

the review or audit of financial statements filed with the Commission and enumerated the records described in the rule as being relevant to audits and reviews. Narrowing the scope of the rule to conform to the current auditing literature would be contrary to the apparent congressional purpose embodied in section 802.

Time of Retention

The final rule states that records must be retained for seven years. We proposed that these materials be retained for five years after the end of the fiscal period in which an accountant audits or reviews an issuer's financial statements,²² which is the period prescribed by section 802.²³ We also noted in the Proposing Release, however, that section 103 of the Sarbanes-Oxley Act directs the Oversight Board to require auditors to retain for seven years audit workpapers and other materials that support the auditor's conclusions in any audit report.²⁴ There may be fewer documents retained pursuant to section 103, which focuses more on workpapers that support the auditor's conclusions, than under section 802, which includes not only workpapers but also other documents that meet the criteria noted in this release. Many documents, however, may be covered by both retention requirements.²⁵

Some commenters suggested that we adopt a uniform seven-year retention period,²⁶ while others indicated that the

longer period would increase audit costs without any commensurate benefit.²⁷

We anticipate that most accounting firms, for administrative convenience, would retain all relevant materials for the longer of the two periods prescribed by the Commission and by the Oversight Board.²⁸ Incremental costs associated with requiring a seven-year retention period, therefore, should not be significant. We also believe that adopting a seven-year retention period would reduce inconsistencies between the forthcoming Oversight Board rules and the Commission's rules and lessen any potential confusion related to the calculation of retention periods.²⁹ Accordingly, the final rule requires that auditors retain the required documents for seven years from the conclusion of the audit or review.

Workpapers Defined

Section 802 is intended to require the retention of more than what traditionally has been thought of as auditor's "workpapers."³⁰ To clarify the distinction between workpapers and other materials that would be retained, paragraph (b) of the final rule defines the term "workpapers." The legislative history to section 802 states that the term is to be used as it is "widely understood" by the Commission and by the accounting profession.³¹ We believe that the term is understood to refer to the documents required to be retained by GAAS.

GAAS does not use the specific term "workpapers,"³² but Statement on

Auditing Standards No. 96, "Audit Documentation," states, in part:

The auditor should prepare and maintain audit documentation, the content of which should be designed to meet the circumstances of the particular audit engagement. Audit documentation is the principal record of the auditing procedures applied, evidence obtained, and conclusions reached by the auditor in the engagement.³³

We have placed the body of this provision into paragraph (b) and stated that "workpapers" means "documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board."³⁴ The proposed rule, therefore, recognizes that the Oversight Board, subject to Commission oversight, has the ability to review and change the nature and scope of the required documentation of procedures, evidence, and conclusions related to audits and reviews of financial statements.³⁵

As noted by several commenters, there may be significant overlap of the documents falling within the definition of "workpapers" and the documents that would be retained pursuant to the description in paragraph (a) of the rule of "other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which (1) are created, sent or received in connection with the audit or review, and (2) contain conclusions, opinions, analyses, or financial data related to the audit or review."³⁶

Differences of Opinion

SAS 96 states that audit documentation serves mainly to provide the principal support for the auditor's report and to aid the auditor in the conduct and supervision of the audit.³⁷ Section 802, however, is intended to

²² The proposed retention period was not based on the fiscal period covered by the financial statements being audited or reviewed, but when the audit or review would occur. For example, if a company has a calendar year-end fiscal year, for an audit of year 2002 financial statements that concludes in February or March 2003, under the proposal, the records would have been required to be retained until January 1, 2009.

²³ See Statement of Senator Leahy on the Senate floor: "[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations." 148 Cong. Rec. S7419 (July 26, 2002).

²⁴ The Oversight Board is required under section 103(a)(2)(A)(i) of the Sarbanes-Oxley Act to adopt an auditing standard that requires accounting firms registered with the Oversight Board to " * * * prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report." The standard to be adopted by the Oversight Board, therefore, is to be both a documentation and retention standard.

²⁵ See, e.g., letter from KPMG LLP, dated December 27, 2002, which states, in part: "Clearly, the documents to be retained under both Sections [103 and 802] overlap to a large extent."

²⁶ See, e.g., letter from Wendy Perez, President of California Board of Accountancy dated December 23, 2002; letter from Grant Thornton LLP dated

December 27, 2002; letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002.

²⁷ See, e.g., letter from Donald G. DeBuck, Controller, Computer Sciences Corporation dated December 26, 2002; letter from PricewaterhouseCoopers dated December 27, 2002; letter from the American Institute of Certified Public Accountants dated December 27, 2002.

²⁸ See e.g., letter from Grant Thornton LLP dated December 27, 2002, which states, "We believe that most firms will adopt a policy of retaining all audit documentation for the longer period of seven years."

²⁹ *Id.*

³⁰ Senator Leahy stated on the Senate floor that section 802 "requires the SEC to promulgate reasonable and necessary regulations * * * regarding the retention of categories of electronic and non-electronic audit records, which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers." 148 Cong. Rec. S7418 (July 26, 2002).

³¹ Statement by Senator Leahy on the Senate floor, 148 Cong. Rec. S7418 (July 26, 2002).

³² American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation," at footnote 1, however, acknowledges that: "Audit Documentation also may be referred to as *working papers*"; Codification of Statements on Auditing Standards ("AU") § 339.

³³ SAS 96, at ¶ 1; AU § 339.01. This paragraph also states: "The quality, type, and content of audit documentation are matters of the auditor's professional judgment." The rule does not include this sentence, but instead notes that the Commission or the Oversight Board may reexamine these requirements in the auditing standards.

³⁴ Prior to the establishment or adoption of auditing standards by the Oversight Board, "workpapers" would continue to mean the documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement as required by GAAS.

³⁵ See section 103(a) of the Sarbanes-Oxley Act.

³⁶ See, e.g., letter from PricewaterhouseCoopers dated December 27, 2002.

³⁷ SAS 96, at ¶ 3; AU § 339.03.