

**PROPOSED RULES OF PROFESSIONAL CONDUCT WILL PROHIBIT CPAs
FROM PROVIDING MANY BUSINESS VALUATION, LITIGATION SUPPORT, AND OTHER
NON-ATTEST SERVICES FOR THEIR ATTEST CLIENTS AND RELATED SHAREHOLDERS**

[Even where the client is Non-Public (Privately Owned)]

September 2003

The massive audit failures associated with Enron, WorldCom and other high profile companies caused significant change within the accounting profession. The Sarbanes-Oxley Act significantly limits the services that CPAs may provide to their public audit clients. On March 19, 2003, the American Institute of Certified Public Accountants ("AICPA") Professional Ethics Executive Committee issued a related Exposure Draft¹ ("proposal"). This proposal, if implemented as expected, will place similar restrictions on CPAs providing attest services² to any client, without regard to its size or non-public ownership. The revised rules are expected to become final within a few months.

The proposal recognizes that a CPA's work may be subject to independence rules of others, e.g., the SEC, GAO, or the DOL. The proposal also articulates specific requirements to be followed by CPAs desiring to avoid a presumption that the performance of non-attest services, e.g. litigation support or valuation services, causes a CPA to become non-independent with respect to that client. If not independent, the CPA is ethically precluded from providing review, audit or other attest services to the affected client. These requirements include:³

1. The CPA shall not perform management functions or make management decisions for the attest client.
2. The client must agree to perform significant functions in connection with the non-attest engagement including making all management decisions, performing all management functions, designating a competent employee to oversee the services, evaluating the adequacy and results of services performed, accepting responsibility for the results of the services, and establishing and maintaining internal controls including monitoring activities of the engagement.
3. The CPA shall establish and document in writing the understanding with the client regarding the engagement and respective responsibilities.

An attorney or CPA may think that direct retention by the client's attorney is an effective work around. One should be cautious. The SEC has ruled that such relationships do not comply with its Rule on Auditor Independence.

¹ AICPA Exposure Draft, *Omnibus Proposal of Professional Ethics Division Interpretations and Rulings*, March 19, 2003.

² Attest services include, among others, engagements where the CPA is retained to review or audit financial statements, or perform agreed-upon procedures.

³ AICPA Exposure Draft, as paraphrased by Michael A. Crain and Michael G. Ueltzene, "*The Impact of Auditor Independence Rules on Business Valuation and Litigation Services*," CPA EXPERT, Summer 2003, AICPA.

Under the proposal, most business valuations associated with ESOPs, stock redemption arrangements, buy-sell agreements, business combination purchase price allocations, covenant-not-to-compete agreements, and the like may not be performed by a client's attest service CPA. Similarly, compliance with the second of the above three quoted requirements will render testimony by the client's attest service CPA (a member of that firm) ineffective. Carefully planned cross-examination will demonstrate that the client's attest service CPA is professionally obligated to avoid responsibility for matters that materially affect the client's financial statements.

In summary, the proposal is designed to more fully assure that CPAs retain their independence by requiring that they not accept responsibility for non-attest services that materially affect a client's financial statements that are reviewed, audited, or the subject of other attest procedures by that CPA.

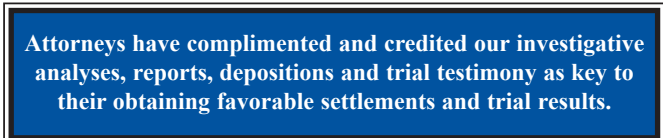
A more in-depth discussion of the proposal is presented by Messrs. Crain and Ueltzen in their article entitled "*The Impact of Auditor Independence Rules on Business Valuation and Litigation Services*;" see footnote 3. An online version may be accessed by clicking on the "Links" reference at www.duree.com.



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