



By Electronic Mail and Federal Express

February 14, 2005

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

Re: PCAOB Rulemaking Docket Matter No. 017

Ladies and Gentlemen,

We are pleased to have this opportunity to submit this written comment to the Public Company Accounting Oversight Board regarding PCAOB Rulemaking Docket Matter No. 017. Our comment is directed to Proposed Rule 3523, which would prevent a registered public accounting firm from providing routine tax services to any officer in a financial reporting oversight role at a public audit client. We support the other rules as proposed.

We believe that Proposed Rule 3523 is not warranted by the evidentiary record. Any potential concerns about an audit firm's independence arising from the fact that it may also provide routine tax return preparation, compliance and advisory services to officers of the SEC registrant would be adequately addressed by requiring audit committee pre-approval of such services and by extending the prohibitions against providing certain aggressive tax services contained within Proposed Rule 3522 to the officers and directors of the SEC registrant.

Firm Background

Arthur F. Bell, Jr. & Associates, L.L.C. (the "Firm") is a small public accounting firm approved by the PCAOB to conduct audits of SEC registrants. We are located in Hunt Valley, Maryland. The Firm was founded in 1974 by Arthur F. Bell, Jr., who is the Managing Member of the Firm. In addition to Mr. Bell, the Firm has four other Members, eight Associates and approximately 55 professional and support staff. We provide tax, audit, accounting and consulting services to a diverse number of for-profit entities, investment funds, charities, not-for-profit foundations, and individuals. The Firm has not offered and will not offer tax shelters or other "aggressive" tax avoidance strategies to any clients and has not accepted or charged and will not accept or charge contingent fees for any services.

In addition to general tax and accounting services, we have developed a specialty in providing tax, audit, accounting and consulting services for the managed futures industry. In that connection, the principals of the Firm serve on numerous government and industry committees such as the Commodity Futures Trading Commission Global Markets Advisory Committee, the National Futures Association Special Committees, the AICPA Investment Companies Expert Panel, the AIMR Leverage and Derivatives Sub Committee and the Pension Research Accounting Group in London, England. Mr. Bell also has been an active executive member of the Managed Funds Association since 1994.

Lack of Adequate Justification for Proposed Rule 3523

We find it peculiar that the proposed rules as drafted would allow registered accounting firms to provide routine tax return preparation, compliance and advisory services to audit clients that are SEC registrants without impairing independence, but would automatically prevent such accounting firms from providing such routine tax services to individual officers in financial reporting oversight roles with those SEC registrants. There does not appear to be any adequate justification for this distinction.

In Release 2004-015, the PCAOB explained that it has published Proposed Rule 3523 based on “concerns that performing tax services for individuals involved in the financial reporting processes of an issuer creates an appearance of a mutual interest between the auditor and those individuals.”¹ The PCAOB also noted that “audit firms have been criticized for providing tax services, including tax shelter products, to senior executives of their public company audit clients.”² Any concern about an audit firm providing tax shelter or other aggressive tax strategies to audit client executives can be adequately addressed by applying the restrictions in Proposed Rule 3522(a), (b) and (c), which the Firm fully supports, to such officers and directors. However, we do not believe that the blanket prohibition set forth in Proposed Rule 3523 on providing individual tax services is justified by any generalized concerns about the appearance of a mutual interest between the auditor and the individuals for whom it is providing tax services in the absence of involvement with aggressive tax avoidance schemes.

The provision of routine tax services to the officers of an audit client is not prohibited under the Sarbanes-Oxley Act or the SEC’s existing regulations. The SEC staff concluded in 2003 that audit committee review of the provision of such services alone would be sufficient to ensure that the auditor’s ability to exercise objective and impartial judgment had been maintained.³ The PCAOB in Release 2004-015 concluded that a “per se prohibition” on providing routine tax services to audit clients “appears to be unnecessary and inappropriate” and noted that such services remain subject to the general auditor independence standard and its requirement that all non-audit services be pre-approved by the audit client’s audit committee.⁴

We believe that the same protections would suffice (in lieu of a per se prohibition) where audit firms provide routine tax return preparation, compliance and advisory services to officers in a financial reporting oversight role with an audit client. This conclusion is particularly mandated when any theoretical justification for the proposed prohibition is weighed against the lack of any evidence of any abuses in the past relating to such routine tax services and the harmful consequences that such a prohibition will have on small issuers and the specialized accounting firms that service them.

¹ PCAOB Release 2004-015 at p. 35.

² PCAOB Release 2004-015 at p. 8.

³ Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U. S. Securities and Exchange Commission (June 24, 2003), at 5.

⁴ PCAOB Release 2004-015 at p. 15.

One Size Doesn't Fit All -- Proposed Rule 3523 Needlessly Disadvantages Small Issuers and Their Investors

In evaluating the need for Proposed Rule 3523, the PCAOB should consider the particular difficulties faced by small public issuers in obtaining competent auditing and accounting services and the likely negative impact of Proposed Rule 3523 on these issuers. The larger accounting firms have recently made it clear that they are focusing their audit practices on larger Fortune 500 companies and dropping smaller clients.⁵ For any size accounting firm, it takes specialized expertise and economies of scale to build a competent, qualified and successful audit practice for smaller public clients. Consequently, the pool of such accounting firms for any particular type of small issuer, especially in niche industries, may be relatively small. Adopting an absolute prohibition on providing audit and routine tax services to certain officers and directors will require these firms to cease providing either tax compliance for the officers and directors or audit services to their public clients. For these reasons, we firmly believe Proposed Rule 3523 will harm rather than benefit investors in small public issuers by further reducing the qualified pool of accounting firms that are willing and able to serve their audit needs.

Further Evaluation of Impacts Required

If the PCAOB believes at this time that audit committee pre-approval would not provide adequate protection against any potential independence concerns arising from the provision of such individual tax services by audit firms, we urge the PCAOB to conduct further studies on the likely impact of Proposed Rule 3523 on smaller public issuers and the smaller accounting firms that serve them before finalizing any rules on this subject. Due to the likely hardships that will be imposed on smaller issuers by a mandated change, we urge the Board to withhold such a prohibition pending the results of further PCAOB evaluation. In this regard, the PCAOB's evaluation of this issue would likely benefit from the information that it will learn from inspections of smaller registered accounting firms, and from the results of the SEC's February 8, 2005 announced study of Section 404 impacts on small issuers. For the reasons stated above, we believe enactment of Proposed Rule 3523 will have a disproportionately negative impact on smaller accounting firms and their public company clients without any corresponding benefit to investors.

Proposed Revision to Rule 3523

In light of the concerns expressed above, if the Board determines to adopt a rule along the lines of Proposed Rule 3523, we offer for the PCAOB's review and consideration the following alternative language for Proposed Rule 3523:

“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, (i) provides any tax service to an officer in a financial reporting oversight role at the audit client without obtaining pre-approval to provide such services from the audit committee of the audit client, or (ii) provides any tax services prohibited under [Rule 3522] to an officer or director of such audit client. These requirements apply regardless of whether the issuer audit client, the individual officer or director, or another person or entity pays for such tax services.”

⁵ See Lynnley Browning, Sorry, The Auditor Said, But We Want A Divorce, N.Y. Times, Feb. 6, 2005, Sunday Business at 5.

We believe this alternative proposal will adequately address the concerns that led the PCAOB to develop Proposed Rule 3523 (as initially drafted) without unduly harming the small public issuers that often rely on specialized accounting firms to provide audit and tax advice. This approach allows the audit committee to make an informed decision about whether the audit firm's independence might be impaired by providing such routine tax services to affiliated individuals.

Conclusion

We appreciate the PCAOB's consideration of our comments. We would welcome the opportunity to discuss our concerns about Proposed Rule 3523 with the Board or members of the staff in order to develop rules that take all relevant considerations into account and are consistent with the public's best interest. If you have any questions about the foregoing comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Arthur F. Bell, Jr.".

Arthur F. Bell, Jr. & Associates, L.L.C.

cc: Alan J. Berkeley
Charles R. Mills
Edward J. Fishman
Kirkpatrick & Lockhart Nicholson Graham LLP