Department of Justice

United States Attorney Michael J. Garcia
Southern District of New York

FOR IMMEDIATE RELEASE
WEDNESDAY, FEBRUARY 20, 2008
HTTP://WWW.USDOJ.GOV/USAO/NYS

REBEKAH CARMICHAEL
PHONE: (212) 637-2600

TWO ADDITIONAL DEFENDANTS CHARGED WITH CRIMINAL TAX FRAUD RELATED TO ERNST & YOUNG TAX SHELTERS

MICHAEL J. GARCIA, United States Attorney for the Southern District of New York, and PATRICIA HAYNES, Special Agent-in-Charge of the New York Field Office of the Internal Revenue Service ("IRS"), Criminal Investigation Division, announced the filing of a superseding Indictment adding two new defendants and multiple additional charges in connection with the tax shelter practice of Big-Four accounting firm Ernst & Young ("E&Y").

In May 2007, the Government filed an Indictment alleging that four current and former E&Y partners, ROBERT COPLAN, MARTIN NISSENBAUM, RICHARD SHAPIRO, and BRIAN VAUGHN ("the E&Y defendants"), together with their co-conspirators, concocted and marketed tax shelter transactions that were based on false and fraudulent factual scenarios, and were designed to be used by wealthy individuals to eliminate or defer their tax liabilities on income generally in excess of $10 or $20 million. As alleged in that Indictment, the conspirators understood that if the IRS were to detect the use of these tax shelters, and learn the true facts and circumstances surrounding the design, marketing and implementation of the shelters, the IRS would aggressively challenge the claimed tax benefits. In that event, the IRS would seek to collect the unpaid taxes plus interest, and might also seek to impose substantial penalties upon the clients. Accordingly, the conspirators undertook to prevent the IRS from: a) detecting their clients' use of these shelters; b) understanding how the transactions operated to produce the tax results reported by the clients; c) learning that the shelters were marketed as cookie-cutter products that would eliminate, reduce or defer large tax liabilities; d) learning that the clients were not seeking profit-making investment opportunities, but were instead seeking huge tax benefits; and e) learning that, from the outset, all the clients intended to complete a pre-planned series of steps that had been designed by the conspirators to lead to the specific tax benefits sought by the clients.

The superseding Indictment charges two additional individuals -- DAVID L. SMITH and CHARLES BOLTON – with participating in the same conspiracy, and it charges all six defendants with additional offenses. According to the superseding Indictment:

In late 1998 or early 1999, SMITH introduced a fraudulent tax shelter called "CDS" to the E&Y defendants, and later that year, used his company -- the Private Capital Management Group ("PCMG") -- to implement CDS transactions for wealthy clients identified by E&Y. Early in 2000, SMITH licensed the CDS idea to BOLTON, and a group of companies owned by BOLTON began to implement the same fraudulent shelter for additional wealthy clients of E&Y.

In mid-2000, the E&Y defendants engaged BOLTON's assistance in implementing an additional fraudulent tax shelter called "CDS Add-On." The conspirators falsely portrayed the "Add-On" transaction to the IRS as an "investment" entered into by clients who were seeking to make profits through trading in foreign currency options, when in reality, the transactions were designed solely to generate tax savings, and the clients stood no chance of making any profit after paying substantial fees to E&Y, to the Bolton companies, and to the other participants in the transactions.

BOLTON and the four E&Y defendants aided and abetted tax evasion by three groups of E&Y clients who implemented the Add-On transaction in 2000. They did this by assisting the taxpayers in creating artificial tax losses totaling approximately $70 million.

According to the new allegations, both SMITH and BOLTON gave false and misleading testimony under oath when interviewed by the IRS in connection with audits of various taxpayers who implemented CDS.

The Indictment also alleges that CHARLES BOLTON himself utilized two CDS transactions to defer his own tax liability on millions of dollars in fees collected from tax shelter clients. In December 2001, in the space of seventeen days, BOLTON used a CDS shelter to generate a tax deduction of approximately $24.9 million, which he used to offset his tax shelter fee income. Later, when audited by the IRS, BOLTON denied that tax avoidance was a significant factor in his decision to implement the shelter.

SMITH, who was involved in developing tax shelters for years before founding PCMG, is also charged with evading his own taxes on $18.4 million earned in 1998. He did this, in part, by engaging in a sham sale of his company to an entity in the Cayman Islands. According to the charges, SMITH controlled that offshore entity, but when audited by the IRS, falsely denied any interest in the entity. SMITH is also charged with filing a false tax return on which he denied having any interest in a foreign bank account.

Smith, 51, of San Francisco, California, and BOLTON, 45, of Memphis, Tennessee, are scheduled to appear on Friday, February 22, 2008 at 9:30 a.m. for arraignment before United States District Judge SIDNEY H. STEIN. The E&Y defendants are also scheduled to be arraigned on the superseding Indictment at this time.

Mr. GARCIA praised the investigative work of the IRS. Mr. GARCIA added that the investigation is continuing.

Assistant United States Attorney DEBORAH E. LANDIS and Special Assistant United States Attorney JOHN E. SULLIVAN are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

###