consumers on a nationwide basis' as defined under section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(b) *Examples:*

(1) *Circumvention through reorganization by data type.* XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603 (p), because it no longer maintains public record information. XYZ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) *Circumvention through reorganization by regional operations.* PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) *Circumvention by a newly formed entity.* Smith Co. is a new entrant in the marketplace for consumer reports that bear on a consumer's credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co.''s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) Bona fide, arms-length transaction with unaffiliated party. Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arms-length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers residing nationwide, and ceases to offer reports containing public record information. Foster Ltd.''s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd.''s conduct does not violate this part.

§ 611.3 Limitation on applicability.

Any person who is otherwise in violation of § 611.2 shall be deemed to be in compliance with this part if such person is in compliance with all obligations imposed upon consumer reporting agencies that compile and maintain files on consumers on a nationwide basis under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–11329 Filed 5–19–04; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release Nos. 33–8422; 34–49708; FR–73]

Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing interpretive guidance regarding Auditing and Related Professional Practice Standard No. 1, *References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board* (''Auditing Standard No. 1'') of the Public Company Accounting Oversight Board (the ''PCAOB'').

DATES: *Effective Date:* May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Consuelo Hitchcock, Division of Corporation Finance, at (202) 942–2960 or to Esmeralda Rodriguez, Office of the Chief Accountant, at (202) 942–4400, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0401.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(a) of the Sarbanes-Oxley Act of 2002 (the ''Act'') authorized the PCAOB to establish auditing and related professional practice standards to be used by registered public accounting firms.[1] On December 23, 2003, the PCAOB filed with the Commission proposed Auditing Standard No. 1, *References in Auditing Reports to the Standards of the Public Company Accounting Oversight Board*.[2] After soliciting comments on the proposed standard,[3] the Commission today approved Auditing Standard No. 1, effective for auditors' reports issued or reissued on or after May 24, 2004.[4] Auditing Standard No. 1 directly impacts certain of the Commission's

[1] Pub. L. 107–204, 116 Stat. 745 (2002).

[2] The PCAOB approved Auditing Standard No. 1 on December 17, 2003. PCAOB Release No. 2003–25 (December 17, 2003) (the ''PCAOB Adopting Release'').

[3] Release No. 34–49528 (April 6, 2004).

[4] Release No. 34–49707 (May 14, 2004).

rules, regulations, releases and staff bulletins (collectively referred to in this release as ''Commission rules and staff guidance'') and certain provisions in the federal securities laws, which refer to Generally Accepted Auditing Standards (''GAAS'') and to specific standards under GAAS (including related professional practice standards), because it directs auditors to cease referring to GAAS in audit reports relating to financial statements of issuers and instead to refer to the ''standards of the Public Company Accounting Oversight Board (United States).'' [5] The Commission is therefore issuing interpretive guidance to avoid confusion on the part of issuers, auditors and investors. The guidance in this release is applicable only to auditors' engagements that are governed by PCAOB rules.[6]

II. Discussion

A. References to GAAS in Commission Rules and Staff Guidance and in the Federal Securities Laws

PCAOB Rule 3100 requires registered public accounting firms and their associated persons to comply with all applicable auditing and related professional practice standards established or adopted by the PCAOB. Because of this and because the PCAOB has adopted interim standards incorporating generally accepted auditing standards, references to GAAS and standards established by the American Institute of Certified Public Accountants (the ''AICPA'') are now superseded. Auditing Standard No. 1 requires that an auditor's report issued in connection with any engagement performed in accordance with the auditing and related professional practice standards of the PCAOB state that the engagement was performed in accordance with ''the standards of the Public Company Accounting Oversight Board (United States).'' [7] In addition, Auditing Standard No. 1 states that ''a reference to generally accepted auditing standards in auditors' reports is no longer appropriate or necessary.'' [8]

Many parts of Commission rules and staff guidance include direct references to GAAS. For example, Regulation S–X, which, together with the Commission's Financial Reporting Releases, sets forth the form and content of and requirements for financial statements required to be filed with the Commission,[9] includes Rule 2–02 regarding the accountant's report.[10] Rule 2–02 of Regulation S–X states in relevant part:

''*Representations as to the audit.* The accountant's report: (1) Shall state whether the audit was made in accordance with generally accepted auditing standards * * *.'' [11]

Moreover, some Commission rules and staff guidance refer to specific auditing standards under GAAS. For example, Accounting Series Release No. 296, which is now in Section 601 of Financial Reporting Codification, references AU 220.03 of the Codification of Auditing Standards published by the AICPA.[12] Finally, some parts of Commission rules and staff guidance could be said to include indirect references to GAAS because in releases or staff bulletins the Commission or its staff has interpreted rules and regulations by directing registrants, auditors and investors to GAAS.

In addition, the federal securities laws refer to GAAS. Specifically Section 10A(a) of the Securities Exchange Act of 1934 states:

''[e]ach audit required pursuant to this title of the financial statements of an issuer by a registered public accounting firm shall include [the following procedures and an evaluation], in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission * * *.'' [13]

Given the possible confusion between Commission rules and staff guidance and references in the federal securities laws, on the one hand, and the PCAOB's rules, on the other hand, the Commission believes it is necessary to publish the guidance in this release. Effective immediately, references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission. The Commission intends to codify this interpretation in the near future.

It should be noted that although the PCAOB has stated that Auditing Standard No. 1 supersedes references to ''generally accepted auditing standards,'' ''U.S. generally accepted auditing standards,'' ''auditing standards generally accepted in the United States of America,'' and ''standards established by the AICPA,'' [14] Auditing Standard No. 1 does not supersede Commission rules or regulations. Section 3(c) of the Act provides that ''[n]othing in this Act or the rules of the Board shall be construed to impair or limit * * * (2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law * * *.'' When an independent accountant prepares a report for submission or filing with the Commission, the independent accountant would be considered to be representing that it has complied with the applicable federal securities laws and Commission rules and guidance, as well as with the standards of the Public Company Accounting Oversight Board (United States), as referenced explicitly in Auditing Standard No. 1. In a note to PCAOB Rule 3600T, Interim Independence Standards, the Board specifically provided that the PCAOB's rules do not supersede the Commission's rules, and, therefore, registered public accounting firms must comply with the more restrictive of the Commission's or the Board's rules.

B. Incorporation by Reference

Some registrants are able to incorporate by reference previously issued and filed reports by including an auditor's consent to the use of their report in the registrant's filing that requires the audit report. If a registrant incorporates by reference a report previously filed with the Commission, rather than including a new report in the filing, the report incorporated by reference would not need to include the otherwise-required reference to the standards of the PCAOB.

List of Subjects

17 CFR Part 211

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 231 and 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17,

[5] PCAOB Adopting Release at A–2.

[6] The PCAOB, for example, has not established particular auditing standards for non-issuer broker-dealers or investment advisers. This release is not applicable to such engagements and related filings.

[7] PCAOB Adopting Release at A–2.

[8] *Id.* at 7.

[9] 17 CFR 210.1–01.

[10] 17 CFR 210.2–02.

[11] *Id.*

[12] FRC 601. AU 220.03 is among the standards adopted by the PCAOB on an interim, transitional basis.

[13] 15 U.S.C. 78j–1.

[14] PCAOB Adopting Release at 3.

chapter II of the Code of Federal Regulations as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. Part 211, Subpart A, is amended by adding Release No. FR–73 and the release date of May 14, 2004 to the list of interpretive releases.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 2. Part 231 is amended by adding Release No. 33–8422 and the release date of May 14, 2004 to the list of interpretive releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–49708 and the release date of May 14, 2004 to the list of interpretive releases.

Dated: May 14, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11399 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9129]

RIN 1545–BB63

Uniform Capitalization of Interest Expense in Safe Harbor Sale and Leaseback Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the capitalization of interest expense incurred in sale and leaseback transactions under the Economic Recovery Tax Act of 1981 (ERTA) safe harbor leasing provisions. The regulations affect taxpayers that provide purchase money obligations in connection with these transactions. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

DATES: *Effective Date:* These regulations are effective May 20, 2004.

Applicability Dates: For dates of applicability, *see* § 1.263A–15T(a)(3).

FOR FURTHER INFORMATION CONTACT: Grant Anderson, 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 263A(f) of the Internal Revenue Code (Code) relating to the treatment of certain interest expense incurred by the lessor in a sale and leaseback transaction under the ERTA safe harbor leasing provisions (former section 168(f)(8), as enacted by section 201(a) of ERTA, Public Law 97–34, 95 Stat. 214).

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer.

Section 263A(f) and the regulations thereunder provide special rules for capitalizing interest to property produced by a taxpayer. In general, section 263A(f) only requires the capitalization of interest that is paid or incurred during the production period of certain property (referred to as designated property). Designated property includes all real property and certain tangible personal property. *See* § 1.263A–8(b) of the Income Tax Regulations.

In general, interest incurred on debt that is directly attributable to production expenditures with respect to designated property (traced debt) is capitalized first. *See* section 263A(f)(2)(A)(i). If production expenditures with respect to designated property exceed the amount of traced debt, interest on any other debt of the taxpayer is capitalized to the extent that the interest could have been reduced if production expenditures had not been incurred. *See* section 263A(f)(2)(A)(ii). The amount of interest required to be capitalized under section 263A(f) is calculated by reference to eligible debt. *See* § 1.263A–9(a)(4). Eligible debt generally includes all outstanding debt of the taxpayer. Certain types of debt (listed in paragraphs (i) to (viii) of § 1.263A–9(a)(4)), however, are excluded from the definition of eligible debt.

The ERTA safe harbor leasing provisions were intended to permit owners of property to transfer the tax benefits of ownership (depreciation and the investment credit) to other persons. The ERTA safe harbor leasing provisions operate by guaranteeing that, for federal tax purposes, (i) a transaction meeting certain stated qualifications (a qualifying transaction) will be treated as a lease even though the qualifying transaction otherwise would not be considered a lease, and (ii) the nominal lessor will be treated as the owner of the property even though the nominal lessee is in substance the owner of the property.

Regulations issued under the ERTA safe harbor leasing provisions clarify that a qualifying transaction may be part of a sale and leaseback transaction, in which the nominal lessee sells the underlying property for Federal tax purposes to the nominal lessor for a cash payment and an interest bearing note (purchase money note), and the nominal lessor simultaneously leases the property back to the nominal lessee. *See* § 5c.168(f)(8)–1(e) *Example 2.* Generally, the nominal lessor deducts, and the nominal lessee includes in income, the interest accruing on the purchase money note, subject to certain limitations. *See* § 5c.168(f)(8)–7.

Explanation of Provisions

The temporary regulations provide that eligible debt under section 263A(f) does not include a purchase money obligation given by the lessor to the lessee (or a party related to the lessee) in a sale and leaseback transaction under former section 168(f)(8) as enacted by ERTA. Accordingly, these obligations are excluded from the definition of eligible debt, and the interest accruing on the obligations is not subject to capitalization with respect to designated property under section 263A(f).

The temporary regulations apply to interest incurred in taxable years beginning on or after May 20, 2004, except that, in the case of property that is inventory in the hands of the taxpayer, the temporary regulations apply to taxable years beginning on or after May 20, 2004. However, taxpayers may elect to apply the temporary regulations to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995 (the general effective date of the interest capitalization regulations).