presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: April 18, 2006.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 06–3893 Filed 4–24–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53677; File No. PCAOB–2006–01]

Public Company Accounting Oversight Board; Order Approving Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees and Notice of Filing and Order Granting Accelerated Approval of the Amendment Delaying Implementation of Certain of These Rules

April 19, 2006.

I. Introduction

On July 26, 2005,[1] the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') adopted proposed Ethics and Independence Rules Concerning Independence, Tax Services and Contingent Fees,[2] (herein, ''the proposed rules'') pursuant to the Sarbanes-Oxley Act of 2002 (the ''Act'') [3] and Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act'').[4] The proposed rules include general rules with respect to ethics and independence, restrict certain types of tax services a registered public accounting firm may provide to its audit clients, and prohibit contingent fee arrangements for any services a registered public accounting firm provides to its audit clients, in order to maintain its independence. On November 22, 2005, the Board adopted certain technical amendments to Rule 3502, including its title, and Rule 3522.[5]

Notice of the proposed rules, including the November 22, 2005 technical amendments, was published in the **Federal Register** on March 7, 2006,[6] and the Securities and Exchange Commission (''Commission'') received eight comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

On March 28, 2006, the PCAOB adopted an additional statement, delaying the implementation schedule for Rules 3523 and 3524 of the proposed rules,[7] and submitted that amendment to the filing to the Commission. The Commission finds there is good cause to approve this amendment prior to the thirtieth day after publication in the **Federal Register** and, for the reasons discussed below, the Commission is approving the amendment.

II. Description

The Act established the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports.[8] Section 103(a) of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission.

Overall Framework (Rules 3501 and 3502)

Proposed Rules 3501 and 3502 will create an overall framework within the PCAOB's ethics rules. Proposed Rule 3501 sets forth the requirement for the accounting firm to be independent of its audit client throughout the audit and professional engagement period as a fundamental ethical obligation of the auditor. This requirement for the auditor to be independent encompasses the obligation to satisfy the independence criteria set out in the rules and the standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission.

Proposed Rule 3502 establishes a standard of ethical conduct for persons associated with registered public accounting firms, indicating that these persons 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 the accounting firm of the Act, the rules of the Board, or provisions of the securities laws. These two proposed rules would be effective 10 days after the date of this order.

Contingent Fees (Rule 3521)

Proposed Rule 3521 would treat registered public accounting firms as not independent if they enter into contingent fee arrangements, directly or indirectly, with audit clients.[9] While the PCAOB's definition of contingent fees was adapted from the Commission's definition, there are two distinct differences. The principal difference is the elimination of the exception in Rule 2–01(c)(5) of Regulation S–X for fees ''in tax matters, if determined based on the results of judicial proceedings or the findings of government agencies.'' The PCAOB found this provision had been misinterpreted and could permit fees that jeopardized the independence of auditors. In addition, the proposed rule would expressly indicate that the contingent fees cannot be received ''directly or indirectly'' from the audit client. We do not object to the language that has been included in the PCAOB's proposed rule. The proposed rule would not be applied to contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise unwound before 60 days after the date of this order.

Tax Transactions (Rule 3522)

Proposed Rule 3522 would prohibit auditors from providing any non-audit services to its audit clients related to the marketing, planning or opining in favor of the tax treatment of transactions that are confidential transactions under the Internal Revenue Service's regulations or transactions that would be considered aggressive tax position transactions.[10] As such, this proposed rule adds to the list of services an audit firm is prohibited from providing its audit clients in order to maintain its independence. While the Board considered a wide-range of tax services, they ultimately determined that these particular types of tax services

[1] On August 2, 2005, the PCAOB submitted its proposed rules to the Commission for approval.

[2] PCAOB Release No. 2005–014.

[3] 15 U.S.C. 7202 *et seq.*

[4] 15 U.S.C. 78s(b).

[5] PCAOB Release No. 2005–020. On November 23, 2005, the PCAOB submitted the technical amendments to the Commission for approval.

[6] Release No. 34–53427; File No. PCAOB–2006–01.

[7] PCAOB Release No. 2006–001.

[8] Section 101(a) of the Act.

[9] The proposed definition of ''contingent fee'' includes any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service. However, a fee is not a contingent fee if the amount is fixed by courts or other public authorities and not dependent upon a finding or result.

[10] The PCAOB has defined aggressive tax positions as those that are initially recommended, directly or indirectly, by the auditor 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.

(confidential transactions or aggressive tax transactions) represented a class of tax-motivated transactions that presented an unacceptable risk of impairing an auditor's independence. The proposed rule would not be applied to tax services that were completed by the accounting firm by 60 days after the Commission approves the rules.

Tax Services for Persons in a Financial Reporting Oversight Role (Rule 3523)

Proposed Rule 3523 adds to the list of services an audit firm is prohibited from providing its audit clients in order to maintain its independence by prohibiting audit firms from providing any tax service to any person who fills a financial reporting oversight role at an audit client,[11] or an immediate family member of such individual, unless such person is in that role solely because he or she is a member of the board of directors or similar management governing body. The proposed rule includes those individuals who are in a financial reporting oversight role at an affiliate of the entity being audited unless that affiliate is either not material to the consolidated entity or the affiliate's financial statements are audited by another auditor. Based on the March 28, 2006 amendment, this proposed rule would not be applied to tax services being provided pursuant to an engagement in process at the time the Commission approves the rules, provided that such services are completed on or before October 31, 2006.[12]

Auditor's Responsibility in Connection With Audit Committee Pre-Approval of Tax Services (Rule 3524)

Proposed Rule 3524 would require the auditor seeking pre-approval to perform tax services to provide the audit committee written documentation of the scope of the proposed tax service and the fee structure for the engagement, discuss with the audit committee the potential effects on the firm's independence of performance of the services, and document the firm's discussion with the audit committee.

The Board amended the proposed effective date for this rule as part of its March 28, 2006 statement. As amended, the proposed rule would not be applied to any tax service pre-approval occurring before 60 days after the Commission approves the rules. Additionally, due to considerations of potentially existing audit committee procedures and schedules for pre-approving all audit and non-audit services, in cases where the registrant pre-approves non-audit services via policies and procedures, the rule will not apply to any tax service that has started within one year after the Commission approves the rules. The Board provided this longer transition so that most tax services considered within an annual audit committee review process that occurred prior to Commission approval could proceed without the need for additional pre-approval.

III. Discussion

The Commission's comment period on the proposed rules ended on April 3, 2006, and the Commission received eight comment letters. The majority of comment letters came from accounting firms,[13] although one professional organization,[14] one registrant [15] and one individual also responded. In general, the respondents expressed support for the proposed rules, though a number of the commenters requested either revisions or additional clarifying guidance from either the Commission or the PCAOB, as discussed in more detail below.

Response to Specific Request for Comment on Proposed Rule 3522

In its public release of the proposed rules for comment, the Commission asked respondents to comment on proposed Rule 3522, specifically as to whether it was clear from the Board's discussion that a subsequent listing of a transaction, while not in and of itself impairing the auditor's independence prior to the listing of the transaction, may impact independence from the date of listing forward. Further, the Commission questioned whether additional guidance was necessary regarding the consideration of an auditor's independence when a transaction planned or opined on by the auditor subsequently becomes listed.

The accounting firms and the AICPA responded to this question. Some commenters [16] indicated that if the audit committee and the firm, in good faith, reached a conclusion that the proposed transaction was allowable at the time the tax services were provided, the subsequent listing of the transaction should not impair the auditor's independence, as long as the firm is not in a position of defending its original advice. The PCAOB received similar comments during its exposure of the rule and responded by stating that it agreed with commenters that a *per se* rule that a subsequent listing of a transaction impaired an auditor's independence in either the period of the transaction or subsequent to the listing was not appropriate. The PCAOB stated that firms should be cautious in participating in transactions that could become listed, and that subsequent to the listing the firm and the audit committee should consider the potential impact of defending the transaction on the auditor's independence.

Commenters [17] on the Commission's Notice requested guidance on the subsequent consideration of independence upon the listing of the transaction and made a number of suggestions. Suggestions on this included: Clarifying that a subsequent listing of a transaction has no retroactive impact on independence and does not *per se* impair independence going forward, clarifying that the subsequent determination as to the impact on auditor independence should rest primarily with the audit committee, and clarifying that an audit committee's good faith determination in determining if the subsequent listing impairs independence should be considered conclusive. We agree that listing of a transaction does not result in a *per se* violation of an auditor's independence in either the period in which the transaction occurred or in subsequent periods. Based on the large percentage of commenters who felt that additional guidance is necessary regarding the subsequent determination of independence upon the listing of a transaction, we encourage the PCAOB to provide such guidance within a reasonable period of time after the approval of the proposed rules.

Rule 3523

A number of commenters raised concerns in relation to the PCAOB's application of the principle of ''individuals in a financial reporting oversight role'' to its proposed Rule 3523. The PCAOB has proposed a definition of the term ''financial reporting oversight role'' that matches the way in which the Commission has defined the term in our independence rules. However, while the defined term is identical to the Commission's

[11] The PCAOB's definition of a ''financial reporting oversight role'' matches the Commission's definition of the same term.

[12] The proposed rule also provides a transition period for those individuals that are hired or promoted into a financial reporting oversight role; this transition period allows for the tax services in process to be completed within 180 days after the hiring or promotion.

[13] Deloitte & Touche LLP, Ernst & Young LLP, KPMG, McGladrey & Pullen, and PricewaterhouseCoopers.

[14] American Institute of Certified Public Accountants.

[15] Capital Group Companies.

[16] KPMG, E&Y, AICPA, PWC.

[17] D&T, PWC, McGladrey.

definition, the proposed application of that term differs from the Commission's application. In the Commission's independence rules pertaining to employment relationships, there are restrictions on the time frame in which a former professional employee of an audit firm can fill a ''financial reporting oversight role'' at an *issuer-client, or significant subsidiary of that issuer,* without negatively impacting the independence of the audit firm. In contrast, the PCAOB's proposed rule prohibits the audit firm from providing tax services to a person in a financial reporting oversight role at the *audit client or material affiliate of the audit client,* with some exceptions (*i.e.*, individuals who serve as directors are not included).

Commenters [18] expressed concerns that the PCAOB's proposed rule extends the definition of ''financial reporting oversight role'' to a broader group of individuals than the Commission's independence rule, and that application of the rule to such a broad group will make monitoring compliance burdensome. This issue was not raised in the PCAOB's comment period because the reference to individuals at material affiliates was added by the PCAOB in response to comments seeking clarification regarding whether the rule applied to immaterial subsidiaries. The PCAOB added language to the rule to make clear that it did not apply to immaterial subsidiaries. However, based on commenters' requests for further clarification, we encourage the PCAOB to issue additional guidance.

Additional Comments

The AICPA and one accounting firm commented how the standard for liability in the rule compares to the standard for liability under Section 21C of the Exchange Act. The AICPA also questions whether the PCAOB's standard setting authority encompassed the adoption of rules related to the responsibility of associated persons not to knowingly or recklessly contribute to an accounting firm's violation of rules or applicable law. We believe that the rule is within the scope of the PCAOB's authority, particularly its authority to establish ethical standards.

A number of commenters made requests for additional implementation guidance from the PCAOB upon the approval of the rules. Commenters raised questions regarding certain language in proposed Rule 3522 pertaining to the confidentiality restrictions in the rule and the use of the term ''planning'' in the rule text. Based on these comments, we recommend the PCAOB provide additional implementation guidance on these topics.

[18] AICPA, D&T, E&Y, KPMG, PWC.

IV. Accelerated Approval of Amendment No. 1; Solicitation of Comments

The Board's March 28, 2006 amendment to the implementation schedule for certain of the proposed rules (the ''March 28, 2006 amendment'') would delay the effective date for Rules 3523 and 3524.

Rule 3523 originally had an effective date of the later of June 30, 2006 or 10 days after the date that the Commission approved the rules. The PCAOB acknowledged in its adoption of the rule that the proposed rule would lead to some registered firms terminating recurring engagements to provide tax services and may require certain members of public companies' senior management to find other tax preparers. In order to allow for as smooth a transition as possible, the PCAOB decided to amend the effective date such that Rule 3523 would not apply to tax services that are being provided pursuant to an engagement in process at the time the Commission approves the rules, provided that such services are completed on or before the later of October 31, 2006 or 10 days after the date of this order.

Rule 3524 requires certain disclosure, discussion, and documentation when a registered firm seeks audit committee pre-approval to provide a public company audit client tax services that are not otherwise prohibited by Commission or PCAOB rules. Acknowledging that some companies choose to use pre-approval policies and procedures to approve certain tax services, the original proposed rules provided two different effective dates: 60 days after the date that the Commission approves the rules or, in the case of an issuer that pre-approves non-audit services by policies and procedures, the rule would not apply to any tax service provided by March 31, 2006. Considering the time period since the rules' adoption, the PCAOB decided to amend the effective date with respect to tax services provided to audit clients whose audit committees pre-approve tax services pursuant to policies and procedures. As a result, under the proposed amendment, Rule 3524 would not apply to any such tax service that is begun within one year after the date of this order. This transition period should allow most tax services considered in an annual audit committee review process that occurred prior to Commission approval to proceed without the need for a firm to seek new pre-approval.

We find good cause to approve the March 28, 2006 amendment prior to the thirtieth day after the date of publication of notice of filing the March 28, 2006 amendment in the **Federal Register**. The original proposed rules, as noted above, were published in the **Federal Register**. We believe that the March 28, 2006 amendment, by delaying the effective date for certain of the proposed rules, addresses some of the concerns raised by commenters regarding the time period in which auditors would have to comply with the new rules. The March 28, 2006 amendment does not modify the scope and purpose of the rules as originally proposed but simply extends compliance dates commensurate with the original filing date. Finally, we also find that it is in the public interest to approve the rules as soon as possible to assist accounting firms in making arrangements to efficiently implement the proposed rules.

Accordingly, we believe good cause exists, consistent with Sections 107 and 109 of the Act, and Section 19(b) of the Exchange Act, to approve the March 28, 2006 amendment to the proposed rules on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning the March 28, 2006 amendment, including whether the amendment is consistent with the Act and the securities laws or is necessary or appropriate in the public interest or for the protection of investors. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number PCAOB–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. PCAOB–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should be submitted on or before May 25, 2006.

V. Conclusion

On the basis of the foregoing, the Commission finds that proposed rules, including the March 28, 2006 amendment, are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors. However, to facilitate implementation of the proposed rules, the Commission expects the PCAOB will issue additional implementation guidance as requested by a number of the commenters.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees (File No. PCAOB–2006–01), as amended, be and hereby are approved.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–6125 Filed 4–24–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53678; File No. SR–Amex–2006–36]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Licensing Fee for Options on the First Trust IPOX–100 Index Fund Shares

April 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract license fee for the orders of specialists, registered options traders (''ROTs''), firms, non-member market makers, and broker-dealers in connection with options transactions on the shares of the First Trust IPOX–100 Index Fund (symbol: FPX).

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at the principal office of the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to adopt a per contract licensing fee for options on FPX. This fee change will be assessed on members commencing April 13, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange traded funds (''ETFs''), such as FPX. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-member market makers and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.[5]

The purpose of this proposal is to charge an options licensing fee in connection with options on FPX. Specifically, Amex seeks to charge an options licensing fee of $0.10 per contract side for FPX options for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the FPX options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the FPX options by those market participants that are the beneficiaries of Exchange index license agreements is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See, e.g.*, Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).