

September 7, 2007

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

Re: **PCAOB Rulemaking Docket Matter No. 017**
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

Dear Mr. Seymour:

Deloitte & Touche LLP is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (“PCAOB” or the “Board”) on its *Proposed Ethics and Independence Rule 3526, Communication with Audit Committees Concerning Independence* (“*proposed Rule 3526*”) and *Proposed Amendment to Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles* (“*proposed Amendment to Rule 3523*”), PCAOB Release No. 2007-008, PCAOB Rulemaking Docket Matter No. 017 (July 24, 2007) (the “Release”).¹

We strongly support the goals of the Sarbanes-Oxley Act of 2002 (the “Act”) and the efforts of the Board to achieve those goals through rulemaking. Recognizing that the Board faced difficult and sensitive judgments in drafting proposed Rule 3526 and the proposed Amendment to Rule 3523, we believe the Board’s efforts in that regard represent a thoughtful approach to furthering the goals of the Act. Accordingly, we strongly support the Board’s proposal and its solicitation of comments as set forth in the Release.

With that support in mind, we offer the comments and recommendations herein. These comments and recommendations are aimed at achieving the effective and efficient implementation of, and compliance with, proposed Rule 3526 and the proposed Amendment to Rule 3523. We believe that all of the parties affected (e.g., issuers, audit committees and auditors) must have both a clear understanding of the scope of proposed Rule 3526 and the proposed Amendment to Rule 3523 and the ability to effectively apply them. When the scope

¹ http://www.pcaob.org/rules/docket_017/2007-07-23_release_2007-008.pdf

or application of a rule is unclear, affected parties will likely find it necessary to seek frequent guidance regarding application of the rule on a case-by-case basis directly from the staff of the Board. This would place additional burden on audit committee members, do little to benefit investors and place an unnecessary burden on the already limited resources of the Board. For these reasons, our comments and recommendations are primarily aimed at enhancing compliance and addressing application issues in today's complex global business environment. We will also respond to specific questions posed by the Board in the Release.

In providing our comments, we have chosen to follow the order of the specific questions posed by the Board in the Release. Accordingly, the order of our comments in no way reflects the importance we place on proposed Rule 3526 and the proposed Amendment to Rule 3523.

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

The Act, the Securities Exchange Commission ("SEC" or the "Commission") and the Board have all emphasized the importance of audit committee oversight of auditor independence. As the Board indicates in its Release, Rule 3526, as proposed, is built upon the Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees* ("ISB No. 1"),² and adds a new requirement that such communications should take place not only annually, but also prior to accepting an initial engagement pursuant to the standards of the PCAOB. While we support proposed Rule 3526 and believe that the proposed rule would assist registered firms and audit committees in fulfilling their respective obligations to investors with respect to auditor independence, we believe specific clarifications should be made by the Board in adopting its final rule as discussed below.

Proposed Rule 3526 requires that all relationships that "may reasonably be thought to bear on independence" must be disclosed to the audit committee of the issuer. However, as noted in the Release, "unlike ISB No. 1 ... the proposed [Rule 3526] would not modify this basic reasonableness standard with the words "in the auditor's professional judgment." The Board expressed its belief in the Release that omitting these words will clarify the requirement by "reminding auditors of the need to focus on the perceptions of reasonable third parties when making independence determinations."

As discussed in more detail below, we believe that the omission of the specific words "in the auditor's professional judgment" departs from and is inconsistent with the Board's recent focus on the importance of the use of auditor judgment and its efforts to amend its auditing standards and other rules to ensure a greater emphasis on the auditor's judgment. We also believe that the omission of the words "in the auditor's professional judgment" is not necessary, and that such a change in proposed Rule 3526 would create unnecessary confusion for audit committees and investors.

² http://www.pcaob.org/Standards/Interim_Standards/Independence_Standards/ISB1.pdf

The Importance of Professional Judgment

As noted above, we believe that, by omitting the words “in the auditor’s professional judgment”, the Board departs from its existing audit standards and creates inconsistency among proposed Rule 3526 and those standards and other rules. Such a departure sends mixed messages to audit committees, investors and auditors working to implement revised standards and rules.

In the Board’s most recent standard-setting effort, PCAOB Audit Standard No. 5, *An Audit of Internal Control Over Financial Reporting That is Integrated with an Audit of Financial Statements*,³ the Board and its staff have diligently gone through a deliberate process of revising AS No. 2 to clearly and expressly permit the auditor to use professional judgment. Proposing to remove these words from an existing PCAOB rule is inconsistent with the Board’s focus on encouraging the use of auditor judgment.

In addition to AS No. 5, there are many examples in standards promulgated by the PCAOB demonstrating that the use of auditor judgment is encouraged. For example, the Board’s Auditing Standards No. 3, *Audit Documentation*⁴ states:

“A18. Auditors exercise **professional judgment** in nearly every aspect of planning, performing, and reporting on an audit. Auditors also exercise **professional judgment** in the documentation of an audit and other engagements...” (Emphasis added.)

Even the Board’s Release indicates that in applying proposed Rule 3526:

“Auditors will, of course, **need to apply professional judgment** to determine what is reasonable under particular facts and circumstances.”⁵ (Emphasis added.)

We believe the use of auditor judgment should continue to be emphasized in Rule 3526 not only to maintain the PCAOB’s consistent message, but also to avoid confusion for audit committees, investors and auditors as to whether the standard for these communications to the audit committee have changed.

The Meaning of Professional Judgment

In a letter to the Securities Exchange Commission Practice Section (“SECPS”) of the American Institute of Certified Public Accountants (“AICPA”), then ISB Chairman William Allen clarified the use of the auditor’s professional judgment under ISB No. 1. He stated:

³ http://www.pcaob.org/Rules/Rules_of_the_Board/Auditing_Standard_5.pdf

⁴ http://www.pcaob.org/Rules/Rules_of_the_Board/Auditing_Standard_3.pdf

⁵ http://www.pcaob.org/rules/docket_017/2007-07-23_release_2007-008.pdf

“[I]n asking itself whether a fact or relationship is material in this setting the auditor may not rely on its professional judgment that such fact or relationship does not constitute an impairment of independence. Rather the auditor is to ask, in its informed good faith view, whether the members of the audit committee who represent reasonable investors, would regard the fact in question as bearing upon the board's judgment of auditor independence.”⁶

The Commission’s independence rules adopted Chairman Allen's interpretation stating:

“We believe that Chairman Allen's interpretation is appropriate.”⁷

Therefore, we believe that the language in ISB No. 1, as it currently exists, already encompasses the need for the auditor to consider the viewpoint of reasonable investors. Changing the language would serve only to create confusion as audit committees, investors and auditors strive to understand whether the standard with respect to these communications has changed.

Accordingly, we recommend that the Board clarify proposed Rule 3526 through the following revisions:

“(a)(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 potential audit client or persons in a financial reporting oversight role at the potential audit client that in the auditor’s professional judgment may reasonably be thought to bear on independence; ...

(b)(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 in the auditor’s professional judgment may reasonably be thought to bear on independence;...

(b)(3) affirm to the audit committee of the issuer, in writing, that the registered public accounting firm, in its professional judgment, is independent in compliance with Rule 3520;...”

Based on discussions set forth above, we believe that our recommended revisions to proposed Rule 3526 would assist in effective and efficient implementation of the rule.

⁶ Letter from William T. Allen, Chairman, ISB, to Michael A. Conway, Chairman, Executive Committee, SECPS (Feb. 8, 1999).

⁷ <http://www.sec.gov/rules/final/33-7919.htm>, footnote 168

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

We believe that the Board's proposal provides an opportunity to enhance the audit committee's understanding of all relationships that, in the auditor's professional judgment, may reasonably be thought to bear on independence. The opportunity to discuss potential impacts of those relationships on the independence of the registered public accounting firm permits the audit committee of the issuer to initiate open and interactive dialogues on potential independence issues, challenge the analysis of the registered public accounting firm, request additional information, evaluate all relevant and available facts and circumstances to determine whether any such relationship would, pursuant to the Board's and the SEC's independence rules, adversely impact independence should the registered public accounting firm be appointed the issuer's independent auditor, and ultimately make a decision as to whether the registered public accounting firm should be appointed as the issuer's independent auditor.

Additionally, we believe that where difficult decisions regarding the appointment of a new auditor must be made by the audit committee of the issuer, the independence communications should serve to enable the audit committees, in their professional judgment, to analyze the facts and circumstances and to conclude, based on such facts and circumstances, whether a registered public accounting firm could accept an audit engagement without independence conflicts. Accordingly, we believe that proposed Rule 3526 would assist audit committees in exercising their judgment in making the appropriate decision regarding the appointment of a new auditor.

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

As noted above, we believe that proposed Rule 3526 should limit required communications with the audit committee of the issuer to relationships that, in the auditor's professional judgment, may reasonably be thought to bear on independence. We also believe that such communications would be sufficient to assist registered public accounting firms and audit committees in fulfilling their respective obligations to investors with respect to auditor independence and to assist audit committees in making a decision regarding the appointment of a new auditor. Accordingly, we do not believe proposed Rule 3526 should require a registered public accounting firm to communicate additional matters on auditor independence to the audit committee of the issuer, unless such additional communications are specifically requested by the audit committee of the issuer. However, we also believe that proposed Rule 3526 should be modified to make it clear that such communications may be based on the auditor's professional judgment, as previously explained, and may exclude communications regarding tax services provided to persons in a financial reporting oversight role or to trusts or other entities controlled by such persons, as discussed further below.

If the proposed amendment to Rule 3523 to allow tax services to persons in a financial reporting oversight role at the issuer during the portion of the “audit period” that precedes the beginning of the “professional engagement period” is adopted, such services will, absent additional transition rules, have to be terminated prior to “an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB” being signed by the new auditor. Accordingly, we question the need to include a discussion of such services within the scope of Rule 3526, in that compliance with amended Rule 3523 would appear to adequately address any independence concerns involving tax services provided to persons in a financial reporting oversight role.

Accordingly, we respectfully request that the Board exclude tax services to persons in a financial reporting oversight role from the required communications under proposed Rule 3526. Such a change could be effected by striking out “or persons in a financial reporting oversight role at the potential audit client” from proposed Rule 3526(a)(1) and (b)(1) as follows:

“(a)(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 potential audit client ~~or persons in a financial reporting oversight role at the potential audit client~~ that in the auditor’s professional judgment may reasonably be thought to bear on independence; ...

(b)(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 in the auditor’s professional judgment may reasonably be thought to bear on independence;...”

If the Board continues to believe that tax services previously provided to persons in a financial reporting oversight role need to be included in the scope of proposed Rule 3526, it is unclear whether tax services provided to trusts or other entities controlled by persons in a financial reporting oversight role at the issuer would need to be discussed with the audit committee of the issuer. Rule 3523 specifically excludes “entities controlled by persons in a financial reporting oversight role, such as trusts and investment partnerships”⁸ from its scope. Since entities controlled by persons in a financial reporting oversight role are outside the scope of Rule 3523, we believe that proposed Rule 3526 should, at a minimum, be clarified to specifically exclude services to trusts or other entities controlled by persons in a financial reporting oversight role at the issuer from its scope.

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

With respect to existing audit clients, proposed Rule 3526(b) requires that a registered public accounting firm communicate annually with the audit committee of its audit client concerning

⁸ <http://www.sec.gov/rules/pcaob/34-53427.pdf>

independence, and document the substance of such communications. ISB No. 1 already requires the auditor to make these communications to the audit committee. In practice, it is our understanding that registered public accounting firms appropriately follow ISB No. 1 by discussing with and disclosing in writing to the audit committee of the audit client all relationships between the registered public accounting firm and the audit client that, in the auditor's professional judgment, may reasonably be thought to bear on independence, confirming in the communication that, in its professional judgment, the auditor is independent of the audit client. Additionally, since registered public accounting firms generally include the issued ISB No. 1 communication as part of their audit working papers, the additional documentation requirement pursuant to proposed Rule 3526(b)(4) is followed in practice.

With respect to potential audit clients, it is our understanding that, in practice, registered public accounting firms generally, informally or sometimes in writing, communicate to the audit committee all relationships that, in the auditor's professional judgment, may reasonably be thought to bear on independence. Such communications generally occur near the final stage of the auditor selection process when the registered public accounting firm, being the only candidate remaining in the proposal process, has taken all necessary measures to analyze and cure its independence with respect to the potential audit client. The registered public accounting firm would describe potential independence issues identified based on its professional judgment, the potential impacts on independence, and actions that the registered public accounting firm has taken, and will undertake to ensure its independence should the registered public accounting firm be appointed as the independent auditor. In instances when a registered public accounting firm is not independent of the issuer, the firm would have notified the audit committee of the issuer that it could not serve as the independent auditor of the issuer due to independence conflicts and withdrawn during the early stages of the proposal process.

Accordingly, it is our understanding that to a large extent, accounting firms are already making the kinds of communications that would be required by proposed Rule 3526. However, although the current communications are similar, due to the language in proposed Rule 3526, we believe the Board should revise and clarify its proposal as indicated herein.

- 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?*

With respect to independence communications to prospective audit clients, we note that the Commission's independence rules require that a registered public accounting firm maintain its independence with respect to its issuer audit clients during both the "audit period" (the period covered by any financial statements being audited or reviewed) and (ii) the "professional engagement period" (the period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission).⁹

⁹ <http://www.sec.gov/rules/final/33-7919.htm>

Consistent with the Commission's independence rules, we believe the length of the period to be covered by proposed Rule 3526(a) should be determined by the years of issuer financial statements to be audited by the registered independent public accounting firm and included in a filing with the Commission. For example, if a registered public accounting firm is proposing to audit the issuer's financial statements for the year ending December 31, 2007, it should only be required to communicate to the audit committee of the issuer, all relationships, which in its professional judgment may reasonably be thought to bear on independence, that existed from the earlier of 1) the date an engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB is signed; 2) the date the auditor begins audit procedures pursuant to that engagement letter; or 3) January 1, 2007. An audit committee should not be required to, but should have the flexibility to, based on the exercise of its judgment, ask for additional information that would facilitate its evaluation of the auditor's independence.

Accordingly, we ask that the Board only require communication of matters that existed or that would continue to exist in the audit and professional engagement period and permit audit committees with the flexibility to request additional information based on their judgment.

With respect to continuing communications, we believe it should not be necessary for the registered public accounting firm to continue to disclose matters that have previously been disclosed to the audit committee of the issuer audit client. As noted above, registered public accounting firms already provide ISB No. 1 communications to the audit committees of their issuer audit clients. These communications are typically documented in the meeting minutes of the audit committee and should be in the audit committee's records. In view of these prior disclosures, auditors generally provide only an update of the previous ISB No. 1 communication to cover new items that may have occurred since the issuance of the last ISB No. 1 communication. In situations where there has been significant turnover in the audit committee of the issuer, we would expect the new audit committee members to be focused on independence matters prospectively, and believe that the minutes of the audit committee meetings should provide information sufficient to inform new audit committee members of the audit committee's prior conclusions with respect to independence matters.

- 6) *Should the Board provide a transition period in Rule 3523 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?*

We believe the proposed Amendment to Rule 3523 addresses certain transition issues and we support the proposed modifications. However, we believe further clarification and guidance is needed to fully address other transition matters that will arise. Below we describe the additional matters that we believe should be addressed by the Board, including the need, in certain instances, for a transition period to allow a registered public accounting firm to complete covered tax services once the professional engagement period begins.

The note addressing initial public offerings (“IPOs”) as provided by the proposed Amendment to Rule 3523 states:

“Note: In the context of an initial public offering, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.”¹⁰

We understand that the Board intends to consistently apply the term “professional engagement period” as defined in the Commission’s independence rules. In doing so, it is easy to identify the “date that the firm signed an initial engagement letter to perform an audit pursuant to the standards of the PCAOB,” however, we believe that it will be very difficult to apply the second prong of the requirement set forth in the note which reads “the earlier of the date that the firm ... (2) began procedures to do so.”

For example, assume that a registered public accounting firm has been the independent auditor of a private company for several years. In 2007, the company decided to undertake an IPO and has determined that it needs to include its December 31, 2004, 2005 and 2006 financial statements in the filing with the Commission. The registered public accounting firm completed its audit procedures on the company’s December 31, 2004, 2005 and 2006 financial statements pursuant to Generally Accepted Auditing Standards (“GAAS”) and the standards of the AICPA and has issued its audit opinions on such financial statements. Company management and the audit committee prefer that the registered public accounting firm continue to serve as its independent auditor through and after the IPO.

In this IPO scenario, some may question whether the date that the registered public accounting firm “began procedures” would precede the “date that the firm signed an initial engagement letter to perform an audit pursuant to the standards of the PCAOB,” presumably sometime in 2007. We believe that such a reading of the note could effectively contradict the changes contemplated by the proposed Amendment to Rule 3523.

To address this issue, and consistent with our previous comments submitted to the Commission¹¹ and the Board,¹² we continue to believe that additional clarification and a transition period are necessary to ensure that the proposed Amendment to Rule 3523 permits companies to navigate independence issues that arise from the application of the rule as a result of corporate “life events.” Similar to an IPO, mergers and acquisitions, employment events, and other corporate “life events” are driven by the ever-changing business environment which usually does not allow for advanced planning for auditor changes. This hardship is further compounded because Rule 3523 prohibits tax services to persons in a financial reporting and oversight role at most of the affiliates of the audit client. Therefore,

¹⁰ http://www.pcaob.org/rules/docket_017/2007-07-23_release_2007-008.pdf

¹¹ See Letter from Deloitte & Touche LLP to the PCAOB dated April 3, 2006.

¹² See Letter from Deloitte & Touche LLP to the PCAOB dated May 18, 2007.

failure to modify the proposed Amendment to Rule 3523 to address other corporate “life events” could impose an undue hardship on an issuer and its investors by requiring an unscheduled auditor change while potentially limiting the field of registered public accounting firms that could serve as the independent auditor for the issuer.

We also note that independence related transition issues resulting from IPOs or other corporate “life events” are conceptually similar to the transition issue related to the hiring or promoting of a person to a financial reporting oversight role. In such situations, the Board adopted a transition period to address commenters’ concerns that Rule 3523 could impose an undue hardship on persons who become subject to the rule because they are hired or promoted into a financial reporting oversight role at an audit client. The Board stated:

“Specifically, the Board has determined to add a new exception to the rule that applies to a person who was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event, when the tax services are both: (1) provided pursuant to an engagement that was in process before the hiring, promotion, or other change in employment event; and (2) completed on or before 180 days after the hiring or promotion event.”¹³

This 180-day transition provision provided in Rule 3523 recognizes the appropriate balance between maintaining auditor independence, the protection of investors and the hardship of immediately discontinuing tax services provided to individuals in financial reporting oversight roles, and acknowledges that such services can be continued for a limited period of time during the audit and/or the professional engagement period without impairing independence. We believe the proposed Amendment to Rule 3523 should extend the PCAOB’s 180-day transition policy to registrants and persons that first become subject to Rule 3523 due to corporate “life events” such as IPOs, mergers and acquisitions, and other scenarios that may require an entity to re-evaluate the independence of its auditor under Rule 3523.

If the Board decides to adopt a transition period, we believe that the period should begin no earlier than with the filing of an IPO or the occurrence of the corporate “life event” because until such time, the transaction or event could be abandoned and if so, Rule 3523 would not apply. Transactions such as IPOs and mergers are often delayed or abandoned due to various business and market considerations. Accordingly, mandating that executives change tax advisors before a transaction closes has the real potential for imposing burdens that may ultimately prove to be unnecessary.

Accordingly, we recommend that the Board adopt the following transition rule:

“Providing tax services to a person covered by Rule 3523 will not impair the independence of an audit firm if the tax services are: (1) performed pursuant to an

¹³ Rule 3523(c), PCAOB; Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees; Notices; 71 Fed. Reg. 12722 (Mar. 7, 2006) (citations omitted).

engagement that is in process before the company or person becomes subject to Rule 3523; and (2) completed in accordance with the guidance and under the oversight of the audit committee on or before 180 days after the occurrence of the event that subjects the company or person to Rule 3523, provided that such services are appropriately approved by the audit committee and the audit firm precludes personnel providing such tax services from being members of the audit team.”

If such a transition rule is not adopted, we recommend that the Board clarify the IPO note provided by the proposed Amendment to Rule 3523 through the following revisions:

“Note: In the context of an initial public offering, or merger, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures ~~to do so~~ pursuant to that engagement letter, does not impair a registered public accounting firm's independence under Rule 3523.”

Conclusion

We support the efforts of the Board to further the goals of the Act, and believe that the Board’s request for comments regarding proposed Rule 3526 and the proposed Amendment to Rule 3523 demonstrates a thoughtful approach to furthering those goals. We also firmly believe that to be effective, all of the parties affected by proposed Rule 3526 and the proposed Amendment to Rule 3523 must have both a clear understanding of the scope of the rules and the ability to effectively apply them. Accordingly, we respectfully request that the recommendations provided herein, which help to achieve the goal of effective and efficient implementation, be adopted.

We appreciate your consideration of the recommendations and views set forth herein, and look forward to working with the Board to achieve clarity in any final rules. We would welcome the opportunity to further discuss these matters with the Board and the staff. If you have any questions or would like to discuss these matters, please contact Robert Kueppers at (212) 492-4241 or Roger Page at (202) 879-5630.

Sincerely,

/s/ Deloitte & Touche LLP

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

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