oversight role” may not be easily and unambiguously identifiable; then, the audit committee will have to determine the officers subject to the proposed rule’s exclusion. When such choices occur, there also arises the potential that the PCAOB inspectors may disagree with the audit committee’s decisions in a subsequent year, thereby raising potential auditor independence problems in previous periods. In order to remove any ambiguity, it may be necessary to specify officers by title or to extend the prohibition to all officers or to all officers that are also board members; however, the proposed rule does not contemplate such extensions. Alternatively, because the audit committee has to pre-approve all such services in any case, it may be preferable to charge the audit committee with determining the extent and scope of tax services to officers.

Regardless of audit committee pre-approval, tax services rendered by the audit firm to a member of the audit or compensation committees, to the board chair, or to any independent board member would call into question the appearance of the audit firm’s independence.

*Proposal:*

Rule 3524: Would require a registered public accounting firm that seeks pre-approval to provide tax services to supply the audit committee with certain information, discuss with audit committee the potential effects of the services on the firm’s independence, and to document the substance of the discussion.

*Response:*

Although the proposed rule provides an excellent foundation for the audit committee to assess an audit firm’s independence, the presumption expressed in proposed rule 3524(b) that compliance services by the auditor which make up for the lack of an “internal tax department” would likely have “a detrimental effect on the firm’s independence” could pose difficulties for non-accelerated filers.

*Proposal:*

Rules 3502 and 3520: Would codify in rule 3502 the principle that persons associated with a registered public accounting should not cause the firm to violate laws, rules, and professional standards due to an act or omission the person knew or should have known would contribute to such violations. Rule 3520 would include a general obligation requiring registered public accounting firms to be independent of their audit clients throughout the audit and professional engagement period.

*Response:*

The NYSSCPA generally endorses proposed rules 3502 and 3520.

Proposed rule 3502 poses the question, "...in a circumstance in which a firm is found to have committed a violation that requires that the firm knowingly or recklessly engaged in the misconduct, would it be appropriate to find a proposed Rule 3502 violation by an associated person who negligently contributed to the violation?" In response, unintentional acts by individuals, including negligence, should not result in automatic 3502 violations.

Proposed rule 3520 does not address potentially prohibited services performed by the audit firm during the year under audit but before the "audit and professional engagement period." Continuing auditors would not be affected by this omission, but newly appointed auditors should be covered in proposed rule 3520 by referring to potentially prohibited services performed at any time during the year being audited.

Regarding to international assignment tax services (page 16), the proposal does not permit "bookkeeping services related to such tax work." Does the PCAOB intend that "bookkeeping services" extend to the routine data compilation done for any personal income tax return? Clarification of "bookkeeping services" in this context would be helpful.