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Office of Regulations and Interpretations
 Employee Benefits Security Administration
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 U.S. Department of Labor
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Attn: Independence of Accountant RFI (RIN 1210-AB09)

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Amper Politziner & Mattia, P.C. ("Amper") is pleased to be able to comment on the Department of Labor's ("DOL") request for information concerning the amending of Interpretative Bulletin 75-9 (29 CFR 2509.75-9) relating to guidelines on independence of accountants retained by employee benefit plans under Section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA").

Amper audits approximately 200 ERISA Plans annually. Amper personnel must comply with the American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct as well as the independence rules of the Securities Exchange Commission ("SEC") and the DOL. We strongly recommend that the DOL revise its independence rules to align closely to that of the AICPA, thus having one less body of independence to consider.

The following are our responses to the specific questions listed in the RFI.

- 22
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? If the Department were to adopt a specific organization's rules or guidelines, what adjustments would be needed to reflect the audit requirements for or circumstances of employee benefit plans under ERISA?**

Yes, we strongly believe the DOL should consider adopting the current independence guidelines of the SEC and AICPA specifically 1) to allow a period for a firm and employees to sell shares in a public company, thus removing the requirement that a firm be independent during the period covered by the financial statements as it pertains to ownership interests and 2) by providing a clarification of whether a firm's employees' family members are included in any of the independence requirements and if so how a) ownership of stock b) employment at the Plan Sponsor and c) being a Plan participant in a Plan the firm is auditing impacts independence.

Currently Interpretive Bulletin 75-9 hinders public companies from changing Plan auditors, specifically due to the requirement of being independent during the period covered by the financial statements. A public company could effectively change corporate auditors and be unable to engage that same firm to perform Plan audits for the first year of the engagement term due to existing DOL independence regulations.

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? For example, should the Department issue guidance that clarifies whether, and under what circumstances, financial interests held by an accountant's family members are deemed to be held by the accountant or his or her accounting firm for independence purposes? If so, what familial relationships should trigger the imposition of ownership attribution rules? Should the ownership attribution rules apply to all members of the accounting firm retained to perform the audit of the plan or should it be restricted to individuals who work directly on the audit or may be able to influence the audit?**

We recommend that the DOL provide guidance with respect to financial interests similar to that of the AICPA, which is comparable to those of the SEC. We believe the ownership attribution rules should be restricted to individuals who participate in the Plan audit(s), all partners located in the office performing the audit(s) and specialists such as quality control/quality assurance, tax or other personnel and those in a position to influence the audit engagement such as the managing partner or executive committee. We request the Department of Labor clearly define those that influence the audit engagement.

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?**

See Number 1 above.

4. **Interpretive Bulletin 75-9 states that an accountant will not be considered independent with respect to a plan if the accountant or member of his or her accounting firm maintains financial records for the employee benefit 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?**

Yes, we believe the DOL should clarify the term financial records. We request the DOL specifically address participant recordkeeping, investment management, preparing financial statements from annual investment statements provided by custodians, and preparing a Plan's trial balance from such documents.

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? Should the Department include and define additional disqualifying status positions in its independence guidelines? If so, what positions and how should they be defined?**

Yes, we believe that these terms are clearly defined in the AICPA independence regulations. The new DOL independence rules should reference to that of the AICPA.

6. **Interpretive Bulletin 75-9 defines the term "member of an accounting firm" as all partners or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit. Should the Department revise and update the definition of "member?" If so, how should the definition be revised and updated?**

Yes, we believe that the DOL should adapt the AICPA's definition of a "member" of an accounting firm to avoid complexity, confusion and avoid having another independence body to consider.

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? Are there benefits for the plan or plan sponsor from entering into agreements to have the accountant or accounting firm provide nonaudit services and also perform the employee benefit plan audit? If so, what are the benefits? Should the Department issue guidance on the circumstances under which the performance of nonaudit services by accountants and accounting firms for the plan or plan sponsor would be treated as impairing an accountant's independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan's annual report? If so, what should the guidance provide?**

Yes, we believe there is a benefit to the Plan Sponsor in allowing Plan auditors to perform certain non-audit services for which the accounting firm may have the expertise. We believe guidance is necessary to define which non-audit services impair independence, as well as, the time frame under which such services may impair independence (i.e., if a firm ceases performing a prohibited service within a reasonable (defined) period of being engaged to perform a Plan audit can the firm be considered independent). Further, we believe guidance is necessary to clarify the timing as to "during the period covered by the financial statements."

Below are some specific examples of non-audit services:

- a. Executive tax preparation and consultation
- b. Executive recruiting
- c. Financial investment management services for the Plan and/or Plan Sponsor, as well as, for executives personally
- d. 404 assistance
- e. Internal audit outsourcing
- f. Corporate tax return preparation
- g. Corporate information technology assistance and consulting and systems implementation
- h. Operational consulting services
- i. Investment banking for Plan Sponsors
- j. Claim audits of a Health and Welfare Plan where the firm performs an audit of the Plan or where the firm performs other Plan audits for a public or non public Plan Sponsor
- k. Business valuation for Plan Sponsor
- l. Litigation support for Plan Sponsor or Plan
- m. Financial advice to retirees in a defined benefit Plan
- n. Financial advice to Plan participants

8. Interpretive Bulletin 75-9 requires an auditor to be independent during the period of professional engagement to examine the financial statements being reported, at the date of the opinion, and during the period covered by the financial statements. Should the Department change the Interpretive Bulletin to remove or otherwise provide exceptions for “the period covered by the financial statements” requirement? For example, should the requirement be changed so that an accountant’s independence would be impaired by a material direct financial interest in the plan or plan sponsor during the period covered by the financial statements rather than any direct financial interest?

Yes, the DOL should change the Interpretative Bulletin to remove “the period covered by the financial statements” requirement. We do not believe the change should be based only on a material direct financial interest, but on all interests, direct or material indirect, and that those interests should be disposed of prior to commencement of the audit. Also those covered by the ownership restriction must be defined as noted elsewhere herein.

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?

For sponsors not subject to the Sarbanes-Oxley Act, it should be an audit committee decision whether they can hire the auditor and monitor the auditors’ independence.

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? Should the Department issue guidance regarding whether receipt of particular types of fees, such as contingent fees and other fees and compensation received from parties other than the plan or plan sponsor, would be treated as impairing an accountant’s independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan’s annual report?

Yes, we believe that the AICPA rules on contingent fees are understandable.

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? If so, what should the guidance provide regarding subsidiaries and affiliates in the evaluation of the independence of an accountant or accounting firm?**

Yes.

12. **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?**

No, since the auditor performs the audit in accordance with generally accepted auditing standards, there is the perception that the auditor is independent.

13. **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? If so, should the Department require those policies and procedures be disclosed to plan clients as part of the audit engagement?**

No, provided that the DOL adopt similar independence requirements as that of the AICPA.

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?**

Yes.

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?**

No, only as required by the SEC for Form 11K engagements or if the audit committee requests.

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We thank you for the opportunity to provide our comments on this RFI and would be delighted to further discuss them if necessary.

Very truly yours,

AMPER POLITZINER & MATTIA, P.C.



Diane M. Wasser, CPA

Officer

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