

Written Statement of Mark A. Weinberger
Vice Chair – Tax Services
Ernst & Young LLP
Senate Permanent Subcommittee on Investigations
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My name is Mark Weinberger. I am submitting this statement on behalf of Ernst & Young LLP as a partner of the firm. I joined the firm as Deputy Vice Chair – Tax Services in May 2002 and have served as the firm's Vice Chair – Tax Services since April of this year. I appreciate the opportunity to participate in addressing the important matters being considered by your Subcommittee.

The subject of tax shelters is complex, and the complexity begins – but certainly does not end – with the definition of what constitutes a tax shelter. The Treasury Department, Internal Revenue Service, courts, lawyers, and other practitioners have wrestled with the definition again and again. I am not going to try to either recount or settle those debates today. When I discuss tax shelters today, I am referring to tax products that have been widely marketed and are intended to generate tax benefits substantially in excess of any anticipated economic or business benefits, generally to shelter the taxpayer's income from other sources. Beginning in the mid-1990s, these products were marketed with increasing frequency by investment banks, law firms, financial service firms, and other professional service firms - including ours.

The stock market boom and the proliferation of stock option awards in the 1990s created an unprecedented number of individual taxpayers with large gains and significant potential tax liabilities. Initially, in an effort to be responsive to client needs, we and other firms looked for legitimate and appropriate tax planning ideas to meet their needs. Perhaps reflecting the tenor of the times, these efforts rapidly evolved into competitive and widespread marketing of those ideas.

Selling and marketing are an essential part of any business, but we should not allow any part of our tax practice, no matter how small, to be dominated by a "sales mentality." Our past involvement in the type of activities that are the focus of the Subcommittee's attention is not reflective of our – and we believe your – expectations of our role as professionals. Ernst & Young has more than 23,000 employees in the United States. That number includes more than 6,000 tax professionals who provide a wide range of tax services to our more than 22,000 tax clients. The revenues derived from the work under scrutiny by the Subcommittee never accounted for more than one-half of one percent of our firm's revenues. Our core tax practice was, and is, assisting our clients in their efforts to comply with the tax law and reduce their tax liability in a manner that is appropriate and consistent with the tax law. We are committed to doing business in ways that embody the highest professional standards.

To make sure that we stay true to who we are as a firm, we have implemented a host of policy, procedural and organizational reforms designed to create the highest quality

professional environment. In addition, we have entered into a settlement agreement with the Internal Revenue Service regarding tax shelter registration and list maintenance requirements. And, we have disbanded the group that had been involved in developing and marketing the tax products of the type at issue. This has nothing to do with the merits of past transactions; it has to do with what we want to be as a firm.

We have made a number of organizational changes that are relevant in the context of this hearing. Ernst & Young has:

- Established a new high-level and full-time position – Americas Director for Tax Quality – to help ensure that the firm maintains the highest possible standards of practice, policy, and procedures;
- Established Tax Technical Review Committees for each of our key functional areas in tax to provide detailed technical reviews of significant issues and help assure consistency in interpretation of the tax law;
- Established a new Tax Review Board, with members that include senior executives from outside the tax practice, to provide a firm-level view with respect to tax practices, services and relationships; and
- Established a new tax practice “hotline” to allow employees to provide anonymous input about any tax-related matter.

The Americas Director for Tax Quality, the Tax Technical Review Committees, and the Tax Review Board have many different responsibilities and bring different skills to bear. One of their common responsibilities is to provide the appropriate levels of review to ensure that we do not engage in activities inconsistent with our professional goals.

In addition to our most recent initiatives, we continue to adhere to our policies under which we do not recommend transactions that have been listed by the IRS as potentially abusive tax shelters or are “substantially similar.” Furthermore, we do not enter into confidentiality agreements related to tax services.

With regard to our audit clients, Ernst & Young has implemented policies that go beyond the requirements imposed by the Sarbanes-Oxley Act and the SEC independence rules. While SEC rules require “careful scrutiny” by audit committees for certain types of transactions, we have gone further and will simply not recommend such transactions to clients. Additionally, we will not provide any tax services to executives of our SEC registrant audit clients unless the client’s audit committee has specifically approved the services, even if the executives are paying for the services themselves.

Finally, as part of our efforts to move forward, earlier this year Ernst & Young executed a Closing Agreement with the Internal Revenue Service that resolved an examination of our tax shelter registration and list maintenance compliance. A key aspect of that

agreement is our commitment to implement a Quality and Integrity Program to promote the highest standards of practice and ongoing compliance with laws and regulations.

As part of the Quality and Integrity Program, Ernst & Young:

- Has implemented a comprehensive centralized process to capture, analyze, and maintain information for assessing our list maintenance and registration obligations.
- Has provided for a firm-wide review of the application of the rules in registration determinations by a “national review staff.”
- Will perform audits of compliance with our program at least annually.
- Will require, at least annually, certification by our professionals that they have complied with the registration and list maintenance requirements.

IRS Commissioner Mark W. Everson referenced our Closing Agreement in his testimony before the Senate Finance Committee on October 21, 2003:

“We are pleased that Ernst & Young has cooperated fully with the IRS in resolving these matters. This represents a real breakthrough and is a good working model for agreements with practitioners.”

In closing, we believe these initiatives, individually and collectively, will foster the highest standards of professionalism within Ernst & Young. We believe these policies are the right course for our firm and our clients.

That said, in the years ahead, there surely will be disagreements between the Internal Revenue Service and taxpayers. Our tax laws are enormously complex and there is more than ample room for disagreement on any number of issues. Where the Service and taxpayers differ, those differences should reflect (on both sides) open, fair, and honest disagreement over well-reasoned and good-faith interpretations of the rules as applied to the particular taxpayer's facts and circumstances.

Let me assure you that we know who we are and where we want to be. We have taken, and are taking, numerous steps to ensure that quality and professionalism are the touchstones for everything we do.

In conclusion, let me say that we have enjoyed an open, cooperative and constructive working relationship with both Majority and Minority staff, and I look forward to responding to your questions.