PRICEWATERHOUSECOOPERS

1301 K Street, NW
Suite 800W
Washington, DC 20005
202-414-1000

March 31, 2006

Ms. Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: File Number PCAOB-2006-01

Dear Ms. Morris:

PricewaterhouseCoopers appreciates the opportunity to comment on the Public Company Accounting Oversight Board ("PCAOB"): *Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees.* We support the efforts of the PCAOB to address certain questions related to auditor provided tax services and agree that those services enhance overall audit quality.

Clear and unambiguous rules for audit committees, companies, and audit firms are needed to appropriately regulate auditor involvement with client tax matters; particularly in connection with auditor initiated aggressive tax transactions and tax services to company executives. We have carefully reviewed the PCAOB's proposal and offer several suggestions that we believe will help foster this clarity and help craft a final rule that strictly adheres to the letter and spirit of the Sarbanes-Oxley Act (the "Act").

Rule 3522

You have requested comments regarding the PCAOB's discussion of the impact on auditor independence when an auditor-initiated tax transaction that the auditor previously marketed or which the auditor had previously provided a favourable opinion or planning services to a registrant subsequently becomes listed by the U.S. Department of Treasury ("Treasury") or Internal Revenue Service ("IRS"). Further, you specifically inquired whether subsequent listing of a transaction may impact independence from the date of listing forward.

Background and Analysis

Rule 3522 is intended to address public concerns regarding auditors marketing aggressive tax position transactions to registrant audit clients. Rule 3522 provides a prohibition with respect to listed transactions and transactions that are substantially similar to listed transactions. Rule 3522, along with recent Treasury efforts to regulate and strengthen rules regarding the issuance of tax opinions for purposes of penalty

protection (e.g., Treasury Circular 230), are important steps to address prior abuses. At the same time, Rule 3522 balances the need to regulate abuses with the desire to enhance audit quality by permitting appropriate auditor involvement in the provision of tax services.

In addition to Rule 3522, a potentially aggressive tax transaction should continue to be subject to scrutiny by Audit Committees as envisioned in the commentary accompanying the Commission's March 26, 2003 Release, *Strengthening the Commission's Requirements Regarding Auditor Independence*.[1] We believe that auditors should continue to have a key role in helping Audit Committees discharge their responsibility by performing a thorough, good faith analysis of each potentially aggressive tax transaction including whether it is a listed transaction or substantially similar to a listed transaction, and sharing that analysis where appropriate with Audit Committees.

Collectively, Audit Committee pre-approval, SEC, and PCAOB rules ensure Audit Committee review of auditor initiated potentially aggressive tax transactions and Rule 3522 strictly prohibit auditor involvement with listed transactions. A robust analysis of proposed transactions, which is reviewed by Audit Committees as part of the requirements of the Commission's 2003 rules, appropriately addresses any independence concerns associated with tax services provided in connection with a subsequently listed transaction. These two rules operating in the manner described above represent significant deterrents to continued abuses in this area. Specifically, Audit Committees are most likely not going to permit auditor involvement with such transactions. If a transaction becomes listed, the Committee again has the opportunity to consider the impact of listing on the auditor's independence in connection with any further services it might provide with respect to that transaction.

We agree that a subsequent listing of any auditor initiated transaction may pose a threat to continued auditor independence but only if the auditor continues to provide services, such as assisting the client in resolving disputes with the taxing authority in connection with the transaction. As the PCAOB noted, at the time of listing, the client and the auditor's interests may appear to merge, calling into question the auditor's ability to prospectively maintain independence. Consequently, any further services provided in connection with the transaction, other than tax compliance services or functioning as a fact witness as to previous services performed in future proceedings, should not be permitted.[2] In addition, the auditors should promptly notify the Audit Committee of the listing and review the financial statement accounting for the transaction and any other factors that would bear on the independence of the auditor so that the Committee can gain assurance that the auditor remains independent.

---

[1] SEC Release No. 33-8183, at page 22, which states, "in addition, audit committees also should scrutinize carefully the retention of an accountant in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations."

[2] Consistent with the PCAOB's findings with respect to the impact of tax compliance services on an auditor's independence, an auditor can prepare a tax return reflecting the tax results arising from a listed transaction where there is disclosure of the transaction on the tax return without impairing its independence.

We note that the concept of "substantially similar to a listed transaction" lacks precision and involves significant uncertainty. On occasion, the Treasury or the IRS may make a public announcement identifying a transaction as substantially similar to a listed transaction, and our recommended response is the same as that described above for a subsequently listed transaction. However, it is more likely that the "substantially similar" concept will be applied on a transaction by transaction basis during examinations by the IRS and there is little experience and public information on the concept's application in that context. We further note that it is not uncommon for the IRS to raise concerns about the tax treatment of items initially and then withdraw the concerns upon a full review of the facts and circumstances or upon consulting with the IRS national office. As a result, in situations involving IRS examinations, we believe the appropriate course of action would be to notify the Audit Committee as early as possible that the IRS is asserting that an auditor initiated transaction is substantially similar to a listed transaction and provide an analysis of the issue so that the Committee can assess the continuing role of the auditor with respect to the transaction.

Recommendation: We believe that registrants and their auditors need certainty as to the impact of subsequent listing on auditor initiated potentially aggressive tax transactions. Rule 3522 should be clarified, through commentary accompanying its adoption or by PCAOB amendment of the rule, to provide that auditor independence is not impaired where services are performed in connection with a potentially aggressive tax transaction (as addressed in its 2003 rule commentary) and an Audit Committee has made a good faith determination to retain its auditors after a thorough discussion and analysis that the proposed transaction is not a listed transaction or substantially similar to a listed transaction. In furtherance of the PCAOB's Rule 3522, additional commentary or amendment should be considered to preclude an auditor from providing any services in connection with an auditor initiated transaction after such transaction becomes listed or publicly identified as substantially similar to a listed transaction, except as a fact witness or in connection with tax compliance services. Finally, commentary should also suggest that the auditor is to review with the Audit Committee the appropriate financial statement and tax treatment of any auditor initiated tax transaction that is subsequently listed or that is publicly identified by the IRS to be substantially similar to a listed transaction and provide an analysis of the issue so that the Committee can assess the continuing role of the auditor with respect to the transaction. Given the history and significant effort associated with the PCAOB's development of Rule 3522, we believe the foregoing recommendations would be appropriate for approval on an accelerated basis.

Rule 3523

The following comments address Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles (FROR), in regard to employees who are participating in international assignment tax services programs.

We offer our comments and recommendations in the context of the change to Rule 3523 that was included in the July Release 2005-014, and specifically the addition of the paragraph found in Rule 3523 (a)(b)(1) regarding material affiliates. The original proposed Rules in December Release 2004-015, did not extend the application of Rule 3523 to include employees in FRORs at material affiliates. Thus, the PCAOB

and the SEC have not had an opportunity to receive comments on this aspect of the rules.

Background and Analysis

In December Release 2004-015, the PCAOB explained its finding that routine tax preparation services provided by an issuer's auditor to the company's international assignees did not pose any ethical or independence issues.[3] However, the PCAOB did indicate that such services could not be provided to, "…officers who are on international assignment and function in a financial reporting oversight role." [4]

We agreed with the PCAOB's comment on page 36 of Release 2004-015 that the original rule was narrowly drafted to, "…include only those tax services that a registered public accounting firm provides to individuals in a position to play a significant role in an audit client's financial reporting." We believed that Rule 3523 as originally drafted adequately met the public policy objectives eliminating the perception of a close relationship that may arise when the auditor provides personal tax services to senior financial client executives and other specifically named executives.

However, the proposed revisions to Rule 3523, found in PCAOB Release 2005-014, cast a much wider net. It creates a prescriptive rule that operates to prohibit international assignment tax services to potentially large numbers of employees who do not have oversight over the company's consolidated financial reporting process. Thus, we believe that extending the FROR rule to material affiliates is inconsistent with the overall intent of the rules to allow auditors to provide international assignment tax services to their audit clients. Furthermore, the PCAOB has created another definition of FROR that is inconsistent with the SEC's existing definition of FROR. Finally, the extension of this rule to material affiliates adds significant complexity to a company's administration of such programs and serves to limit choice in the market.

Definition of Financial Reporting Oversight Role

It was clear in December Release 2004-015 that the FROR definition was intended to mirror verbatim the SEC's definition of FROR. [5] Therefore, it was widely thought that by specifically referencing the SEC's definitions of FROR for purposes of the Sarbanes Oxley Act's "cooling off" period with respect to employment relationships, the PCAOB intended to adopt a similar definition of FROR for limiting tax services to executives. Thus, it was reasonably believed that the employee population that would not be able to obtain tax services from an issuer's auditor would be the same limited

[3] See Release 2004-015, page 16, wherein the PCAOB observes that "[t]hese services typically are paid for by the company, as a means of minimizing the company's risk that its employees will embarrass the company in a foreign country that hosts the company. Because the company pays for the services, they are subject to the Act's and the Commission's requirements relating to audit committee pre-approval and to proxy fee disclosure requirements. The Board's evaluation has not identified independence or ethical issues when an accounting firm provides these routine tax return preparation services to its audit clients…"

[4] See Release 2005-014, page 16 footnote 38.

[5] See Release 2004-015, page 36, footnote 73.

group that functions in FRORs contemplated by the "cooling off" period rules. This interpretation was reinforced by other references in Release 2004-015 that referred to "officers" and "senior officers." [6]

Accordingly, it was widely believed that by using the term “officers,” and adopting the SEC definition of FROR *verbatim*, in the context of the “cooling off” period, the PCAOB intended to apply the FROR rule to senior executives and officers at an issuer level who were on international assignment. Thus, based on the proposed rules, it was expected that Rule 3523 would have very little effect on expatriate tax programs since very few such individuals are on international assignment.

However, the final PCAOB rules in July Release 2005-014 changed the application of the FROR rules by applying the rule to all individuals in a FROR at “material affiliates” of an SEC registrant audit client.

Impact of the PCAOB's Proposed FROR Rule

The PCAOB’s addition of the material affiliate rule in the context of FRORs has resulted in confusion surrounding the implementation of the rule since the SEC and PCAOB's definition of a FROR are inconsistent. Companies must now administer and monitor two separate and different definitions of FROR.

As a result of this administrative complexity, many companies feel they are being forced to choose tax service providers other than their auditor. This is placing an undue burden on the market. Companies' choices of tax advisors may already be limited due to independence restrictions of other firms other than the primary auditor. Furthermore, companies' choices may be limited due to gaps in each firm's service or capability in certain countries or regions.

Thus, in some situations, companies may feel that their auditor is best placed to provide such services. As noted in the PCAOB's commentary in footnote 3 above, some clients offer this tax service to minimize the company's risk that its employees may not be compliant in a foreign country.

Accordingly, we do not believe that the Board's rules should work to limit market choice or unnecessarily increase costs in an area where it has found little ethical or independence issues.

Practical Application of Rule 3523 for International Assignment Programs

The application of the revised rule will result in many more individuals on international assignments being considered in a FROR and therefore included in the scope of this rule. There are several practical problems:

---

[6] See Release 2004-015, page 16 footnote 38 and the Section Heading number 4 on page 35

1) The materiality rule casts a very wide net over a company's employees. As a result, many employees with no practical oversight responsibilities or influence over the contents of the consolidated financial statements or related system of internal controls would need to be excluded from such auditor provided tax return preparation programs. Due to the larger number of employees that would be covered under Rule 3523, the tracking and control over tax services to employees in numerous foreign locations becomes cumbersome.

2) Multinational companies have many employees on international assignments for two or three years that are continuously rotating in and out of positions which could be considered to be FROR. In addition, companies frequently offer company-paid tax services in the year of a move as part of relocation package. The volume of cross-border employees impacted by Rule 3523 will make it difficult for companies to ensure compliance.

3) The wider application of Rule 3523 results in a larger number of employees where tracking of potential tax services to related family members is required. Companies and firms will be placed in the difficult position of determining whether an immediate family member of an employee is an FROR employee of an unrelated company. Such a requirement is reasonable in the context of a relatively small number of senior corporate officers in a financial oversight role at an issuer level. Extending this to numerous affiliates and potentially large number of employees outside the US is impractical.

Recommendation: We believe that it would be administratively easier to have only one definition of FROR that is consistent with the SEC definition that is already understood and administered by companies and audit firms. Having two definitions places an undue burden on companies and auditors, in particular because the much wider application of Rule 3523 potentially affects numerous employees and family members. Furthermore, applying the prohibition to the same group of employees that are covered under the SEC's FROR definition under the "cooling off" rules meets the important public policy objectives, without placing an undue burden on the market.

Therefore, we recommend that Rule 3523 (a)(b)(1) be revised to eliminate the reference to material affiliates. If the SEC believes that Rule 3523 should be extended below the issuer audit client level, we recommend that the PCAOB revise the rule to cover only "significant subsidiaries." This standard would be consistent with the rule that the SEC has adopted for audit partner rotation. This would provide a more objective test for auditors and companies to administer.

Rule 3524

We recognize the importance of ongoing dialogue between Audit Committees and auditors regarding non-audit services. We believe that Audit Committees are best suited to determine the manner in which they will monitor these services. The release accompanying Rule 3524, Audit Committee Pre-Approval of Certain Tax Services,

states the following in connection with an Audit Committee's decision to delegate authority to pre-approve non-audit services to one member of the committee:

> "Also, although the auditor may discuss the service with the member holding the delegated authority when the member is considering the service, in order to comply with Rule 3524(b), the auditor ought to discuss the service with the audit committee as a whole when the audit committee considers the updated forecast or other summary." [7]

We believe this requirement is inconsistent with the Sarbanes-Oxley Act.[8] The Act empowers Audit Committees to delegate such authority to a member of the Audit Committee. When such authority is granted, Section 202 of the Act requires:

> "The decision of any member to whom authority under the paragraph to pre-approve an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings." [9]

The legislative history of the Act further clarifies that the requirement to discuss the decision of the delegated member of the audit committee with the full audit committee is the responsibility of the delegated member and not the auditor, as follows:

> "After a delegated member has granted a pre-approval, he or she is required to report the decision at the next meeting of the full audit committee." [10]

As written, the intent was for the delegated member to report to the full audit committee and not the auditor.

Recommendation: Consistent with the legislative history and, we believe, the intent of Congress, an Audit Committee should have flexibility in adopting its pre-approval process and we request that this be clarified in the adopting release.

PCAOB Release 2006-001

We note that on November 22, 2005, the PCAOB issued a Technical Amendment to the Ethics and Independence Rule Concerning Independence, Tax Services, and Contingent Fees.[11] That release included certain transition and/or effective date provisions. On March 28, 2006, in PCAOB Release No. 2006-001, the PCAOB revised its effective dates including those previously announced for Rules 3523 and 3524. We agree that those revisions provide adequate time to address the proper implementation of Rules 3523 and 3524.

---

[7] PCAOB Release No. 2005-014, July 26, 2005, Docket Matter 017, 11.C.
[8] Section 202 of the Sarbanes-Oxley; 15U.S.C.78j-1(i)(3).
[9] ID
[10] Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S.2673, Public Company Accounting Reform and Investor Protection Act of 2002, S. Report 107-205, 107th Congress, 2d Session (July 3, 2002), p.20
[11] See PCAOB Release No. 2005-020, November 22, 2005, Docket Matter No. 017

If you have questions concerning this submission, please contact Kevin M. Mitchell at 201-521-4410 or Carl W. Duyck at 202-414-4402.

Yours very truly,

PRICEWATERHOUSECOOPERS LLP