



October 10, 2006

Office of Regulations and Interpretations  
Employee Benefits Security Administration (EBSA)  
Room N-5669  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

RECEIVED  
OFFICE OF REGULATIONS AND INTERPRETATIONS  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION  
2006 OCT 21 PM 5:11

Attn: Independence of Accountant RFI (RIN 1210- AB09)

We applaud the efforts of the Department of Labor in reconsidering its auditor independence rules for employee benefit plans subject to ERISA. Since 1975, the date Interpretive Bulletin 75-9 was issued, employee benefit plans, the accounting profession and the nation's economy have undergone dramatic changes. We believe that a modernization of the DOL auditor independence rules would benefit all interested parties, including the public and appreciate the opportunity to provide our comments and thoughts on this important matter.

While we have addressed a number of the specific questions raised by your RFI, we believe that there should be an overarching principal applied to auditor independence. Financial statement users, CPAs and regulators should be able to quickly and easily determine what independence rules apply to auditors issuing opinions on financial statements. While reasonable individuals may disagree on specific matters, we believe that consistency in expectation is a crucial part of the public's confidence when considering audited financial statements. To the extent that multiple standards of independence exist, readers and users affected by an audited financial statement may face confusion and uncertainty as to which independence standards apply, what those standards really mean and why those standards differ from other standards that apply to a different set of financial statements. Accordingly, we recommend that the Department seriously consider adopting, wherever possible, standards that are already promulgated by other standard setting bodies, whether those are the SEC, AICPA or GAO standards. Further, since the vast majority of potential users of financial statements may not be sophisticated investors, we recommend that the standards be fully explained, in plain English, so that the potential users of the financial statements can understand the importance of independence and develop a true sense of what auditor independence, as related to DOL and ERISA matters really means.

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Our specific comments on the various issues are as follows:

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?

As we discussed in our introduction to these comments, we believe that consistency in standards is very important to financial statement users and readers. Accordingly, we recommend that the Department adopt as much of existing current rules and guidelines as possible. This would create several benefits. First, existing guidance has already been through an extensive public comment process, during which the promulgating organization or regulator received input and suggestions from many interested parties, input that was subsequently incorporated into the final rules. While employee benefit plans and ERISA may provide unique or controversial issues that the Department believes may not be adequately addressed by any existing guidance, we believe that such issues can be specifically addressed by new rulemaking, tailored to address those issues, without creating yet another set of standards that financial statement readers and users must read and understand. In any event, we strongly recommend that any independence rules follow, as closely as possible, existing independence standards.

We also recommend that the Department adopt, to the extent possible, one of the existing set of independence standards. We recommend the Department adopt the AICPA standards, but recognize that a compelling public interest argument exists that the SEC standards are more appropriately geared to the diverse users and differing levels of sophistication of users of publicly traded companies. Nevertheless, we believe that the AICPA standards provide more than adequate protection for any potential users of financial statements that may come under the Department's responsibility. In addition, these standards are applied to the vast majority of audits performed in the U.S., since the AICPA code of conduct has been incorporated by reference into most of the state board of accountancy rules.

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?

Independence requires that an auditor not have a mutuality of interests with the financial statement issuer. To the extent that such a mutuality of interest exists, independence (or at a minimum the appearance of independence) is impaired. Accordingly, we believe that the prohibition against having a direct financial interest or a material indirect financial interest in a plan is an appropriate prohibition. We also oppose modifying the existing rule against having such an interest in the plan sponsor. While we recognize that the financial statements are those of the plan, and not the plan sponsor, the close relationship between the sponsor and the plan as well as the potential financial interdependence between the parties lead us to conclude that no auditor should have a direct or material indirect financial interest in either party. Further, in today's business environment, the

perception of a lack of independence is as worrisome and problematic as a real lack of independence. Thus, we support the requirement contained in the current rule.

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?

We recommend that the Department adopt the AICPA rules on family employment. Under the AICPA rules independence is impaired if any family member of a covered member of the firm is in a *key position* with the plan sponsor, or was associated with the plan sponsor as a promoter, underwriter, or voting trustee during the financial statement period or during the period of the professional engagement. The AICPA rules define a key position to be one in which an individual has primary responsibility for significant accounting functions that support material components of the financial statements; has primary responsibility for the preparation of the financial statements; or has the ability to exercise influence over the contents of the financial statements, including when the individual is a member of the board of directors or similar governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or an equivalent position. In short, the AICPA rules provide protection from undue influence in any area directly affecting or associated with the financial statements. This broad prohibition seems to us to be sufficient to protect the interests of the plan, interested parties and members of the public affected by the plan.

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?

While we support the Department defining financial records, we recommend that the determination of what activities constitute maintaining financial records reference the AICPA's Section 101-3, dealing with the provision of non-attest services to attest clients. We believe that any guidelines must include that the auditor not perform any management function and not audit his or her own work.

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?

Consistent with our earlier discussion, we recommend that the Department adopt definitions of these terms that have already been promulgated by the AICPA, SEC or GAO.

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

We recommend that the definition of member be updated. We also recommend that the AICPA definition of "covered member" be adopted. In our view, the AICPA definition of member recognizes the complexity and diversity of the current business environment. Accordingly, we believe that it provides a realistic and workable set of rules that protect the plan, the public and all other interested parties. Under the AICPA rules, for financial relationship purposes, a member includes both immediate and close family members of the covered member, which then imposes financial relationship limitations on those individuals. Additionally, the AICPA rules are more engagement driven. This means that firm members (and other covered individuals) must normally have some connection with the financial statement engagement or be in a position within the firm to influence the engagement team. ET Sections 92.06 and 92.13 cover the definitions of covered members and individuals in a position to influence the engagement. Likewise, the AICPA rules also prohibit family members from having certain employment and other relationships with the plan.

*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?*

Our firm has made the business and ethical decision not to offer any services (other than the attest services) to the plans we audit. We cannot comment on what other firms may or may not be doing. However, we recommend that the Department consider adopting the AICPA's rules on non-attest services that may be offered to attest clients as provided in Sec. 101-3. We believe that these rules strike a fair and practical balance between a client's need for non-attest services from the auditor and the public's need for an independent auditor.

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

We strongly support the elimination of the "period covered by the financial statements" requirement. As a practical matter, the prohibition potentially reduces the number of auditors that can be engaged by the plan, since all members of any firm being considered as a successor auditor can have no financial interest in the plan or plan sponsor for an extended period of time. Thus, for example, a member holding an interest in the plan sponsor on January 1, 2007, who disposed of that interest on January 2, 2007 would prevent the firm from being engaged for the audit of the plan's financial statement for 2007, even if the firm wasn't being considered until November or December of 2007 for the engagement, despite the fact that, as a practical matter, the firm had no connection with the plan or plan sponsor except for a very short period. For many firms, this would require that members not hold interests in any entity, including publicly-traded companies, with a retirement plan that the firm could potentially audit.

We also believe that the prohibition provides no significant public benefit. As we discussed previously, the issue with independence is the mutuality of interest between the firm (or a member of the firm) and the plan or plan sponsor. Holding a financial interest in the plan sponsor prior to any affiliation with the plan does not create or further this

mutuality of interest. In our view, the measuring point should be when there is an actual engagement. At that point, a reasonable person would demand that the auditor be independent from the plan or plan sponsor.

Finally, we believe that a requirement that the covered member dispose of his or her interest or otherwise cure the independence impairment prior to the earlier of the execution of the engagement letter or the commencement of audit procedures provides sufficient protection for the plan and plan sponsors, as well as the public.

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?

Plan administrators and other plan fiduciaries must adhere to the fiduciary standards set forth in ERISA and other regulations covering the plans. Accordingly, we believe that there are already sufficient guidelines in place monitoring the auditor and audit function. Thus, we believe that the imposition of a new and separate audit committee requirement would not significantly further the public interest, while imposing on the plan a new and potentially costly requirement to provide outside "board members" for the purpose of overseeing the plan's audit.

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?

We recommend that the Department adopt the AICPA definition of a firm that reads:

Firm is a form of organization permitted by law or regulation whose characteristics conform to resolutions of the Council of the American Institute of Certified Public Accountants that is engaged in the practice of public accounting. Except for purposes of applying Rule 101: *Independence*, the firm includes the individual partners thereof.

Should the Department'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 support the concept of an "appearance of independence" requirement, but also believe that, to the extent the member or firm meets the requirements of actual independence (i.e. the AICPA definition of member is adopted and a member of the firm in another office, unrelated to the audit, holds a financial interest in the plan sponsor), there is no impairment because of an appearance of independence.

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

We strongly support a requirement that any auditor of an employee benefit plan have written policies and procedures in place to provide an assurance that it is independent with respect to the plan.

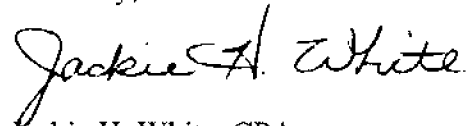
Should the Department adopt formal procedures under which the Department will refer accountants to state licensing boards for discipline when the Department concludes an accountant has conducted an employee benefit plan audit without being independent?

We strongly support the use of the disciplinary process when a firm conducts any audit, including one of an employee benefit plan, where the firm is not independent. The disciplinary process has safeguards that protect the public interest as well as the auditor's rights, while also taking into consideration any egregious or mitigating circumstances. We also recommend that the Department refer any such potential violation to the AICPA and appropriate state society for action under their disciplinary policies and procedure.

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?

We believe that the standard auditor's report is sufficient disclosure with respect to the firm's independence.

Sincerely,



Jackie H. White, CPA  
Member of the Firm