
ETHICS AND INDEPENDENCE RULES
CONCERNING INDEPENDENCE, TAX
SERVICES, AND CONTINGENT FEES

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) PCAOB Release No. 2005-020
) November 22, 2005

) PCAOB Rulemaking
) Docket Matter No. 017
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Summary: The Public Company Accounting Oversight Board ("PCAOB" or "Board") is adopting technical amendments to certain rules it adopted in July 2005 to promote the ethics and independence of registered public accounting firms that audit financial statements of U.S. public companies.

Public Comment: The Board, on December 14, 2004, released for public comment proposed rules to promote the ethics and independence of registered public accounting firms. The Board received 807 letters of comment. After considering these comments, the Board adopted final rules on July 26, 2005. Because the amendments being adopted today do not change the substance of these rules, the Board is not seeking additional comment. The rules adopted on July 26, 2005, as amended by this release, remain subject to the Securities and Exchange Commission ("SEC") approval process, which includes a period for public comment.

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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 become involved in marketing or otherwise opining in favor of aggressive tax

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shelter schemes or in selling personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients. As part of this rulemaking, the Board adopted an ethics rule, Rule 3502, to codify the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and standards. The rules were submitted to the SEC on August 2, 2005, for its approval, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002.

After discussions with the SEC, the Board has decided to remove the word "cause" from the title and text of Rule 3502. This amendment is intended to avoid any misperception that the rule affects the interpretation of any provision of the federal securities laws. The rule, as amended, should be interpreted and understood to be the same as the rule adopted by the Board in July, however.^{1/} In particular, under the amended rule, the person's conduct must have the same relation to the violation and the person must act with the same mental state as under the rule the Board adopted in July.

The Board is also amending Note 1 to Rule 3522(b) to correct a typographical error in the citation of the provision of the Internal Revenue Code cited in that note.

In light of the time that has elapsed since their adoption, the Board has also decided to revise the effective dates for certain of the rules. Three of those rules – Rules 3521, 3522 and 3524 – had effective dates of the later of December 31, 2005 or 10 days after the date the SEC approves the rules.^{2/} The Board has decided to revise the effective dates of those three rules to 60 days after the date the SEC approves the rules.^{3/}

Specifically, the Board will not apply Rule 3521 to contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise

^{1/} See PCAOB Release No. 2005-014 (July 26, 2005), at 9-14 (discussing Rule 3502).

^{2/} See *id.*, at 47-48.

^{3/} The effective dates of Rules 3501, 3502, 3520 and 3523 are not changed by this release and remain as set forth in the Board's adopting release. *Id.*

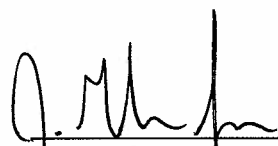
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unwound before 60 days after the date that the SEC approves the rules.^{4/} The Board will not apply Rule 3522 to tax services that were completed by a registered public accounting firm no later than 60 days after the date that the SEC approves the rules. Rule 3524 will not apply to any tax service pre-approved before 60 days after the date that the SEC approves the rules, or, in the case of an issuer that pre-approves non-audit services by policies and procedures, the rule will not apply to any tax service provided by March 31, 2006. Combined with the time period since the rules' adoption, the extension of the effective dates for these rules should allow reasonable time for affected firms to prepare internal policies and procedures, train their employees to ensure compliance with the new requirements, and, if necessary, terminate or complete any ongoing engagements covered by the rules in a professional manner.

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On the 22nd day of November, in the year 2005, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.



J. Gordon Seymour
Acting Secretary

November 22, 2005

APPENDIX –

Technical Amendments to Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees

^{4/} Of course, the Commission's Rule 2-01 on auditor independence treats an auditor as not independent if it enters into a contingent fee arrangement with an audit client today. 17 C.F.R. § 210.2-01(c)(5).

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Appendix – Amendments to Rules

[Underlining indicates an addition; strikethrough indicates a deletion.]

Rule 3502. Responsibility Not to Cause Knowingly or Recklessly Contribute to Violations

A person associated with a registered public accounting firm shall not take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of cause ~~that registered public accounting firm to violate~~ the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, ~~due to an act or omission the person knew, or was reckless in not knowing, would directly and substantially contribute to such violation.~~

Rule 3522. Tax Transactions

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(b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011-4-4(b)(2).

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