

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

Our reference: RME/CM

Via Email: comments@pcaobus.org

14 February 2005

Dear Secretary,

Public Company Accounting Oversight Board (PCAOB) Rule Making Docket Matter No. 017 Tax Services and Auditor Independence

This submission is made on behalf of the Australian Institute of Company Directors (AICD) in response to the PCAOB Release of December 14, 2004.

The AICD is the peak organisation representing the interests of company directors in Australia. Current membership is over 19,000 drawn from large and small organisations, across all industries, and from private, public and the not-for-profit sectors. The AICD has had a standing policy committee focusing on financial and other reporting issues for over thirty years.

The AICD's initial review of the PCAOB's release indicates that the proposed rules provide a level of clarity concerning permissible tax services. This is welcome. However, from the perspective of an Australian director, the proposed rules appear to raise significant issues for foreign registrants that will impact on how directors, and more particularly audit committees, satisfy the requirements under Sarbanes-Oxley and the Securities and Exchange Commission's auditor independence rules.

The AICD is hopeful that the proposed rules will be further clarified, and if necessary amended, to address unintended international commercial consequences.

Pre-approval requirements

The expansion of the pre-approval requirement raises some commercial issues that the AICD considers would be detrimental to the proper and efficient functioning of an audit committee.

The AICD's analysis indicates that if the proposed rules are to be applied as stated, on a matter by matter basis, the AICD anticipates that in practice audit committees will be inundated with engagement letters for each and every tax service to be provided. This is clearly not the primary role of an audit committee.

Other adverse impacts of the proposed rule include clearing matters for a non-English speaking jurisdiction, the timing of audit committee meetings and the requirement for a commercially appropriate response and the imposition of the duty of the audit committee to evidence in detail that there is no impairment to independence. The AICD is concerned that the additional requirements are too onerous without potentially in any way improving compliance with auditor independence.

The AICD recommends that the PCAOB adopt a threshold test for non-residents for tax engagements.

Tax services provided to 'officers in a financial reporting oversight role'

The AICD would appreciate clarification of this rule as it relates to the application to advice provided by the auditor to the company of which such officers are recipients (for example, employee share plans). It is quite common that advice impacting employees is provided to the company as a whole.

In Australia, the application of Fringe Benefits Tax to certain 'benefits' such as company cars is provided generically to the company to apply to all employees in receipt of such benefits. The proposed rule is unclear as to whether such advice would be prohibited.

The AICD submits that matters of general application such as Fringe Benefits Tax should be excluded from the application of the rule and recommends that the rule be amended to enable the efficiency of obtaining one piece of advice and not causing additional costs to be incurred by the company.

Another issue on which the AICD requests further clarification is the application of the rule to board members of multiple boards. Many AICD members serve on more than one board and this may in fact operate to prohibit any of the top tier accounting firms from providing tax services. The AICD also notes that the top tier accounting firms may be the experts, or the only providers, in respect of certain Australian taxation issues.

Incompatible tax services

The proposed rules provide that an auditor's independence would be impaired by providing planning advice or a tax opinion on an 'aggressive' tax position or on a 'listed transaction' or a 'confidential transaction' as defined pursuant to US Treasury regulations.

The AICD requests further clarification as to the operation of the proposed rules to foreign registrants. The AICD is concerned that directors and boards will be required to know, and in fact, ensure that those US rules are not breached in the transmission of advice from an auditor. More importantly, directors may ultimately have to contend with how a piece of tax planning advice may be regarded by the US Treasury.

The AICD respects the need to protect the US revenue; however, the application of potentially inconsistent tax laws possibly leading to a conflict of laws is to be avoided.

Please do not hesitate to contact me or Rob Elliott should you have any questions about the submission.

Yours sincerely,

Ralph Evans
Chief Executive Officer