

I am writing to comment on Proposed Rule 3523 as described on page 35 of the PCAOB release of December 14, 2004.

As I understand the rules currently in effect, the selection of the audit firm and determination of its independence of judgment is no longer a decision by the management of the client public company and now is the responsibility of the company's Audit Committee of the Board of Directors. The members of the Audit Committee are to be independent and certified as such by the company's Board of Directors, which also has to have a majority of independent members. The relationship is between the Audit Committee and the audit firm with management on the side. The burden is on the Audit Committee to act independently of management and it is on the audit company to act independently of management and in conformity with its professional standards.

With these rules and relationships in place, it seems the proposed new rule seeks to correct a presumption of influence from a party truly relegated to the side of the decision making regarding independence. The Audit Committee is charged with watching for undue influence by management over the audit firm, and the audit firm is charged with watching for undue influence by management over the Audit Committee. So it seems the proposed rule is a bit misplaced in its attention.

While it would be naïve to assume officers in financial oversight roles will never try to steer decisions by the auditors or by the Audit Committee, it also seems that this tension and whether the result might compromise the audit firm's or the Committee's judgment are more dependent on the force of personality of the officer than the incidental choice that officer has made on who does his or her personal tax work.

There is also a privacy issue to consider. This rule would require all the financial oversight officers to disclose publicly who prepares his or her tax return. While no one including managers likes having salaries or incentives publicly known, one can accept there is some public interest in this information. It seems to me disclosure of one's tax preparer takes transparency a step too far.

People and firms act in their own financial best interest. A public accounting firm would not find it in its best interest to jeopardize huge fees from the company audit side by paying attention to or compromising its judgment on any unethical demands of a private client whose fees paid to the firm are penny ante, relatively speaking.

I also do not believe Proposed Rule 3523 can be practically applied. Consider this hypothetical situation: A public company has three officers with financial oversight roles, e.g., the CEO, the COO, and the Controller. Imagine that the CEO and CFO have sufficiently complex personal financial matters that they want to use a national firm for their tax preparation. The public company uses one national audit firm for external audit and one national accounting firm for internal audit. Since there are only four or five national accounting firms, someone in this scenario is likely to have to switch accounting/audit firms, to a disadvantage from the view of continuity and, likely, expense. The prospect of another job coming up during a year, e.g., an appraisal or an acquisition/merger, makes this even more complicated.

Further, I can foresee the application of Proposed rule 3523 creeping toward extension, maybe not through an expanded PCAOB rule but through extensions by ISS and the like. A wider net would say that independence is compromised if there is a link between the company's audit firm and the Chairman, or the Chairman of the Audit Committee, or the members of the Audit Committee. Extensions like these, which are easily visualized, would be more impractical, somewhat insulting, a real hardship, a further violation of privacy, and would not serve the public by tying all these parties in knots.

Stepping back and understanding the principle, true independence of the audit firms and the Audit Committees, I think it is time to let the current, adequate rules take hold. I do understand the public's and PCAOB's concern that a cozy relationship between management and the audit firm may exist. I would suggest that PCAOB give thought to ways for a company to rotate audit firms every 5-7 years, especially with a practical, affordable way to have a transition or overlap year, because, just as coziness is a problem, continuity and familiarity with the company procedures and the personalities are beneficial to the company, the audit firm and the public.

Respectfully submitted,

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