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

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Ladies and Gentlemen:

This letter is in response to the U. S. Department of Labor's request for information from the public concerning the advisability of amending 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.

UHY LLP is a firm of certified public accountants that has just over 100 partners that utilizes staff resources of approximately 800 individuals through an alternative practice structure arrangement with an associated entity, UHY Advisors, Inc. and its operating subsidiaries.

Our audit clients include approximately 200 employee benefit plans including nearly a dozen plans of public companies.

Like many other firms, UHY LLP is being approached with greater frequency to propose on the audits of employee benefit plans in which public companies are the plan sponsor. This is a shift from what once was the almost exclusive domain of the Big 4 firms. It has been described to us as being the result of Big 4 firms' resource considerations that have resulted in substantially increased fees for work that is not part of the public company audit.

Department of Labor (DOL) independence regulations that date back to the 1970's are presenting obstacles to UHY LLP and other responsible firms in accepting employee benefit plan audits where the plan sponsor is a public company. Under the DOL independence rules, a firm is not considered independent if a direct financial interest is held by a partner (or other member) in the plan sponsor at any time during the year under audit [29 CFR 2509.75-9]. Unlike AICPA and SEC independence rules, disposing of such direct financial interest does not eliminate the independence issue.

Using an actual situation as an example of what has occurred within UHY LLP several times within the past year, our New England practice was approached and requested to propose on certain of AT&T's employee benefit plans for the year ended December 31, 2005. This was an important client opportunity for UHY LLP and its New England practice, and an independence check was undertaken immediately. In checking independence, we learned that a partner in Albany and another in Detroit each held a few hundred shares of the plan sponsor's common stock. Although each of those partners (who would have had no connection with the potential engagement) indicated a willingness to sell the shares immediately, disposing of the investments in the plan sponsor still would not make the firm independent under DOL rules—unlike AICPA and SEC rules. Because of those holdings, the firm would not be independent for either 2005 or 2006. As a consequence, UHY LLP had to decline to propose on this audit opportunity because of independence considerations.

It is ironic that a firm whose partners were to dispose of direct financial interests would meet the SEC's independence rules and be allowed to audit a public company yet be unable to audit that same public company's employee benefit plan because of interests once held by partners in the public company plan sponsor.

We would ask that the DOL reconsider its independence regulations and consider whether currently existing AICPA and SEC independence rules (both of which have been revised considerably since 1979) do not provide more than adequate protection for plan participants if those rules were to be put in place for audits of employee benefit plans of public companies. Those rules provide far more direction and guidance in most areas than do the current DOL rules.

Should the DOL believe it necessary to have rules that extend beyond those of the AICPA and SEC, we would respectfully request that the DOL reconsider the 1979 rule that forecloses the possibility of a firm auditing a pension plan of a public company if one partner in an office remote to the location where the audit would be performed happened to own a share of stock in the plan sponsor. Certainly there would be no threat to independence and the quality of audit work performed if that partner were to dispose of such an investment prior to the firm's accepting the audit engagement. Again, it would seem to be quite an anomaly if the firm were able to meet the SEC's stringent independence requirements and be able to audit the plan sponsor but not the plan itself.

We have made inquiry to other firms—both larger and smaller. All are well aware of the problematic nature of the regulation and how it is an economic burden for them and for those smaller public companies who are reaching out to other than the Big 4 for audits of pension plans. The current regulations essentially preclude any firms with more than a few partners from auditing plans of public companies because the relatively high probability that a partner somewhere will hold a share of stock in the public company plan sponsor thereby precluding the firm from doing the audit because of independence considerations. Yet, said again, that same firm could audit the public company plan sponsor as long as the partner was in a remote office or, if in the local office, divested of the stock before accepting the audit client.

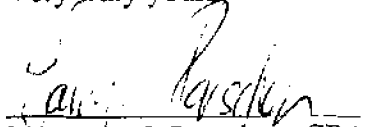
Because of the DOI rule, whenever we consider becoming the auditors for a pension plan of a public company, our independence procedures extend to making an inquiry of each of our more than 100 partners to determine whether anyone has any direct investment in the employee benefit plan sponsor.

As recently as this Monday, our Houston Office had an opportunity to audit a public company pension plan. Our independence check revealed one partner who held a few shares in the plan sponsor that he would have willingly disposed of. However, because of the DOL's independence rule, we would not be considered independent. Accordingly, we withdrew UIIY LLP from further consideration—another of many similar situations.

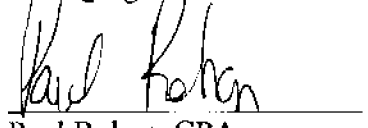
We believe that our procedure of making direct inquiry of all partners extends well beyond what many firms are doing to insure independence. Although we believe that the rule should be brought into conformity with the more current AICPA and SEC rules on independence, we do believe in rigorous enforcement of the rules—whatever they may be—so that all firms that audit employee benefit plans of public companies are competing on a level playing field.

Should any of the DOL's staff assigned to this project require additional information or have any questions, please contact Paul Rohan, the firm's Director of Financial Reporting and Quality Control at (203) 401-2101.

Very truly yours,



Lawrence J. Porschen, CPA
Managing Partner



Paul Rohan, CPA
Partner
Director of Financial Reporting and Quality Control