

July 27, 2007

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street N.W.
Washington, D.C. 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 17
Proposed Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*; Proposed Amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles*; and Implementation Schedule for Rule 3523
July 24, 2007

Dear Board Members,

I am submitting my comments to you regarding the above referenced Rulemaking Docket Matter. These are my personal comments and do not necessarily reflect those of my employer. You specifically asked respondents to answer six (6) questions regarding Proposed Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*. I begin with comments on the Proposed Amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles*.

Proposed Amendment to Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

In the very first paragraph I find concern with two seemingly undefined items. How do we define “the professional engagement period”? The Board indicates that if a registered public accounting firm starts an attestation engagement on Day 1, no tax services may be performed until the report is issued. Suppose the report is issued on Day 185. It is conceivable that the person for whom the return is prepared may extend their filing date, which may be Day 205. A subsequent extension may bring the actual filing to Day 300. Even though the actual filing apparently occurs outside the time of “the professional engagement period,” one could reasonably believe that the tax services were contemplated during the performance time of the attestation engagement.

This also leaves the question of the commencement date. Does the Board intend to begin “the professional engagement period” with fieldwork; or is it when the engagement manager begins to review files, staffing requirements, budgets, and scheduling needs with the issuer? Is it when the issuer’s audit committee signs the engagement letter, or when the proposal is submitted to the audit committee?

Furthermore, a definition of “a person in a financial reporting role” is needed. How far down the corporate chain does this go? Could it include anyone with the authority to approve a general ledger journal entry? The Board hints at this in subsection (b)(1), yet we may run into another issue of defining materiality. For example, Issuer Corporation’s (“Issuer”) registered accounting

firm (“the Firm”) determines that materiality is \$50,000,000 on the consolidated financial statements. Issuer has 100 locations. No location could reach the threshold on a net income basis, but five locations have gross revenues in excess of \$500,000,000 – ten times materiality. Given that “a person in a financial reporting oversight” role may receive a bonus based upon location performance, even a non-material journal entry could move the location from missing the goal to reaching the goal. Therefore, I recommend (b)(1) be struck and (b)(2) be merged into a single section (b).

I strongly disagree with section (a). The board of directors has too much responsibility to ignore their role in financial reporting oversight. I recommend that paragraph (a) be struck in its entirety.

Section (c) and its sub-paragraphs and note appear to be reasonable.

Proposed Ethics and Independence Rule 3526, Communication with Audit Committees Concerning Independence

1. Would proposed Rule 3526 assist registered firms and audit committees in fulfilling their respective obligations with respect to auditor independence?

I believe that Rule 3526 moves in that direction. I have some suggestions below in my answer to Item 3 and after my response to Item 6.

2. Would proposed Rule 3526 assist audit committees in making a decision regarding the appointment of a new auditor?

This rule ought to achieve that goal.

3. Should proposed Rule 3526 require the registered public accounting firm to communicate any additional matters on auditor independence to the audit committee? Is so, what specific communications should the auditor be required to make to the audit committee?

Here is the first of my more detailed suggestions for the Board. The Rule begins:

A registered public accounting firm must –

- (a) in its prior to accepting an initial engagement proposal to the issuer’s audit committee pursuant to the standards of the PCAOB ...

This will require all firms bidding on the issuer’s professional engagement to assess independence before being awarded the engagement. Then further down:

- (a)(2) discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm, should it be appointed or retained as the issuer’s auditor ...

I believe the three added words guide us towards what the Board intends and describes in section (b). See my recommendations after my response to Item 6.

4. To what extent, if any, are accounting firms already making the kinds of communications that would be required by proposed Rule 3526?

I am not aware of the communication between my company's audit committee and our registered public accounting firm.

5. Should the initial communication required under proposed Rule 3526(a) be limited to relationships that existed during a particular period? If so, why, and how long should the period be?

I do not believe there ought to be any limit on when a relationship first existed. To illustrate this, I will use the Firm and Issuer from my discussion of Rule 3523 above.

Suppose Issuer hired a controller, who at the time of the interview was employed by the Firm. At that time several years ago, Issuer was contemplating going public and wanted to hire someone with SEC experience. Issuer has been reporting for a few years engaging another registered public accounting firm, and the audit committee has opted to put the audit engagement out to bid. While it may stand to reason that all parties concerned know that the controller (who may have been promoted in the intervening years) once worked for the Firm, it ought to be clearly acknowledged. This ensures that all members of the audit committee are aware of the past relationship.

It may actually work to the benefit of the Firm and Issuer to have this past relationship. Since the Board placed a premium on prior knowledge to guide external auditors in planning and performing their audits (new Auditing Standard No. 5), this "prior knowledge" of the Firm's methods may assist Issuer in producing documentation with more ease. In addition, Issuer will have a deeper appreciation of what the Firm needs to perform their procedures.

Ensuring that this information is openly discussed is important if there is ever a problem with the audit. One can assume that a lawyer will bring that past relationship into court.

6. Should the Board provide a transition period in Rule 3526 to allow a registered public accounting firm to complete covered tax services once the professional engagement period begins? If so, why is such a transition period necessary? How long should any such transition period be?

Given the time frame for approval, I recommend that this Rule be effective immediately for issuers with fiscal years ending on or after December 15, 2007. Tax work ought to be complete for 2006. For those issuers whose most recent fiscal year end is between January 1, 2007 and December 14, 2007, who have engaged a registered external accounting firm (either initial professional engagement or retaining the prior year's firm)

the transition period ought to be through the filing of the tax return, including proper extensions. However, I also recommend that the tax work be fully disclosed in appropriate filings, including fees for such services, and clearly documented in audit committee meeting minutes.

I also recommend the following changes and additions to Rule 3526.

(b) at least annually with respect to each of its issuer audit clients –

~~(1) — describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in a financial reporting oversight role at the audit client that may reasonably be thought to bear on independence;~~

~~(2) — discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (b)(1) on the independence of the registered public accounting firm;~~

~~(3)~~(1) affirm to the audit committee of the issuer, in writing, that the registered public accounting firm is independent in compliance with Rule 3520; and

~~(4)~~(2) document the substance of its discussion with the audit committee of the issuer.

(c) as soon as the registered public accounting firm becomes aware of a potential impairment due to a previously unknown or new relationship –

(1) describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in a financial reporting oversight role at the audit client that may reasonably be thought to bear on independence;

(2) discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (c)(1) on the independence of the registered public accounting firm;

(3) affirm to the audit committee of the issuer, in writing, that the registered public accounting firm is independent in compliance with Rule 3520; or

(4) describe to the audit committee of the issuer, in writing, that the registered public accounting firm's independence is impaired under Rule 3520 and must resign; and

(5) document the substance of its discussion with the audit committee of the issuer.

I believe that these changes protect all parties – issuers, auditors, and investors. It appears that Rule 3526 as presented presumes independence is not (could one say, “never”) impaired by these relationships. It is important that we understand that independence may be impaired. We also want to recognize that independence is in fact and appearance. (See Securities and Exchange Commission pamphlet at <http://www.sec.gov/info/accountants/audit042707.htm> for further discussion.) Independence may be impaired merely in appearance to an investor, and this ought to be enough to give the audit committee and registered public accounting firm pause.

If the registered public accounting firm does need to resign, we ought to have time to put the engagement out to bid as soon as possible. While section (b) states that the registered public accounting firm will affirm its independence “at least annually”, the Board may wish to guide the firms when this affirmation is needed. I recommend that it occurs before substantial planning procedures commence. Many audit committees may meet with their auditors to discuss the prior year’s engagement period and discuss how the upcoming engagement can be smoother. This is an excellent opportunity for this affirmation. Some may argue that this affirmation of independence occurs by default when the registered public accounting firm issues its report. I suggest that the Board not take this approach.

Thank you for your efforts and attention to this matter.

Respectfully submitted,

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