plante moran

Plante & Moran, PLLC
27400 Northwestern Highway
P.O. Box 307
Southfield, MI 48037-0307
Tel: 248.352.2500
Fax: 248.352.0018
plantemoran.com

December 11, 2006

Office of Regulations and Interpretations
Employee Benefits Security Administrations (EBSA), Room N-5669
U. S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Independence of Accountant RFI (RIN 1210 – AB09, Release Number 06-1566-NAT)

Plante & Moran, PLLC (P&M) is pleased to respond to the Department of Labor's (DOL or Department) Employee Benefits Security Administration (EBSA) Request for Information regarding the advisability of amending Interpretive Bulletin 75-9 (29 CFR 2509-75-9), *Interpretative bulletin relating to guidelines on independence of accountant retained by Employee Benefit Plan.* P&M is the 11th largest public accounting firm in the United States with more than 18,000 corporate clients. Annually, we audit more than 800 plans throughout the United States for companies large and small, both privately- and publicly- held. We believe our benefit plan client base is representative of the population of plans throughout the United States. The plans we audit have assets ranging from under $100,000 to over $22 billion.

We appreciate the EBSA's consideration of revising and clarifying the current guidance related to the Independence of Employee Benefits Plan Accountants included in Interpretative Bulletin 75-9 and believe additional guidance is needed due to the changes in the employee benefit plan industry, as well as in the accounting and management consulting industry, in the last 20 plus years.

We understand the need for employee benefit plan audits and the need for accountants to be independent. We also understand the time and financial burden benefit plan audits can place on plan sponsors and employers. As we compiled our comments we tried to consider the cost of the additional requirements the EBSA may be suggesting with the real and perceived benefit that the plan, plan participants and plan sponsor would receive. We have specific comments about a number of the items included in the Request for Information as paraphrased by the American Institute of Certified Public Accountants (AICPA)'s Employee Benefit Plan Audit Quality Center, which are detailed below.

1 - Should the Department adopt, in whole or in part, current rules or guidelines on accountant independence of the SEC, AICPA, GAO or other governmental or nongovernmental entity?

The number of rules and regulations that benefit plan auditors must comply with is cumbersome – especially for publicly held companies' plan audits. If the EBSA could adopt the rules currently in place by the AICPA for non-registrant plans and the SEC for registrant plans and

provide guidance and clarification on when the rules apply to the plan, the plan sponsor or both, that would simplify the compliance process.

If the AIPCA and SEC rules are not adopted fully, we believe for publicly traded entities the EBSA should adopt the SEC independence rules, particularly as they relate to de minimus ownership interests and the ability to resolve any potential independence issues by the sale of any shares prior to being engaged by the public company.

2 - Should the Department modify, or otherwise provide guidance on, the prohibition in Interpretive Bulletin 75-9 on an independent accountant, his or her firm, or a member of the firm having a "direct financial interest" or a "material indirect financial interest" in a plan or plan sponsor?

We think the DOL should adopt the AICPA or SEC rules (or both). By adopting these standards the DOL would only be required to create plan specific guidance.

If the AICPA or SEC rules are not adopted, we believe that there should be guidance related to the “direct financial interest” or “material indirect financial interest” in a plan or plan sponsor. Specifically, we believe that a non-owner in a CPA firm having any interest in a plan or plan sponsor, where they are not actively involved in the management of the plan, should not cause the CPA firm’s independence to be impaired. We also acknowledge that such individual should not be involved in the plan’s audit.

We also believe that the a spouse or other relative of partner or other professional in the CPA firm that is a participant of a plan to be audited would not cause the firm’s independence to be impaired so long as that partner or other professional in the CPA firm is not involved in the plan’s audit. Again, the participant in the plan should not be actively involved in the management of the plan (except as it relates to the directing of their investments in a participant directed investment plan).

Lastly as it relates to direct financial interest, we believe that if a plan requires the match be paid in (publicly traded) company stock, and a spouse of professional in the firm is in the plan, that this would not cause the firm’s independence to be impaired, so long as the spouse’s interest in the stock was less than 5% (or some other de minimus amount) of the outstanding stock of the public company and the spouse is not actively involved in the management of the plan.

As it relates to indirect material financial interest, it would be helpful to clarify what this means and give examples (e.g., stock held in trust (like a uniform gift to minor trust accounts), stock held by minor children or owned by other close relatives).

3 - Should the Department issue guidance on whether, and under what circumstances, employment of an accountant's family members by a plan or plan sponsor that is a client of the accountant or his or her accounting firm impairs the independence of the accountant or accounting firm?

Guidance on whether or when employment of an accountant’s family members by a plan or plan sponsor that is a client of the accountant or his or her accounting firm impairs the independence of the accountant or accounting firm should be provided.

Specifically, we think that if a family member of a partner or shareholder of the accounting firm was employed by a benefit plan audit client, it would not necessarily impair independence if (1) the family member was not involved in the management of the plan or in a significant financial

management capacity and (2) the partner or shareholder of the is not involved in the audit of the plan.

The guidance should likely address differences depending on the size of the company (closely held small employer versus a large public company).

4 - Should the Department define the term "financial records" and provide guidance on what activities would constitute "maintaining" financial records. If so, what definitions should apply?

We suggest that the EBSA provide guidance on the term “financial records”. For instance, we don’t believe the preparation of financial statements or the 5500 would impair independence. The majority of privately held companies’ plans that we audit do not maintain a general ledger for their plan, rather they rely on their recordkeeper to maintain the plan’s records. It is from these records that the financial statements and the 5500s are prepared (generally by the auditor).

5 - Should the Department define the terms "promoter," "underwriter," "investment advisor," "voting trustee," "director," "officer," and "employee of the plan or plan sponsor," as used in Interpretive Bulletin 75-9?

We believe guidance should be provided on the terms mentioned above should be provided. Specifically “employee of the plan or the plan sponsor” and likely it should distinguish between those who manage the plan and those without financial or plan responsibilities (i.e. a receptionist, a sales person, designer, consultant, etc).

6 - Should the Department revise and update the definition of "member?" If so, how should the definition be revised and updated?

We believe the definition of member should be consistent with that in the AICPA or SEC rules and regulations.

If the AICPA or SEC rules are not adopted, then EBSA should consider revising its definition of member. Currently the definition includes all partners or shareholders and all professionals participating in the audit or located in the office of the firm participating in a significant portion of the audit. We believe that all professional located in the office of the firm participating in a significant portion of the audit might be too encompassing. For example, it is difficult to imagine the Microsoft audit could be performed by a firm located in Washington where no professional in a Washington office of the accounting firm had any shares of Microsoft currently (or during the period under audit). We also don’t believe a staff person in that office owning 5 shares of Microsoft who doesn’t work on the Microsoft plan audit would impair the independence as it relates to the plan.

7 - What kinds of nonaudit services are accountants and accounting firms engaged to provide to the plans they audit or to the sponsor of plans they audit?

The types of non-audit services accountants and accounting firms would typically be engaged to provide plans relate to 5500 preparation, benefit plan tax consulting, including assistance in filings with the EBSA. The types of nonaudit services accountants and accounting firms would typically provide to plan sponsors would be those allowed under AICPA and SEC regulations without impairing the accountants’ independence.

Evaluating independence impairment on the benefit plan audit for non-attest services provided to the plan sponsor should be based on a facts and circumstance basis, because there are many services that can be provided to the company that have no impact on the plan.

If the AICPA or SEC rules on independence are not adopted, EBSA should elaborate on the definition of independence under paragraph (3) of Interpretive Bulletin 75-9 as it pertains to the rendering of specific multiple services to a plan by an accountant or an accounting firm including but not limited to:

- Actuarial Services – such as ongoing defined benefit plan administration, processing of benefit payments at the direction of the plan sponsor, preparation of Statement of Financial Accounting Standards (such as Nos. 87, 106, 112, 132, and 158) for the Plan Sponsor, Statements of Position, etc.
- Third Party Administration – such as defined contribution plan administration for profit sharing, 401(k), money purchase, and employee stock ownership plans, certain limited functions such as the allocation of annual employer contributions and/or investment earnings/forfeitures
- Rendering of Investment Consulting or Investment Monitoring – such as assistance in the development of plan investment policies, assistance with investment selection, monitoring and/or reporting of periodic investment returns
- Insurance Brokerage – will a brokerage arm of an accountant or accounting firm that provides group benefits (such as health, life, disability, etc.), in whole or in part, jeopardize audit independence?

8 - Should the Department change the Interpretive Bulletin to remove or otherwise provide exceptions for "the period covered by the financial statements" requirement?

We believe that the Interpretive Bulletin should remove the reference to the “period covered by the financial statements,” especially in the case of publicly held corporations (where the interest is disposed of prior to being engaged).

9 - Should there be special provisions in the Department's independence guidelines for plans that have audit committees that hire and monitor an auditor's independence, such as the audit committees described in the Sarbanes-Oxley Act applicable to public companies?

We don’t think there should be any different rules for plans with audit committees and those without. The independence rules should be more based on whether the company is publicly or privately held.

10 - What types and level of fees, payments, and compensation are accountants and accounting firms receiving from plans they audit and sponsors of plans they audit for audit and nonaudit services provided to the plan?

We have no comment on this item as we don’t believe fees for service impacts independence.

11 - Should the Department define the term "firm" in Interpretive Bulletin 75-9 or otherwise issue guidance on the treatment of subsidiaries and affiliates of an accounting firm in evaluating the independence of an accounting firm and members of the firm?

The AICPA rules have adequate and understood guidelines on the definition of the term “firm”. If they are adopted no additional guidance would be necessary.

If AICPA rules are not adopted, EBSA should define the word “firm” as it pertains to the relationship that an accountant or accounting firm maintains with respect to wholly- or partially-owned subsidiaries. EBSA should answer the question: Does partial ownership affect independence as it pertains to nonaudit services provided by subsidiaries of accountants or accounting firms?

12 - Should the Department of Labor's independence guidance include an "appearance of independence" requirement in addition to the requirement that applies by reason of the ERISA requirement that the accountant perform the plan's audit in accordance with GAAS?

We believe the current AICPA rules provide enough guidance on an “appearance of independence” and since the accountant would need to comply with the AICPA rules to perform a GAAS audit, the EBSA does not need to undertake providing additional guidance.

13 - Should the Department of Labor require accountants and accounting firms to have written policies and procedures on independence which apply when performing audits of employee benefit plans?

We believe the requirement that the accountants providing benefit plan audits comply with EBSA and AICPA independence rules is enough and thus the individual accounting firms should not be required to have written policies and procedures on independence specific to the audits of employee benefit plans – specifically EBSA rules. These requirements are contained in the peer review rules, to which all benefit plan auditors should be subject.

14 - Should the Department adopt formal procedures under which the Department will refer accountants to state licensing boards for discipline when the Department concludes an accountant has conducted an employee benefit plan audit without being independent?

We have no specific opinion or comment on this matter.

15 - Should accountants and accounting firms be required to make any standard disclosures to plan clients about the accountant's and firm's independence as part of the audit engagement? If so, what standard disclosures should be required?

When an auditor issues their audit opinion in accordance with GAAS and the EBSA Rules and Regulations under ERISA they are required to comply with the related independence rules, thus we don’t believe it is necessary to make additional disclosures regarding independence to the plan sponsors. We believe requiring additional communication regarding independence will only raise the cost of the audit with little benefit to the plan, plan participants and plan sponsor.

We appreciate the opportunity to comment on the Request for Information and would be happy to discuss the above comments with you. We hope that when proposed changes to the Interpretive Bulletin are developed, we will have the opportunity to provide comments on those proposed independence rules.

Very truly yours,

Theresa K. Banka, CPA
Employee Benefit Plan Audit
Services Group Leader
Plante & Moran, PLLC

Joseph F. Rankin
Employee Benefit Consulting
Services Group Leader
Plante & Moran, PLLC