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Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SEC Release No. 34-53247; File No. PCAOB-2006-01: Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees

Members and Staff of the Commission:

McGladrey & Pullen, LLP is pleased to submit written comments on the PCAOB's proposed ethics and independence rules concerning independence, tax services and contingent fees. McGladrey & Pullen, LLP is a registered public accounting firm serving middle-market issuers.

General Comments

We agree with the Board's conclusion that neither routine tax return preparation and tax compliance services nor general tax planning and advice in connection with business transactions initiated by the audit client raise independence concerns. Although we disagree that these same types of services raise independence concerns when performed for senior officers, we accept the fact that others view these services differently.

Many entities that are not issuers within the meaning of Section 2 of the Sarbanes-Oxley Act of 2002 are subject to the SEC's independence rules. While the rules are issued by the PCOAB and, therefore, apply only to registered public accounting firms and their [issuer] audit clients, if the rules (especially rule 3523) were deemed to apply to other entities subject to the SEC's independence rules, it would place unnecessary restrictions on those entities and their independent auditors. Accordingly, we urge the Commission to make it clear that these rules only apply to audits of issuers performed in accordance with the PCAOB's auditing and related professional practice standards.

Rule 3521. Contingent Fees

Rule 3521 provides that independence would be impaired if, **during the audit and professional engagement period**, a registered public accounting firm provides any service or product to the audit client for a contingent fee or commission. In order to avoid restricting the ability of an audit client to engage new auditors or requiring an entity first becoming an issuer to obtain a reaudit, we believe this rule or the adopting release should state that independence would not be impaired in such situations provided the contingent fee is settled prior to the acceptance of a new audit engagement or, in the case of a new issuer, consenting to the filing of an audit report in a registration statement.

Rule 3522. Tax Transactions

Rule 3522 states, "A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any non-audit service to the audit client related to the marketing, **planning**, or opining in favor of the tax treatment **of a transaction** ... **that was initially recommended**, directly or indirectly by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws." We are concerned that the phrase "planning of a transaction that was initially recommended by the registered public accounting firm" is ambiguous and may unintentionally limit the ability of a registered public accounting firm to advise the audit client concerning the tax consequences of alternative transaction structures. Accordingly, we believe the Commission should clarify in the adopting release that this rule is not intended to prohibit a registered public accounting firm from advising a client of the likely tax consequences of alternative transaction structures provided the registered public accounting firm does not recommend that the audit client take a tax filing position unless it is at least more likely than not to be allowable under applicable tax laws.

In announcing new authority listing a transaction, the IRS may define the listed transaction in a way that covers certain nonabusive transactions in addition to the abusive transactions that raise specific IRS concerns. A broad definition is perfectly appropriate in the tax reporting context, inasmuch as Treas. Reg. §1.6011-4(a) states that the fact that a transaction is reportable does not affect the legal determination whether a taxpayer's treatment is, in fact, proper. In view of these circumstances, the Commission has requested comments regarding the PCAOB's proposal for reconsideration of an auditor's independence when a transaction planned or opined on by the auditor subsequently becomes listed.

We believe that the Board's approach appropriately addresses the issue. When an auditor plans or opines on a transaction that subsequently becomes listed, the auditor and the audit committee should carefully evaluate the impact of such listing and of the underlying transaction on the auditor's independence, giving appropriate consideration to the unique facts and circumstances applicable to the transaction. The Board's approach appropriately mandates that the audit committee and the auditor revisit the independence issues potentially raised by the transaction, while allowing for the audit committee and the auditor to reasonably conclude that the subsequent listing does not raise independence concerns. In this regard, we believe that the audit committee's good faith determination should be considered conclusive.

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

We note that the PCAOB provided transitional relief for persons hired or promoted into a financial reporting oversight role. However, as we stated in our comments on the proposed rules, we believe that additional transitional provisions are necessary to address situations in which an issuer first becomes an audit client and when a private company first becomes an issuer. This transitional relief is necessary because the rule applies to the audit period as well as the professional engagement period. Absent transitional relief, issuers wishing to change auditors will be unnecessarily restricted in their ability to do so and companies engaging in an IPO would need to anticipate doing so up to three years in advance. Although the PCAOB's rule release states that the Board believes that provision of tax services to senior management creates an unacceptable appearance of a mutuality of interests between the auditor and senior management, we believe that this threat is not significant provided such services are provided prior to the time the issuer becomes an audit client or, for a private company audit client, before it becomes an issuer. Accordingly, we ask the Commission to provide transitional relief on the application of this rule to new audit clients and new issuers either in the rule or in the adopting release.

Closing Comments

Thank you for the opportunity to comment on this proposed standard. Questions concerning our comments should be directed to Leroy Dennis, Executive Partner – Assurance Services (952.921.7627) or Mike Metz, Executive Partner – Tax Services (952.921.7784).

Very truly yours,

McGladrey & Pullen, LLP