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CONCEPT RELEASE CONCERNING SCOPE OF)	PCAOB Release No. 2007-002
RULE 3523, TAX SERVICES FOR PERSONS IN)	April 3, 2007
FINANCIAL REPORTING OVERSIGHT ROLES)	
)	PCAOB Rulemaking
IMPLEMENTATION SCHEDULE FOR RULE 3523)	Docket Matter No. 017
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Summary: The Public Company Accounting Oversight Board ("PCAOB" or "Board") is issuing a concept release to solicit comment regarding one part of Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles*. The Board also is further adjusting the implementation schedule for Rule 3523 as it applies to tax services provided during the "audit period." Specifically, Rule 3523 will not apply to tax services provided on or before July 31, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.

Public Comment: Interested persons may submit written comments to the Board. Such comments should be sent to the Office of the Secretary, PCAOB 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted via email to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 017 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on May 18, 2007.

Board Contacts: Bella Rivshin, Associate Chief Auditor (202/207-9180; rivshinb@pcaobus.org), or Greg Scates, Associate Chief Auditor (202/207-9114; scatesg@pcaobus.org).

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I. Introduction

On July 26, 2005, the Board adopted certain rules related to registered public accounting firms' provision of tax services to public company audit clients. The rules were designed to address certain concerns related to auditor independence when auditors sell personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients or market or otherwise opine in favor of aggressive tax shelter schemes. As part of this rulemaking, the Board adopted Rule 3523, which provides that a registered firm, subject to certain exceptions, is not independent of an audit client if the firm, or an affiliate of the firm, provides tax services during the audit and professional engagement period to a person in, or an immediate family member of a person in, a financial reporting oversight role at an audit client. Rule 3523 was approved by the Securities and Exchange Commission ("SEC" or "Commission") on April 19, 2006.

On October 31, 2006, the Board adjusted the implementation schedule for Rule 3523, as it applies to tax services provided during the period subject to audit but before the professional engagement period, so that the Board could revisit this aspect of the rule.^{1/} As described below, the Board is further adjusting the implementation schedule in order to allow sufficient time for consideration of comments received in response to this release.

No other aspect of the Board's rules on independence and tax services is affected by this or the October extension or addressed in this release. As of November 1, 2006, registered firms have been required to comply with Rule 3523 as it relates to tax services provided while they serve as auditor of record for an audit client – that is, during the "professional engagement period." In addition, with one exception, all other PCAOB rules concerning independence, tax services, and contingent fees that were adopted by the Board on July 26, 2005 and approved by the SEC on April 19, 2006 are now in effect and are not addressed in this concept release.^{2/}

^{1/} See PCAOB Release No. 2006-006 (October 31, 2006), at 2. Specifically, the Board stated that Rule 3523 will not apply to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.

^{2/} With respect to tax services provided to audit clients whose audit committees pre-approve tax services pursuant to policies and procedures, Rule 3524

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II. Background

As described above, Rule 3523 applies to registered firms in circumstances in which the firm, or an affiliate of the firm, provides or has provided tax services during the "audit and professional engagement period" to a person in, or an immediate family member of a person in, a financial reporting oversight role at an audit client. Consistent with the SEC's independence rules,^{3/} the phrase "audit and professional engagement period" is defined to include two discrete periods of time. The "audit period" is the period covered by any financial statements being audited or reviewed.^{4/} For example, for an audit of a company's annual financial statements for the calendar year ending on December 31, 2007, the audit period begins on January 1, 2007 and ends on December 31, 2007. The "professional engagement period" is the period beginning when the firm either signs the initial engagement letter or begins audit procedures, whichever is earlier, and ends when either the company or the firm notifies the SEC that the company is no longer that firm's audit client.^{5/} If the company in the preceding example hired the firm as its auditor in 2007 by the firm's signing, before beginning audit procedures, of an engagement letter on July 1, 2007, the professional engagement period would begin on July 1, 2007. Because the audit period in this example begins on January 1, 2007, the "audit and professional engagement period" also begins on January 1, 2007.

In circumstances in which a registered firm has been auditor of record for an audit client for more than a year, the "audit period" is a subset of the "professional engagement period." As indicated in the example in the previous paragraph, however, when a registered firm accepts a new audit client the "audit period" may cover a period of time prior to the commencement of the "professional engagement period" (in that example, the portion of the audit period that runs from January 1 to June 30, 2007). In such circumstances, Rule 3523, as adopted, provides that the firm is not independent of

will not apply to any such tax service that is begun by April 20, 2007. See PCAOB Release No. 2006-001 (March 28, 2006), at 2-3, PCAOB Release No. 2005-020 (November 22, 2005) at 2-3, and PCAOB Release No. 2005-14 (July 26, 2005) at 47-48.

^{3/} 17 C.F.R. § 210.2-01(f)(5).

^{4/} Rule 3501(a)(iii)(1).

^{5/} Rule 3501(a)(iii)(2).

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its audit client if the firm, or an affiliate of the firm, provided tax services to a person covered by Rule 3523 during the audit period but before the professional engagement period. This aspect of the rule therefore effectively prevents a firm from accepting a new audit client when the firm, or an affiliate of the firm, provided tax services to such a person during the period covered by any financial statements to be audited or reviewed. In the previous example, if the registered firm provided tax services to a person covered by Rule 3523 during the first six months of calendar year 2007, then the firm would not be able to later accept an engagement to audit that company's 2007 calendar-year financial statements because the firm's independence would be impaired under Rule 3523. Because the rule covers the audit period as well as the professional engagement period, this impairment could not be "cured" by the registered firm's ceasing to provide the tax services before accepting the audit engagement.

III. Consideration of Application of Rule 3523 to the Audit Period

The Board is revisiting the application of Rule 3523 to tax services provided during the audit period. In preparing for implementation of the Board's tax services and independence rules, the PCAOB determined that application of the rule to such services raises issues that warrant focused comment and consideration. Through this concept release, the Board is seeking information about the possible effects on a firm's independence of providing tax services to a person covered by Rule 3523 during the portion of the audit period that precedes the beginning of the professional engagement period, and other practical consequences of applying the restrictions imposed by Rule 3523 to that portion of the audit period.

The Board 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 such senior management having a mutual interest."^{6/} In discussing this concern, however, the Board's release did not explore whether the provision of these tax services during the audit period but before becoming the auditor of record presents the same appearance issues as the auditor's provision of such services while serving as the auditor of record. In addition, while the Board received thoughtful comment on this rule, commenters did not explicitly address this matter.

^{6/} See PCAOB Release No. 2005-014 (July 26, 2005), at 35.

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The Board seeks comment on whether concerns about tax services provided to a person covered by Rule 3523 during a time period that will be audited are reduced or eliminated if the services are discontinued before the firm becomes auditor of record. In considering these issues, the Board notes that unlike other SEC and PCAOB auditor independence rules that provide that firms are not independent if they or their affiliates have provided certain non-audit services to an audit client during the audit period,^{7/} Rule 3523 relates to services provided to individuals and not the audit client that issues the financial statements subject to audit. The Board is interested in views as to whether this distinction has a bearing on the nature and extent of any independence concerns that may exist with respect to tax services provided during the audit period to persons covered by Rule 3523.

The Board also notes that the SEC's general standard on auditor independence treats an accountant as not independent –

[i]f the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether any accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.^{8/}

Accordingly, if the Board determined to amend the rule to eliminate the prohibition on services provided during the audit period, accounting firms would remain responsible for considering the relevant facts and circumstances of a specific tax engagement and

^{7/} For example, SEC auditor independence rules state that an accountant is not independent if the accountant provides, among other things, bookkeeping, management functions, or financial information system design and implementation services to an audit client at any point during the audit and professional engagement period. 17 C.F.R. § 210.2-01(c)(4). In addition, PCAOB Rule 3522, *Tax Transactions*, prohibits the auditor from providing certain non-audit services to an audit client during the audit period as well as the professional engagement period.

^{8/} 17 C.F.R. § 210.2-01(b).

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determining whether independence is impaired under the SEC's general standard.^{9/} The Board seeks comment on whether such an approach would allow for a more tailored application of the independence requirements to this area that would prohibit only those services that pose a risk while allowing those that do not.

Questions

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?
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?

IV. Opportunity for Public Comment

The Board will seek comment for a 45-day period. Interested persons are encouraged to submit their views to the Board. Written comments should be sent to Office of the Secretary, PCAOB 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted via email to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 017 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on May 18, 2007.

The Board will carefully consider all comments received. Following the close of the comment period, the Board will determine whether to amend Rule 3523 as it relates to the "audit period." Any rule amendment adopted will be submitted to the Securities and Exchange Commission for approval. Pursuant to Section 107 of the Act, amended rules of the Board do not take effect unless approved by the Commission.

^{9/} If the Board determined to amend Rule 3523 to not apply to the audit period, it might effect this change by striking the words "audit and" from the current text of Rule 3523.

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V. Adjustment of Implementation Schedule

Under the implementation schedule for Rule 3523 that the Board set on October 31, 2006, the Board will not apply Rule 3523 to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins. The Board has determined to further adjust the implementation schedule for Rule 3523 in order to allow sufficient time for consideration of commenters' views on the issues raised in this release. Specifically, the Board will not apply Rule 3523 to tax services provided on or before July 31, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.^{10/}

The PCAOB has filed this adjustment to the implementation schedule with the SEC as an immediately effective proposed rule change. The rule change became effective upon its filing with the SEC, thereby extending to July 31, 2007 the implementation date for this aspect of Rule 3523. The adjustment to the implementation schedule and related rule filing will not result in any textual changes to the Rules of the PCAOB.

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On the 3rd day of April, in the year 2007, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

April 3, 2007

^{10/} This will apply regardless of whether there is an engagement in process on April 30, 2007.