

May 18, 2007

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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

**RE: PCAOB Rulemaking Docket Matter No. 017-Concept Release
Concerning Scope of Rule 3523, Tax Services for Persons in Financial
Reporting Oversight Roles, PCAOB Release No. 2007-002**

Dear Office of the Secretary:

The Center for Audit Quality (CAQ or the Center) is a group created by the public company auditing profession and the American Institute of Certified Public Accountants (AICPA) to help foster confidence in the audit process and aid investors and the capital markets by advancing constructive suggestions for change rooted in the profession's core values of integrity, objectivity, honesty and trust. The CAQ consists of approximately 800 member firms that audit or are interested in auditing public companies. We welcome the opportunity to share our views on the Public Company Accounting Oversight Board's (PCAOB or the Board) Release No. 2007-002, *Concept Release Concerning Scope of Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles* (April 3, 2007) (the Release).

Due to the subject matter of the Release, the Center has received significant input from the AICPA Professional Ethics Executive Committee (PEEC) and accordingly, this letter is being issued jointly with PEEC.

The CAQ and PEEC commend the PCAOB's decision to issue a Concept Release to solicit comments on this aspect of Rule 3523, tax services to persons in financial reporting oversight roles during the "audit period," and also agree with the Board's adjustment to the implementation schedule for this aspect of the rule in order to allow sufficient time for the Board to consider comments received. We are supportive of these steps because tax services have been afforded a unique status under the Sarbanes-Oxley Act of 2002 (the Act) and careful consideration should be given to any unintended consequences that audit clients and accounting firms may be facing as a result of the rule.

We believe it is appropriate for the Board to amend the rule to eliminate the prohibition on providing such services during the *audit period* to the extent it precedes the *professional engagement period*. Subject to the recommended

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transition period discussed in our response to question 2 below, we believe that the change can be effected by eliminating “**audit and**” from the current text of Rule 3523 that states, subject to exceptions, “A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the **audit and** professional engagement period provides any tax service to a person in a financial reporting oversight role at the audit client.”

Our comments have been drafted primarily in response to the two questions posed by the PCAOB within the Release. In addition to responding to the specific questions, we have included other comments and suggestions throughout our letter.

1. To what extent, if any, is a firm's independence affected when the firm, or an affiliate of the firm, has provided tax services to a person covered by Rule 3523 during the portion of the audit period that precedes the professional engagement period?

We believe there is no threat to independence when an accountant provides tax services to senior management prior to becoming the company's auditor of record. The Board states that it adopted Rule 3523 because “the provision of tax services by the auditor to the senior management responsible for the audit client's financial reporting creates an unacceptable *appearance* of the auditor and senior management having a mutual interest” (emphasis added). However, we believe most reasonable investors with knowledge of all relevant facts and circumstances would conclude that the accountant is capable of exercising objectivity when providing audit services to a client in cases where the accountant provided tax services to senior management prior to becoming the company's auditor.

The Securities and Exchange Commission (SEC or the Commission) staff recently provided views with respect to non-audit services and whether auditor independence would be impaired by the provision of prohibited non-audit services during the professional engagement period. Michael W. Husich¹, Associate Chief Accountant, Office of the Chief Accountant of the SEC, recently stated in a speech:

The staff's position is that a successor auditor's independence would not be impaired if the successor auditor provided prohibited non-audit services in the current audit period and these services (i) relate solely to the prior period which is audited by a predecessor auditor, (ii) will not be subject to audit procedures by the successor auditor, and (iii) are not management functions.

¹ [Speech by SEC Staff: Remarks Before the 2006 AICPA National Conference on Current SEC and PCAOB Developments- December 11, 2006](#)

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An analogy can be drawn to these remarks in concluding that independence should also not be impaired due to the provision of tax services to senior management during the *audit period* if it precedes the *professional engagement period*. Specifically, the results of the tax services provided to executives are not subject to audit procedures and do not result in the performance of management functions.

2. ***What effect, if any, would application of Rule 3523 to the audit period have on a company's ability to make scheduled or unscheduled changes in auditors? Could any such effect be minimized or managed through advanced planning or otherwise?***

Application to New Audit Clients:

We believe the prohibition on providing tax services to senior management during the audit period results in a significant hardship to public companies and diminishes their ability to manage scheduled or unscheduled changes in auditors. For example, many issuers have engaged a firm, other than their audit firm, to perform expatriate tax services. Since the rule applies to persons in financial reporting oversight roles at material subsidiaries, a single engagement for an expatriate (or the spouse of an expatriate) in a financial reporting oversight role at a material foreign subsidiary performed during the portion of the audit period that precedes the period of professional engagement would technically eliminate the firm from consideration as the auditor under the current rule.

Accordingly, as previously stated, we recommend that the Board amend the rule to eliminate the application of Rule 3523 to any portion of the audit period that precedes the professional engagement period. In addition, in order to avoid unnecessary hardship to such persons, we recommend that the Board extend the 180-day transition rule currently afforded to persons who become subject to Rule 3523 due to a hiring, promotion or other change in employment event to all persons in a financial reporting oversight role at a new audit client.

Application to Existing Audit Clients upon the Occurrence of a Corporate Life Event:

We also believe that the prohibition on providing tax services to persons in a financial reporting oversight role creates a significant impediment to companies that become subject to Rule 3523 as a result of a “corporate life” event, such as a merger or an initial public offering (IPO). Because such events cannot always be foreseen, companies may be placed in a position of changing auditors or requiring a re-audit simply because their auditor provided tax services to persons in a financial reporting oversight role during the period covered by the financial statements included in the registration statement or other filing. In addition, many companies contemplate an IPO or a merger only to later abort such an offering or merger for a variety of reasons. Further, because a company’s executives may receive tax services from a number of firms, the application of the rule to the audit period

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may unreasonably restrict a company's ability to either continue or change its auditor in such situations.

Accordingly, we recommend that the Board also exempt entities that become subject to Rule 3523 as a result of an IPO, merger or other "corporate life" event, from application of the rule to audit periods prior to the occurrence of the event and also provide for a 180-day transition period after the corporate life event to complete tax services to persons in a financial reporting oversight role.

Audit Committee Involvement

The Act, the Commission and the Board have all emphasized the importance of the audit committee in overseeing auditor independence. Accordingly, we believe that the Board should require the audit firm to discuss with the audit committee all tax services provided to persons in financial reporting oversight roles during the portion of the audit period that precedes the professional engagement period, as well as any such services to be provided during the professional engagement period resulting from the recommended transition provisions. We believe that these situations should be considered by the auditor in conjunction with the issuance of the Independence Standards Board Standard No. 1 Letter, which requires that the auditor disclose to the audit committee in writing all relationships between the audit firm and the company that may reasonably be thought to bear on the audit firm's independence. The audit committee's involvement is an excellent safeguard to preserve auditor independence and the audit committee should be in a position to make the ultimate determination as to whether auditor independence is threatened.

We appreciate the opportunity to comment on the Board's Release and would welcome the opportunity to meet with you to clarify any of our comments.

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Sincerely,



Cynthia M. Fornelli
Executive Director
Center for Audit Quality



Bruce P. Webb
Chair, AICPA Professional Ethics Executive Committee

cc: Mark W. Olson, Chairman
Kayla J. Gillan, Member
Daniel L. Goelzer, Member
Willis D. Gradison, Member
Charles D. Niemeier, Member
Thomas Ray, Chief Auditor and Director of Professional Standards