

**BYLAWS and RULES**

**OF THE**

**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

**Revised as of December 31, 2016**

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**BYLAWS**

**ARTICLE I  
NAME**

1. The name of the body corporate shall be the Public Company Accounting Oversight Board (the "Corporation").

**ARTICLE II  
OBJECT**

2.1. Organization. The Corporation is organized pursuant to, and shall be operated for such purposes as are set forth in, Title I of the Sarbanes-Oxley Act of 2002 (the "Act").

2.2. Exempt Organization Purposes. The Corporation is organized exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

2.3. Exempt Organization Uses of Earnings and Activities. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, members or trustees of the Corporation, if any, or to officers of the Corporation, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the Corporation shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any

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future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

**ARTICLE III  
OFFICES**

3.1. Principal Office. The principal office of the Corporation shall be in the City of Washington, District of Columbia.

3.2. Other Offices. The Governing Board of the Corporation (the "Governing Board") may designate other office locations, within or without the District of Columbia, as the Governing Board may determine are necessary or appropriate to meet the Governing Board's objectives.

3.3. Agent and Office for Service of Process. The Secretary (or Acting Secretary, as applicable) of the Corporation shall serve as the agent of the Corporation upon whom any process, notice or demand required or permitted by law to be served upon the Corporation may be served. The office of the Corporation for purposes of such service of process, notice or demand shall initially be the office located at 1666 K Street, NW, Washington, DC 20006.

**ARTICLE IV  
GOVERNING BOARD**

4.1. Composition. The Governing Board shall consist of those persons appointed thereto by the Securities and Exchange Commission, pursuant to Section 101 of the Act.

4.2. Powers and Duties. The Governing Board shall have such powers and duties as are provided in Title I of the Act.

4.3. Quorum. A majority of the members of the Governing Board shall constitute a quorum.

4.4. Board Action. Any act (i) authorized by majority vote of the members of the Governing Board present at a meeting of the Governing Board at which a quorum is present, or (ii) authorized by at least a majority of the Governing Board (other than at a



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meeting of the Governing Board) in accordance with any other procedure permitted by law, shall be an act by vote of the Governing Board. If a Governing Board member has recused himself or herself from a decision, and a quorum of otherwise qualified Governing Board members cannot reasonably be assembled in time to meet the exigencies of that particular situation, the recused Governing Board member may be counted for quorum purposes only. As used in this section, "the exigencies of that particular situation" shall be defined to require circumstances in which the Governing Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise prevents the deferral of action until a quorum of non-recused Governing Board members is available.

4.5. Compensation and Expenses. The Governing Board shall set the compensation for its members. The Corporation shall pay or reimburse members of the Governing Board for reasonable expenses incurred in the discharge of their duties.

**ARTICLE V  
GOVERNING BOARD MEETINGS**

5.1. Governing Board Meetings. The Governing Board shall hold at least one (1) public meeting each calendar quarter, and such other meetings, which may be either public or non-public (in accordance with the Open Meeting Policy of the Governing Board), as the Chair (as defined below) deems necessary or appropriate to further the purposes of the Act. The Governing Board shall ensure that, absent exigent circumstances as determined by the Governing Board, the public is informed, at least five (5) calendar days in advance, of the time, location, and general topics scheduled for discussion of each public meeting, and, in the event of such exigent circumstances, shall ensure that notice of a public meeting is provided as soon as practicable.

5.2. Telephonic Participation. Provided that all Governing Board members are able to hear each other (and, in the case of public meetings, the public located at the location specified in the meeting notice is able to hear all of the participating members of the Governing Board), the Governing Board may meet via telephone or teleconference, and any member thereof may participate in a meeting by telephone, provided that, in the

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case of a meeting that is open to the public, at least one Governing Board member shall be present at the location specified in the meeting notice.

**ARTICLE VI  
OFFICERS**

6.1. General. The Chairman of the Governing Board (the "Chair") shall also be the President and Chief Executive Officer of the Corporation. All other Governing Board members shall also be Vice Presidents of the Corporation. Governing Board members shall serve as officers of the Corporation without additional compensation.

6.2. Other Officers. The other officers of the Corporation shall include a Secretary, Treasurer, General Counsel, Chief Auditor, Chief Administrative Officer, Director of Registration and Inspections, Director of Enforcement and Investigations, and such other officers as the Governing Board may establish in accordance with such rules of the Governing Board as may be adopted for establishing officers.

6.3. Powers of the Chief Executive Officer.

(a) The Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including responsibility and authority for the appointment, dismissal, and supervision of personnel (other than Governing Board members and personnel employed regularly and full-time within the immediate offices of the Governing Board members), the distribution of business among such personnel and among organizational units of the Corporation, the use and expenditure of funds (including the procurement of goods and services), and the development (for Governing Board review) of strategic policy initiatives.

(b) (1) In carrying out any of the responsibilities under the provisions of this section 6.3, the Chief Executive Officer shall be governed by the general policies of the Governing Board and by such rules and decisions as the Governing Board may lawfully make.

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- (2) The appointment by the Chief Executive Officer of the officers of the Corporation designated in and established under section 6.2 shall be subject to the approval of, and made in consultation with, the Governing Board, and the dismissal of the officers of the Corporation designated in and established under section 6.2 shall be made in consultation with the Governing Board, except that when the Governing Board determines that the dismissal arises out of a conflict regarding the general policies of the Governing Board, it is also subject to the approval of the Governing Board.
  - (3) Each Governing Board member has responsibility and authority for the appointment, dismissal, and supervision of personnel employed regularly and full-time within the immediate office of the Governing Board member, subject to the Governing Board's overall personnel policies.
  - (4) The Chief Executive Officer has the responsibility and authority to develop, and present to the Governing Board for approval, an annual budget as well as mid-year adjustments, if any. There is reserved to the Governing Board its responsibility and authority with respect to determining the distribution of funds according to major programs and purposes, including those related to salary schedules and other conditions of employment.
- (c) Notwithstanding any other provision of these bylaws, however, the Director of the Office of Internal Oversight and Performance Assurance shall report directly to the Governing Board and the Governing Board shall have exclusive authority to hire, fire, and establish the compensation and other terms of employment of the Director.

**ARTICLE VII  
LIABILITY AND INDEMNIFICATION**

7.1. No Personal Liability. No contract entered into by or on behalf of the Corporation shall personally obligate any employee, officer, or Governing Board member of the Corporation, including the employee, officer or Governing Board member authorizing such contract or executing same.

7.2. Indemnification.

- (a) Unless and to the extent otherwise prohibited by law and as otherwise provided in this section 7.2, the Corporation shall indemnify any employee, officer, or Governing Board member, or any former employee, officer, or Governing Board member (each, a "Potential Indemnitee"), against any and all liabilities (including without limitation judgments, fines, and penalties against such Potential Indemnitee) and reasonable expenses (including without limitation reasonable counsel fees and other reasonable related fees) actually and necessarily incurred by or imposed on him or her, in connection with such Potential Indemnitee's defense against any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals) (each, a "Proceeding") to which he or she may be or is made a party by reason of being or having been such a Potential Indemnitee (such liabilities and expenses, collectively, "Indemnifiable Amounts"). Notwithstanding the foregoing, Indemnifiable Amounts shall include amounts paid in settlement by a Potential Indemnitee only if such amounts are approved by the Governing Board.
- (b) There shall be no indemnification in relation to matters as to which the Governing Board finds that the Potential Indemnitee acted or omitted to act, in either case in bad faith, or engaged in willful misconduct in the performance of a duty to the Corporation. Prior to making any such finding, the Governing Board shall provide the Potential Indemnitee with at least ten (10) business days written notice of its intent to consider the

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matter, within which time the Potential Indemnitee shall have the right to submit relevant written materials to the Governing Board for its consideration.

- (c) In lieu of providing the advancements or indemnification provided for herein, the Corporation may, at its own expense not to be reimbursed by the Potential Indemnitee, undertake the defense of any such Potential Indemnitee, in which case the Governing Board in its discretion may determine whether the Corporation shall reimburse such Potential Indemnitee for any fees and expenses incurred as a result of his or her engagement of separate counsel, whether through advancements or indemnification. The provisions of this subsection 7.2(c) shall not apply to any Proceeding by or in the right of the Corporation.
- (d) Except as otherwise provided herein, within fifteen (15) business days after the Corporation's receipt of a request therefore, and of a written undertaking by the Potential Indemnitee to repay or to reimburse all such amounts if it is determined that such Potential Indemnitee is not entitled to indemnification under this Article, the Corporation shall advance Indemnifiable Amounts to a Potential Indemnitee.
- (e) The provisions of this Article shall be applicable to Proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after adoption hereof.
- (f) The indemnification and advancements provided by this Article shall not be deemed exclusive of any other rights to which any Potential Indemnitee may be entitled under any applicable law.
- (g) The indemnification and advancements provided by this Article shall not restrict the power of the Governing Board to provide any additional indemnification and advancements permitted by law.
- (h) As a condition precedent to a Potential Indemnitee's right to be indemnified or receive advancements hereunder, he or she shall (i) give to the Corporation notice in writing directed to the Secretary of the

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Corporation (or to such other individual as the Corporation may designate) as soon as practicable of any Proceeding made against such Potential Indemnitee for which indemnity will or could be sought, and (ii) other than in connection with a Proceeding by or in the right of the Corporation, provide the Corporation with such information and cooperation as it may reasonably request.

7.3. Insurance. The Governing Board may purchase insurance on behalf of any Potential Indemnitee against any liability which may be asserted against or incurred by him or her that arises out of such person's status as a Potential Indemnitee or out of acts taken in such capacity, whether or not the Corporation would have the power to indemnify such person against that liability under law. To the extent that any applicable insurance is available to respond to any Proceeding addressed in this Article, such insurance shall be exhausted before any payment is made pursuant to the advancement and indemnification provisions in this Article.

**ARTICLE VIII  
BYLAW AMENDMENTS AND RULES OF THE GOVERNING BOARD**

8.1. Amendments to Bylaws. Subject to the approval of the U.S. Securities and Exchange Commission as provided in the Act, the Governing Board may from time to time amend, repeal, or supplement these bylaws.

8.2. Rules. In addition to, and separate from, these bylaws, the Governing Board may adopt such rules of the Governing Board as it deems necessary or appropriate to discharge its responsibilities under the Act.

**ARTICLE IX  
MISCELLANEOUS PROVISIONS**

9.1. Fiscal Year. The Corporation's fiscal year shall be the calendar year.

9.2. Capital Expenditures. Except as expressly delegated by the Governing Board, no capital expenditure or investment shall be made without the approval of the Governing Board.

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9.3. Selection of Auditor. The Governing Board shall retain an accounting firm to annually audit the Corporation's financial records, which firm shall not perform any other services, except tax services, for the Corporation.

9.4. Headings. Section and other headings contained herein are for reference purposes only, and are not intended to describe, interpret, define, or limit the scope, extent, or intent of any of the provisions hereof.

9.5. Variation of Terms. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the respective person or persons may require.

9.6. Severability. If any part of these bylaws shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and effectiveness of the remaining parts shall not be affected.

[Effective pursuant to SEC Release No. 34-48212, File No. PCAOB-2003-01 (July 23, 2003); as amended by SEC Release No. 34-51155, File No. PCAOB-2004-02 (February 8, 2005)]

**ETHICS CODE**

**EC1. Application of Code**

The provisions of this Ethics Code apply, according to their terms, to –

- (a) present and former Board members and staff;
- (b) the spouse, spousal equivalent, and dependents of Board members and staff; and
- (c) designated contractors and consultants to the Board.

Note: Rule 3700(e) requires members of a Board advisory group to comply with certain provisions of the Ethics Code.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

**EC2. Definitions**

- (a) Reference to Rules of the Board

Unless the context requires otherwise, the definitions provided in Section 1001 of the Rules of the Board apply to the words and terms contained in this Ethics Code.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

- (b) Code

The term "Code" means this Ethics Code, as it may be amended from time to time.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

- (c) Dependent

The term "dependent" of a Board member or staff means a person who receives more than half of his or her support for the most recent calendar year from the Board member or staff.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]



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### (d) Designated Contractors and Consultants

The term "designated contractors and consultants" means certain persons or business organizations

- (1) with which the Board enters into contracts for services, including contracts that provide for both goods and services;
- (2) which the Board, or its designate, has determined should be subject to this Code, in whole or in part; and
- (3) for which the contract contains a provision expressly incorporating this Code, in whole or in part.

Note: The Board will maintain a list of designated contractors and consultants, which will be available to the public. Nothing in this provision will restrict the Board's right to impose additional contractual restrictions and limitations on any contractor or consultant. The Board is committed not to use its contracting authority to convert a person who would ordinarily be an employee to a contractor or consultant, as a means of allowing that person to be excluded from the provisions of this Code.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### (e) Honoraria

The term "honoraria" means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. Neither the waiver of conference fees nor acceptance of a modest speakers-only meal constitutes "honoraria." Items and meals which are provided to all conference participants are not considered to be "honoraria."

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### (f) Practice

The term "practice" means –

- (1) knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or

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- (2) making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission with respect to Board-related matters.

Note: For purposes of this definition, participating in the financial reporting process as the officer or director of an issuer, broker, or dealer or participating in an audit of the financial statements of an issuer, broker, or dealer does not, in and of itself, constitute practice before the Board or the Commission.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

- (g) Professional Staff or Professional Staff of the Board

The terms "professional staff" or "professional staff of the Board" mean those persons who are employed by the Board and who are exempt, pursuant to Section 13(a)(1) of the Fair Labor Standards Act (29 USC § 201 et seq.), from Sections 6 and 7 (minimum wage and overtime provisions) of that act.

Note: These terms may, according to the context, alternatively be used to refer to a single such employee, or to all such employees.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

- (h) Staff or Staff of the Board

The terms "staff" or "staff of the Board" mean those persons who are employed by the Board.

Note: These terms may, according to the context, alternatively be used to refer to a single such employee, or to all such employees.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### **EC3. General Principles**

(a) The purpose of this Code is to maintain the highest standards of ethical conduct among Board members and staff, and to provide the public with confidence in the objectivity of the Board's decisions by seeking to avoid both actual and perceived conflicts of interest among Board members and staff. The general principles within this section form the basis for the ethics rules and standards of conduct contained in the Code. When a situation is not covered by the Code's specific standards, Board members and staff shall apply the principles set forth in this section in determining whether their conduct is proper.

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- (1) Board members and staff should at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public confidence in the objectivity and deliberative process of the Board.
- (2) Board members and staff should take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board.
- (3) Board members and staff should recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

(b) No Board member or staff shall act in a manner, regardless of whether specifically prohibited by this Code, which might reasonably result in or reasonably create the appearance that the employee is –

- (1) using his or her official position with the Board, or confidential information obtained through service for the Board, for the private gain of any person;
- (2) giving preferential treatment to any person with respect to the Board member or employee's work for the Board;
- (3) losing independence or objectivity with respect to his or her work for the Board;
- (4) adversely affecting the public confidence in, or the integrity, independence or objectivity of the Board; or
- (5) otherwise hindering the interests or reputation of the Board.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### **EC4. Financial and Employment Interests**

- (a) While employed by the Board, no Board member or professional staff shall –
  - (1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner, client, or publisher except –
    - (A) routine banking and other routine commercial relationships;

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- (B) securities and other investments permitted by this Code;
  - (C) benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;
  - (D) profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client;
  - (E) royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board; or
  - (F) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board; or
- (2) owe, directly or indirectly, any financial or other obligation to any former employer, business partner or client, except –
- (A) routine banking and other routine commercial relationships;
  - (B) covenants not to compete;
  - (C) non-disclosure agreements; or
  - (D) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board.

(b) Notwithstanding any other provision of this Code, no member of the Board or his or her spouse, spousal equivalent, or dependents may share in any of the profits of, or receive payments from, a public accounting firm, other than fixed continuing payments under standard arrangements for retirement from public accounting firms.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

**EC5. Investments**

(a) Except as provided in this Section, nothing in this Code prohibits Board members and staff, or their spouses, spousal equivalents, or dependents, from owning and holding securities (including futures), real estate, commodities (including futures), exchange-traded options and other investments held for personal investment purposes, except that no Board member or staff may have any financial interest in a public accounting firm.

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(b) Board members and staff should at all times be mindful of their responsibilities to the Board and shall avoid personal financial activities which might affect or reasonably create the appearance of affecting their independence or objectivity.

(c) Board members and staff should at all times be mindful that, in the course and scope of their employment activities, they may obtain knowledge of confidential, non-public information which, if disclosed, might affect the value of particular securities or investments. Accordingly, Board members and staff may not –

- (1) disseminate or otherwise disclose any confidential, non-public information obtained by virtue of their position with the Board, regardless of whether that information may be considered to be "material" under the securities laws; or
- (2) use such information for the financial gain of themselves or others.

Note: Concurrent restrictions on disclosure of non-public information are provided in EC9.

(d) Board members and professional staff shall disclose their holdings, and the holdings of their spouses, spousal equivalents, and dependents, in securities of issuers (including exchange-traded options and futures) to the Ethics Officer.

- (1) Within the first 60 days of commencement of service with the Board; and
- (2) On an annual basis, on May 1 or another date that may be prescribed by the Ethics Officer.
- (3) Disclosure statements by Board Members shall be made available to the public.
- (4) Disclosure statements by professional staff shall remain confidential.

Note: The form and content of this disclosure statement shall be included in the Board's ethics manual.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **EC6. Outside Activities**

(a) No member of the Board may undertake any employment or other activity for compensation outside of service to the Board.

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(b) Staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority.

(c) No Board member or staff of the Board shall engage in any outside activity, whether or not for compensation, which –

- (1) affects or reasonably creates the appearance of affecting his or her independence or objectivity;
- (2) interferes with his or her responsibilities to the Board; or
- (3) otherwise hinders the interests or reputation of the Board.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### **EC7. Gifts, Reimbursements, Honoraria and Other Things of Value**

(a) No Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, which might reasonably be viewed as –

- (1) interfering with his or her independence, objectivity or responsibilities to the Board; or
- (2) otherwise hindering the interests or reputation of the Board.

Note: Although this provision does not extend to non-professional staff, such staff should remain cognizant of corresponding duties imposed by EC3 and EC5.

(b) No Board member or staff shall accept payment for or reimbursement of official travel-related expenses from any organization, except –

- (1) for travel that is in direct connection with the employee's participation in an educational forum; and
- (2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by –
  - (A) a federal, state or local governmental body, or an association of such bodies,
  - (B) an accredited institution of higher learning,

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- (C) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms, issuers, brokers, or dealers, or
- (D) institutions equivalent to those in EC 7(b)(2)(A) – (C) outside the United States.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **EC8. Disqualification**

(a) If a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she, or his or her spouse, spousal equivalent, or dependents, may have a financial or personal interest which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to the Board's function or activities, then he or she shall, at the earliest possible date –

- (1) disclose such circumstances and facts, as set forth in subsection (b); and
- (2) recuse himself or herself from further Board functions or activities involving or affecting the financial or personal interest.

Note 1: For the purposes of applying this provision to members of an advisory group convened by the Board, those members shall not be considered to lack independence or objectivity with regard to advisory group matters merely because they (or their employer, business partners or clients) are subject to the direct or indirect oversight of the Board.

Note 2: Although this provision does not extend to non-professional staff, such staff facing circumstances that may affect their ability to perform their functions should seek advice from the Board's Ethics Officer.

(b) For a member of the Board, disclosure shall be made to all other members of the Board. For professional staff of the Board, disclosure shall be made to the Board Chair, or his or her designee.

(c) For a period of 12 months commencing on date of appointment or employment, no Board member or professional staff may participate in the making of a decision which is reasonably likely to have a material effect, direct or indirect, on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within five years from the date of appointment or employment with the Board. For purposes of this section, participating in the making of

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a decision which affects a former employer, business partner or client to the same degree as similarly situated people or business organizations, does not constitute an "indirect" effect.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **EC9. Non-Public Information**

(a) Unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly.

(b) The provisions of this Section shall continue in effect after the termination of employment or Board membership.

Note: Concurrent restrictions on disclosure of non-public information are provided in EC5(c).

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### **EC10. Speaking for the Board**

Unless authorized to speak on behalf of the Board, Board members and professional staff shall include a disclaimer for any private publication or public statement by indicating that the views expressed are those of the author or speaker and do not necessarily reflect the view of the Board or other Board members or staff.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

### **EC11. Ethics Officer**

The Board shall designate an Ethics Officer who shall be empowered to –

(a) counsel Board members and staff regarding compliance with or potential violation of this Code;

(b) issue advisory opinions, as deemed necessary, to Board members and staff regarding potential violations of this Code; and

(c) make recommendations to the Board regarding waiver requests and potential violations of, or amendments to, this Code.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]



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**EC12. Post-Employment Restrictions**

- (a) Negotiating Prospective Employment
- (1) Board members and professional staff may not negotiate prospective employment with a public accounting firm, issuer, broker, or dealer, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.
  - (2) For purposes of this section, "negotiating prospective employment" means participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute "negotiating prospective employment."
- (b) Prohibition on Practice Before the Board or Commission
- (1) Board members and professional staff shall be restricted from practice before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.
  - (2) Former Board members and professional staff shall not practice before the Board, or the Commission with respect to Board-related matters, on a particular matter in which the Board member or professional staff participated personally and substantially as a Board or staff member and which involved a specific party or specific parties at the time of such participation.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**EC13. Waiver**

Unless otherwise prohibited by law, the Board (or person to whom the Board may delegate this responsibility as to staff) may grant a request for waiver of any provision of this Code. Such waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer. The Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Waivers will be made available to the public, subject to the withholding of information that would constitute a clearly unwarranted invasion of personal privacy.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

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**EC14. Certification**

Board members, staff and designated contractors and consultants agree to comply with this Code at the commencement of their service or contract with the Board and shall, throughout the term of their appointment, employment or contract, certify annually in writing their continuing compliance with it.

[Effective pursuant to SEC Release No. 34-48755, File No. PCAOB-2003-04 (November 7, 2003)]

**RULES**

**SECTION 1. GENERAL PROVISIONS**

**Rule 1000. [Reserved]**

[Reserved]

**Rule 1001. Definitions of Terms Employed in Rules.**

When used in the Rules, unless the context otherwise requires:

**(a)(i) [Reserved]**

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

**(a)(ii) Accountant**

The term "accountant" means a natural person –

- (1) who is a certified public accountant, or
- (2) who holds –
  - (i) a college, university, or higher professional degree in accounting, or
  - (ii) a license or certification authorizing him or her to engage in the business of auditing or accounting, or
- (3) who –
  - (i) holds a college, university, or higher professional degree in a field, other than accounting, and
  - (ii) participates in audits;

provided, however, that the term "accountant" does not include a person engaged only in clerical or ministerial tasks.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

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### **(a)(iii) Act**

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(a)(iv) Associated Entity**

The term "associated entity" means, with respect to a public accounting firm –

- (1) any entity that directly, indirectly, or through one or more intermediaries, controls, or is controlled by, or is under common control with, such public accounting firm; or
- (2) any "associated entity," as used in Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-01(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(a)(v) Audit**

The term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); SEC Release No. 34-65163, File No. PCAOB-2011-01 (August 18, 2011); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(a)(vi) Audit Report**

The term "audit report" means a document, report, notice, or other record –

- (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and
- (2) in which a public accounting firm either –
  - (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

## Public Company Accounting Oversight Board Bylaws and Rules – Rules – General Provisions

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- (ii) asserts that no such opinion can be expressed.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); SEC Release No. 34-65163, File No. PCAOB-2011-01 (August 18, 2011); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(a)(vii) Audit Services**

(1) With respect to issuers, the term "audit services" means professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years;

(2) With respect to brokers and dealers, the term "audit services" means professional services rendered for the audit of a broker's or dealer's annual financial statements, supporting schedules, supplemental reports, and for the report on either a broker's or dealer's compliance report or exemption report, as described in Rule 17a-5(g) under the Exchange Act.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(a)(viii) Auditing and Related Professional Practice Standards.**

The term "auditing and related professional practice standards" means the auditing standards, related attestation standards, quality control standards, ethical standards, and independence standards (including any rules implementing Title II of the Act), and any other professional standards, that are established or adopted by the Board under Section 103 of the Act.

[Effective pursuant to SEC Release No. 34-48730, File No. PCAOB-2003-05 (October 31, 2003)]

### **(a)(ix) Accounting Board Demand**

The term "accounting board demand" means a command to produce documents and/or to appear at a certain time and place to give testimony.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(a)(x) Accounting Board Request**

The term "accounting board request" means a request to produce documents and/or to appear at a certain time and place to give testimony.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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### **(a)(xi) Appropriate State Regulatory Authority**

The term "appropriate state regulatory authority" means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **(a)(xii) Auditor**

The term "auditor" means both public accounting firms registered with the Public Company Accounting Oversight Board and associated persons thereof.

[Effective pursuant to SEC Release No. 34-50331, File No. PCAOB-2004-06 (September 8, 2004)]

### **(b)(i) Board**

The term "Board" means the Public Company Accounting Oversight Board.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(b)(ii) Bar**

The term "bar" means a permanent disciplinary sanction prohibiting a person from being associated with a registered public accounting firm.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(b)(iii) Broker**

The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(b)(iv) Broker-Dealer Accounting Support Fee**

The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

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### **(c)(i) Commission**

The term "Commission" means the Securities and Exchange Commission.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(c)(ii) Counsel**

The term "counsel" means an attorney at law admitted to practice, and in good standing, before the Supreme Court of the United States or the highest court of any state.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(c)(iii) Common Equity**

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(d)(i) Disciplinary Proceeding**

The term "disciplinary proceeding" means a proceeding initiated by an order instituting proceedings, held for the purpose of determining whether or not a registered public accounting firm, or any person associated with a registered public accounting firm, has engaged in any act or practice, or omitted to act, in violation of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards; or has failed reasonably to supervise an associated person in connection with any such violation by that person; or has failed to cooperate with the Board in connection with an investigation; and whether to impose a sanction pursuant to Rule 5300.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(d)(ii) Document**

The term "document" is synonymous in meaning and equal in scope to its usage in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. In no event shall the term "document" be construed to be limited to audit work papers.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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### **(d)(iii) Dealer**

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(e)(i) Exchange Act**

The term "Exchange Act" means the Securities Exchange Act of 1934, as amended.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(f)(i) Foreign Public Accounting Firm**

The term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(f)(ii) Foreign Registered Public Accounting Firm**

The term "foreign registered public accounting firm" means a foreign public accounting firm that is a registered public accounting firm.

### **(f)(iii) Foreign Auditor Oversight Authority**

The term "foreign auditor oversight authority" means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(h)(i) Hearing Officer**

The term "hearing officer" means a person, other than a Board member or staff of the interested division, duly authorized by the Board to preside at a hearing.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]



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### **(i)(i) Issuer Market Capitalization**

The terms "issuer market capitalization" and "market capitalization of an issuer" mean –

(1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer's voting and non-voting common equity that trade in the United States; or

(2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company Act, and (ii) whose securities are not traded on a national securities exchange or whose share price is not otherwise publicly available, the issuer's net asset value.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(i)(ii) Investment Company Act**

The term "Investment Company Act" means the Investment Company Act of 1940, as amended.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003)]

### **(i)(iii) Issuer**

The term "issuer" means an issuer (as defined in Section 3 of the Exchange Act), the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(i)(iv) Interested Division**

The term "interested division" means a division or office of the Board assigned primary responsibility by the Board to participate in a particular proceeding.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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### **(i)(v) Issuer Accounting Support Fee**

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(i)(vi) Invoice**

The term "invoice" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 7103, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, 7102, and 7103.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(n)(i) [Reserved]**

[Effective pursuant to SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(n)(ii) Non-Audit Services**

The term "non-audit services" means all services other than audit services, other accounting services, and tax services.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **(n)(iii) Non-U.S. Inspection**

The term "non-U.S. inspection" means an inspection of a foreign registered public accounting firm conducted within a non-U.S. oversight system.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]

### **(o)(i) Other Accounting Services**

The term "other accounting services" means assurance and related services that are reasonably related to the performance of the audit or review of the client's financial statements, other than audit services.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

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### **(o)(ii) Order Instituting Proceedings**

The term "order instituting proceedings" means an order issued by the Board commencing a disciplinary proceeding.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(p)(i) Person Associated With a Public Accounting Firm (and Related Terms)**

The terms "person associated with a public accounting firm" (or with a "registered public accounting firm" or "applicant") and "associated person of a public accounting firm" (or of a "registered public accounting firm" or "applicant") mean any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor or entity that, in connection with the preparation or issuance of any audit report –

- (1) shares in the profits of, or receives compensation in any other form from, that firm; or
- (2) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks, or, for purposes of completing a registration application on Form 1, Part IX of an annual report on Form 2, or Part IV of a Form 4 filed to succeed to the registration status of a predecessor, these terms do not include a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

Note: Section 2(a)(9)(C) of the Act provides that, for purposes of, among other things, Section 105 of the Act, and the Board's rules thereunder, the terms defined in Rule 1001(p)(i) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that:

- (1) the authority to conduct an investigation of such person under Section 105(b) of the Act shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and
- (2) the authority to commence a disciplinary proceeding under Section 105(c)(1) of the Act, or impose sanctions against such person under Section 105(c)(4) of the Act, shall apply only with respect to:

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- (i) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or
- (ii) non-cooperation, as described in Section 105(b)(3) of the Act, with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(p)(ii) Play a Substantial Role in the Preparation or Furnishing of an Audit Report**

The phrase "play a substantial role in the preparation or furnishing of an audit report" means –

- (1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report, or
- (2) to perform the majority of the audit procedures with respect to a subsidiary or component of any issuer, broker, or dealer, the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer, broker, or dealer necessary for the principal auditor to issue an audit report.

Note 1: For purposes of paragraph (1) of this definition, the term "material services" means services, for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the principal auditor in connection with the issuance of all or part of its audit report. The term does not include non-audit services provided to non-audit clients.

Note 2: For purposes of paragraph (2) of this definition, the phrase "subsidiary or component" is meant to include any subsidiary, division, branch, office or other component of an issuer, broker, or dealer, regardless of its form of organization and/or control relationship with the issuer, broker, or dealer.

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Note 3: For purposes of determining "20% or more of the consolidated assets or revenues" under paragraph (2) of this Rule, this determination should be made at the beginning of the issuer's, broker's, or dealer's fiscal year using prior year information and should be made only once during the issuer's, broker's, or dealer's fiscal year.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(p)(iii) Public Accounting Firm**

The term "public accounting firm" means a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(p)(iv) Person**

The term "person" means any natural person or any business, legal or governmental entity or association.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(p)(v) Party**

The term "party" means the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(p)(vi) Professional Standards**

The term "professional standards" means –

(A) accounting principles that are –

(i) established by the standard setting body described in section 19(b) of the Securities Act, or prescribed by the Commission under section 19(a) of the Securities Act or section 13(b) of the Exchange Act; and

(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

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(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing Title II of the Act) that the Board or the Commission determines –

(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

(ii) are established or adopted by the Board under section 103(a) of the Act, or are promulgated as rules of the Commission.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004); SEC Release No. 34-65163, File No. PCAOB-2011-01 (August 18, 2011); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(r)(i) Registered Public Accounting Firm**

The term "registered public accounting firm" means a public accounting firm registered with the Board.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(r)(ii) Rules or Rules of the Board**

The terms "Rules" or "Rules of the Board" mean the bylaws and rules of the Board (as submitted to and approved, modified, or amended by the Commission in accordance with Section 107 of the Act) and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(r)(iii) Revocation**

The term "revocation" means a permanent disciplinary sanction terminating a firm's registration.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **(s)(i) Securities Act**

The term "Securities Act" means the Securities Act of 1933, as amended.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003)]

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### **(s)(ii) Securities Laws**

The term "securities laws" means the provisions of the law referred to in Section 3(a)(47) of the Exchange Act, as amended by the Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(s)(iii) State**

The term "State" means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(s)(iv) Suspension**

The term "suspension" means a temporary disciplinary sanction, which lapses by its own terms, prohibiting –

- (1) a registered public accounting firm from preparing or issuing, or participating in the preparation or issuance of, any audit report; or
- (2) a person from being associated with a registered public accounting firm.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **(s)(v) Self-Regulatory Organization**

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(s)(vi) Secretary**

The term "Secretary" means the Secretary of the Board.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

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### **(t)(i) Tax Services**

The term "tax services" means professional services rendered for tax compliance, tax advice, and tax planning.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **(t)(ii) Tentative Net Capital**

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **(t)(iii) Total Accounting Support Fee**

The term "total accounting support fee" means the fee described in Rule 7100.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

## **Rule 1002. Time Computation**

In computing any period of time prescribed in or allowed by these Rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday. Intermediate Saturdays, Sundays, and federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed by rule or order for service by mail. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a federal legal holiday.

Note: The Secretary will maintain a list of federal legal holidays.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]



**SECTION 2. REGISTRATION AND REPORTING**

**Part 1 – Registration of Public Accounting Firms**

**Rule 2100. Registration Requirements for Public Accounting Firms.**

Each public accounting firm that –

(a) prepares or issues any audit report with respect to any issuer, broker, or dealer; or

(b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker, or dealer must be registered with the Board.

Note 1: As set forth in Section 106(a)(1) of the Act, registration with the Board pursuant to this Rule will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or State courts, other than with respect to controversies between such firms and the Board.

Note 2: The issuance of a consent to include an audit report for a prior period by a public accounting firm, which does not currently have and does not expect to have an engagement with an issuer, broker, or dealer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker, or dealer will not by itself require a public accounting firm to register under Rule 2100.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); SEC Release 34-49473, File No. PCAOB 2004-01 (March 25, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 2101. Application for Registration.**

Any public accounting firm applying to the Board for registration pursuant to Rule 2100 must complete and file an application for registration on Form 1 by following the instructions to that form. Unless directed otherwise by the Board, the applicant must file such application and exhibits thereto electronically with the Board through the Board's web-based registration system. An applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

**Rule 2102. Date of Receipt.**

Unless the Board directs otherwise, the date of receipt of an application for registration will be the later of (a) the date on which the registration fee has been paid,

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or (b) the date on which the application is submitted to the Board through its web-based registration system.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **Rule 2103. Registration Fee.**

Each applicant for registration must pay a registration fee. The Board will, from time to time, announce the current registration fee. No portion of the registration fee is refundable, regardless of whether the application for registration is approved, disapproved, or withdrawn.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **Rule 2104. Signatures.**

Each signatory to an application for registration (including, without limitation, each signatory to the consents required by such application) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of seven years. Upon request, an electronic filer shall furnish to the Board or its staff a copy of all documents retained pursuant to this Rule.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

### **Rule 2105. Conflicting Non-U.S. Laws.**

(a) An applicant may withhold information from its application for registration when submission of such information would cause the applicant to violate a non-U.S. law if that information were submitted to the Board.

(b) An applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must –

- (1) identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted; and
- (2) include as an exhibit to Form 1 –
  - (i) a copy of the relevant portion of the conflicting non-U.S. law;
  - (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and

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- (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003)]

**Rule 2106. Action on Applications for Registration.**

**(a) Standard for Approval.**

After reviewing the application for registration, any additional information provided by the applicant, and any other information obtained by the Board, the Board will determine whether approval of the application for registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports.

**(b) Action on Application.**

Unless the applicant consents otherwise, the Board will take action on an application for registration not later than 45 days after the date of receipt of the application by the Board.

- (1) If the Board makes the determination in paragraph (a) of this Rule, the Board will approve the application.
- (2) If the Board is unable to determine that the standard for approval in paragraph (a) of this Rule is met, or if the Board determines that the application may be materially inaccurate or incomplete, the Board will:
  - (i) request more information from the applicant; or
  - (ii) provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Such notice may, at the applicant's election, be treated as a written notice of disapproval for purposes of Section 102(c) of the Act.

**(c) Requests for More Information.**

If the Board requests more information from an applicant, and such applicant submits the requested information to the Board, the Board will treat the application, as supplemented by the requested information, as if it were a new application for purposes of paragraph (b) of this Rule. The Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application by the Board. If such firm declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete for purposes of paragraph (b)(2) of this Rule, may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 2107. Withdrawal from Registration**

**(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

- (1) the Board grants leave to withdraw, or
- (2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

**(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

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**(c) Effect of Filing**

Beginning on the date of Board receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending –

(1) the firm shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period;

(2) the firm's obligation to file annual reports on Form 2, and special reports on Form 3 shall be suspended;

(3) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(4) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

**(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers, brokers, or dealers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

**(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is

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pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or person, the requested withdrawal from registration shall not take effect before the completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee, annual report, and special report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal Voided for Material Inaccuracies or Omissions**

If the Board determines, within three years after the date a firm's registration is deemed withdrawn, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.

[Effective pursuant to SEC Release No. 34-49694, File No. PCAOB-2003-09 (May 13, 2004); SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 2108. Succeeding to the Registration Status of a Predecessor**

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in paragraph (b) of this Rule, the entity in its new form shall succeed to the registration status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to any subpart of Item 3.2.e of that Form 4 is other than "no," that entity

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shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualifications in subparagraphs (ii), (iii), and (iv), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination as reported on Form 4;

(ii) subject to the qualifications in subparagraphs (iii) and (iv), if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule;

(iii) if the Board requests additional information from the entity pursuant to Rule 2106(c) with less than 60 days remaining in the original transitional period, the entity's temporary succession to registration status shall continue to the date that is 60 days after the date of the Board's request; and

(iv) if, after the original transition period has been extended pursuant to subparagraph (iii), the Board makes any further requests for additional information from the entity pursuant to Rule 2106(c), the Board may in its discretion extend the temporary succession to registration status for such finite period as the Board shall specify.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the

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request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.

[Effective pursuant to SEC Release No. 34-60496, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2109. Procedure for Succeeding to the Registration Status of a Predecessor**

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm pursuant to the provisions of Rule 2108 must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after December 31, 2009; or

(2) no later than January 14, 2010, if the change or business combination took effect before December 31, 2009.

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board's Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification required in Part V of Form 4, *provided, however*, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form 3.

[Effective pursuant to SEC Release No. 34-60496, File No. PCAOB-2008-04 (August 13, 2009)]



## **Part 2 – Reporting**

### **Rule 2200. Annual Report**

Each registered public accounting firm must file with the Board an annual report on Form 2 by following the instructions to that form. Unless directed otherwise by the Board, the registered public accounting firm must file such annual report and exhibits thereto electronically with the Board through the Board's Web-based system.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2201. Time for Filing of Annual Report**

Each registered public accounting firm must file the annual report on Form 2 no later than June 30 of each year, provided, however, that a registered public accounting firm that has its application for registration approved by the Board in the period between and including April 1 and June 30 of any year shall not be required to file an annual report in that year.

Note: Pursuant to Rule 1002, in any year in which the filing deadline falls on a Saturday, Sunday, or federal legal holiday, the deadline for filing the annual report shall be the next day that is not a Saturday, Sunday, or federal legal holiday.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2202. Annual Fee**

Each registered public accounting firm must pay an annual fee to the Board on or before July 31 of any year in which the firm is required to file an annual report on Form 2. The Board will, from time to time, announce the current annual fee. No portion of the annual fee is refundable.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2203. Special Reports**

(a) A registered public accounting firm must file a special report on Form 3 to report information to the Board as follows –

(1) Upon the occurrence, on or after December 31, 2009, of any event specified in Form 3, a registered public accounting firm must report the event in a special report filed no later than thirty days after the occurrence of the event;

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(2) No later than thirty days after receiving notice of Board approval of its application for registration, a registered public accounting firm that becomes registered after December 31, 2009 must file a special report to report any event specified in Form 3 that occurred after the date used by the firm for purposes of General Instruction 9 to Form 1 and before the date that the Board approved the firm's registration; and

(3) No later than January 30, 2010, a registered public accounting firm that is registered as of December 31, 2009, must file a special report to report, to the extent applicable to the firm, certain information described in General Instruction 4 to Form 3 and current as of December 31, 2009.

(b) A registered public accounting firm required to file a special report shall do so by filing with the Board a special report on Form 3 in accordance with the instructions to that form. Unless directed otherwise by the Board, a registered public accounting firm must file such special report and exhibits thereto electronically with the Board through the Board's Web-based system.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2204. Signatures**

Each signatory to a report on Form 2 or Form 3 shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic submission. Such document shall be executed before or at the time the electronic submission is made and shall be retained by the filer for a period of seven years. Upon request, an electronic filer shall provide to the Board or its staff a copy of all documents retained pursuant to this Rule.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

### **Rule 2205. Amendments**

Amendments to a filed report on Form 2 or Form 3 shall be made by filing an amended report on Form 2 or Form 3 in accordance with the instructions to those forms concerning amendments. Amendments shall not be filed to update information in a report that was correct at the time the report was filed, but only to correct information that was incorrect at the time the report was filed or to provide information that was omitted from the report and was required to be provided at the time the report was filed.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

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**Rule 2206. Date of Filing**

(a) An annual report shall be deemed to be filed on the date on which the registered public accounting firm submits a Form 2 in accordance with Rule 2200 that includes the signed certification required in Part X of Form 2.

(b) A special report on Form 3 shall be deemed to be filed on the date that the registered public accounting firm submits a Form 3 in accordance with Rule 2203 that includes the signed certification required in Part VIII of Form 3.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

**Rule 2207. Assertions of Conflicts with Non-U.S. Laws**

If, in a report on Form 2 or Form 3, a foreign registered public accounting firm omits any information or affirmation required by the instructions to the relevant form on the ground that it cannot provide such information or affirmation on the form filed with the Board without violating non-U.S. law, the foreign registered public accounting firm shall –

(a) In accordance with the instructions to the form –

(1) Indicate that it has omitted required information or affirmations on the ground that it cannot provide such information or affirmations on the form filed with the Board without violating non-U.S. law;

(2) Identify all Items on the form with respect to which it has withheld any required information or affirmation on that ground; and

(3) Represent that, with respect to all such omitted information or affirmations, the foreign registered public accounting firm has satisfied the requirements of paragraph (b) of this Rule and has in its possession the materials required by paragraph (c) of this Rule;

(b) Before filing the form with the Board, make reasonable, good faith efforts, where not prohibited by law, to seek any consents or waivers that would be sufficient to allow it to provide the required information or affirmation on the form filed with the Board without violating non-U.S. law;

(c) Have in its possession, before the date on which the foreign registered public accounting firm files the form with the Board and for a period of seven years thereafter –

(1) An electronic version of the form that includes all information required by the instructions to the form (including certification and

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signature) and a manually signed signature page or other document that would satisfy the requirement of Rule 2204 if that version of the form were filed with the Board;

(2) A copy of the provisions of non-U.S. law that the foreign registered public accounting firm asserts prohibit it from providing the required information or affirmations on the form filed with the Board, and an English translation of any such provisions that are not in English;

(3) A legal opinion, in English, addressed to the foreign registered public accounting firm and that the foreign registered public accounting firm has reason to believe is current with respect to the relevant point of law, that the firm cannot provide the omitted information or affirmation on the form filed with the Board without violating non-U.S. law;

(4) A written representation, in English, that the Firm has made reasonable efforts, and a written description of those efforts, to obtain consents or waivers that would be sufficient to allow it to provide the required information or affirmation on the form filed with the Board, manually signed by the same person whose signature appears in the certification portion of the form, and indicating that the signer has reviewed the description and that the description is, based on the signer's knowledge, accurate and does not contain any untrue statements of material fact or omit to state a material fact necessary to make the statements made not misleading, and dated –

(i) for Form 2, after the end of the reporting period and no later than the date of the Form 2 filing; and

(ii) for Form 3, after the date of the reportable event and no later than the date of the Form 3 filing;

- (d) Not later than the fourteenth day after any request by the Board or by the Director of the Division of Registration and Inspections for any of the documents described in subparagraphs (2) – (4) of paragraph (c) of this Rule, file an amended report on Form 2 or Form 3 including, as an exhibit to the amended report, the requested documents; and
- (e) Not later than the fourteenth day after any request by the Board for any of the information included in the document described in subparagraph (1) of paragraph (c) of this Rule, file an amended report on Form 2 or Form 3 including the requested information.

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Note: Rule 2207(c)(1) does not require that the version of the form maintained by the firm include any affirmation required by Part IX of Form 2. If the firm withholds any such affirmation, however, the asserted legal conflict must be addressed in accordance with subparagraphs (2) – (4) of Rule 2207(c).

Note: Rule 2207(c)(1) does not require a firm to include on the form maintained by the firm any information (1) that the firm does not possess, and (2) as to which the firm asserts that the firm would violate non-U.S. law by requiring another person to provide the information to the firm. The asserted legal conflict that prevents the firm from requiring another person to provide the information to the firm, however, must be addressed in accordance with subparagraphs (2) - (4) of Rule 2207(c).

Note: The "reasonable efforts" element of Rule 2207(c)(4) does not require a firm to renew efforts to seek consents or waivers from parties who have previously declined to provide consents or waivers with respect to disclosure of similar types of information and does not require a firm to seek consents or waivers from parties other than firm personnel and firm clients.

[Effective pursuant to SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

**Part 3 – Public Availability Of Applications And Reports**

**Rule 2300. Public Availability of Information Submitted to the Board; Confidential Treatment Requests.**

**(a)** Except as provided in paragraph (b) below –

(1) an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application; and

(2) all other forms filed pursuant to Part 1 or Part 2 of this Section of the Rules of the Board, and any amendments thereto, will be publicly available as soon as practicable after filing, except to the extent otherwise specified in the Board's rules or the instructions to the form.

**(b) Confidential Treatment Requests.**

(1) A public accounting firm may request confidential treatment of any information submitted to the Board in connection with its application for registration on Form 1, and may request confidential treatment of information on other forms filed pursuant to Part 1 or Part 2 of this Section of the Rules of the Board to the extent

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specified in the instructions to the form, provided that the information as to which confidential treatment is requested –

- (i) has not otherwise been publicly disclosed, and
- (ii) either (A) contains information reasonably identified by the public accounting firm as proprietary information, or (B) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

(2) Failure to provide an exhibit that complies with the requirements of paragraph (c)(2) of this Rule constitutes sufficient grounds for denial of any request for confidential treatment.

**(c) Application Procedures.**

To request confidential treatment of information for which such requests are permitted by paragraph (b)(1) of this Rule, the requestor must –

- (1) identify, in accordance with the instructions to the form, the information that it desires to keep confidential; and
- (2) include as an exhibit to the form a representation that, to the requestor's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed and –
  - (i) a detailed explanation of the grounds on which the information is considered proprietary; or
  - (ii) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the requestor claims protects the information from public disclosure.

**(d)** Pending a determination by the Board as to whether to grant the request for confidential treatment, the information for which confidential treatment has been requested will not be made available to the public.

**(e)** If the Board determines to deny a confidential treatment request, the requestor will be notified in writing of the Board's decision, and of the date on which the information in question will be made public, a reasonable time in advance of such date.

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**(f)** Unless the requestor requests otherwise, the exhibit containing an explanation supporting a confidential treatment request will be afforded confidential treatment without the need for a request for confidential treatment.

**(g)** Information as to which the Board grants confidential treatment under this Rule will not be made available to the public by the Board. The granting of confidential treatment will not, however, limit the ability of the Board (1) to provide the information as to which confidential treatment was granted to the Commission, or (2) to comply with any subpoena validly issued by a court or other body of competent jurisdiction. In the event the Board receives such a subpoena, the Board will notify the public accounting firm of such subpoena, to the extent permitted by law, to allow the public accounting firm the opportunity to object to such subpoena.

**(h)** Pursuant to Section 101(g)(2) of the Act, the Board hereby delegates, until the Board orders otherwise, to the Director of Registration and Inspection the Board's functions under this Rule.

[Effective pursuant to SEC Release No. 34-48180, File No. PCAOB-2003-03 (July 16, 2003); and SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

**SECTION 3. AUDITING AND RELATED PROFESSIONAL PRACTICE STANDARDS**

**Part 1 – General Requirements**

**Rule 3100. Compliance with Auditing and Related Professional Practice Standards.**

A registered public accounting firm and its associated persons shall comply with all applicable auditing and related professional practice standards.

[Effective pursuant to SEC Release No. 34-48730, File No. PCAOB-2003-05 (October 31, 2003)]

**Rule 3101. Certain Terms Used in Auditing and Related Professional Practice Standards**

(a) The Board's auditing and related professional practice standards use certain terms set forth in this rule to describe the degree of responsibility that the standards impose on auditors.

(1) **Unconditional Responsibility:** The words "must," "shall," and "is required" indicate unconditional responsibilities. The auditor must fulfill responsibilities of this type in all cases in which the circumstances exist to which the requirement applies. Failure to discharge an unconditional responsibility is a violation of the relevant standard and Rule 3100.

(2) **Presumptively Mandatory Responsibility:** The word "should" indicates responsibilities that are presumptively mandatory. The auditor must comply with requirements of this type specified in the Board's standards unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard. Failure to discharge a presumptively mandatory responsibility is a violation of the relevant standard and Rule 3100 unless the auditor demonstrates that, in the circumstances, compliance with the specified responsibility was not necessary to achieve the objectives of the standard.

**Note:** In the rare circumstances in which the auditor believes the objectives of the standard can be met by alternative means, the auditor, as part of documenting the planning and performance of the work, must document the information that demonstrates that the objectives were achieved.

(3) **Responsibility To Consider:** The words "may," "might," "could," and other terms and phrases describe actions and procedures that auditors have a responsibility to consider. Matters described in this fashion require the auditor's attention and understanding. How and whether the auditor implements these matters in the audit will depend on the exercise of professional judgment in the circumstances consistent with the objectives of the standard.



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Note: If a Board standard provides that the auditor "should consider" an action or procedure, consideration of the action or procedure is presumptively mandatory, while the action or procedure is not.

(b) The terminology in paragraph (a) of this rule applies to the responsibilities imposed by the auditing and related professional practice standards, including the interim standards.

[Effective pursuant to SEC Release No. 34-50331, File No. PCAOB-2004-06 (September 8, 2004); SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014); and SEC Release No. 34-75935, File No. PCAOB-2015-01 (September 17, 2015)]

### **Rule 3200. Auditing Standards.**

In connection with the preparation or issuance of any audit report, a registered public accounting firm and its associated persons shall comply with all applicable auditing standards adopted by the Board and approved by the SEC, including, to the extent not superseded or amended by the Board, AICPA Statements on Auditing Standards as in existence on April 16, 2003.

[Effective pursuant to SEC Release Nos. 33-8233 & 34-47746 (April 25, 2003); SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004); SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014); and SEC Release No. 34-75935, File No. PCAOB-2015-01 (September 17, 2015)]

### **Rule 3300T. Interim Attestation Standards.**

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports for issuers, a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003, to the extent not superseded or amended by the Board.

[Effective pursuant to SEC Release Nos. 33-8233 & 34-47746 (April 25, 2003); SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 3400T. Interim Quality Control Standards.**

A registered public accounting firm, and its associated persons, shall comply with quality control standards, as described in –

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20-40 (AICPA 2002)), to the extent not superseded or amended by the Board; and

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(b) the AICPA SEC Practice Section's Requirements of Membership (d), (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), (j), (m), (n)(1) and (o)), to the extent not superseded or amended by the Board.

Note: The AICPA SEC Practice Section's Requirements of Membership only apply to those registered public accounting firms that were members of the AICPA SEC Practice Section on April 16, 2003.

[Effective pursuant to SEC Release Nos. 33-8233 & 34-47746 (April 25, 2003); SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### Part 5 – Ethics and Independence

#### Rule 3500T. Interim Ethics and Independence Standards.

(a) In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board.

(b) In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with independence standards –

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(2) Standards Nos. 2 and 3, and Interpretation 99-1 of the Independence Standards Board, to the extent not superseded or amended by the Board.

Note: The Board's Interim Independence Standards do not supersede the Commission's auditor independence rules. See Rule 2-01 of Reg. S-X, 17 C.F.R. § 210.2-01. Therefore, to the extent that a provision of the Commission's rule is more restrictive – or less restrictive – than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

[Effective pursuant to SEC Release Nos. 33-8233 & 34-47746 (April 25, 2003); SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

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**Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules**

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

**(a)(i) Affiliate of the Accounting Firm**

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

**(a)(ii) Affiliate of the Audit Client**

The term "affiliate of the audit client" means –

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

**(a)(iii) Audit and Professional Engagement Period**

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

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(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

### **(a)(iv) Audit Client**

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

### **(a)(v) Audit Committee**

The term "audit committee" means a committee (or equivalent body) established by and among the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of the entity and audits of the financial statements of the entity; if no such committee exists with respect to the entity, the entire board of directors of the entity. For audits of non-issuers, if no such committee or board of directors (or equivalent body) exists with respect to the entity, "audit committee" means the person(s) who oversee(s) the accounting and financial reporting processes of the entity and audits of the financial statements of the entity.

### **(c)(i) Confidential Transaction**

The term "confidential transaction" means –

(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

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(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

**(c)(ii) Contingent Fee**

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, 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.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

**(f)(i) Financial Reporting Oversight Role**

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

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### **(i)(i) Immediate Family Member**

The term "immediate family member" means a person's spouse, spousal equivalent, and dependents.

### **(i)(ii) Investment Company Complex**

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 3502. Responsibility Not to Knowingly or Recklessly Contribute to Violations**

A person associated with a registered public accounting firm 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 that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

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### Subpart 1 – Independence

#### Rule 3520. Auditor Independence

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client encompasses not only an obligation to satisfy the independence criteria applicable to the engagement set out in the rules and 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 under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Board or Commission or other applicable independence criteria.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

#### Rule 3521. Contingent Fees

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

#### Rule 3522. Tax Transactions

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction –

- (a) **Confidential Transactions** – that is a confidential transaction; or
- (b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a

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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.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011-4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which the firm has a formal agreement or other arrangement related to the promotion of such transactions, recommends engaging in the transaction.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

### **Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles**

A registered public accounting firm is not independent of an issuer audit client if the firm, or any affiliate of the firm, during the professional engagement period provides any tax service to a person in a financial reporting oversight role at the issuer audit client, or an immediate family member of such person, unless –

(a) the person is in a financial reporting oversight role at the issuer audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the issuer audit client only because of the person's relationship to an affiliate of the entity being audited –

(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the issuer audit client before a hiring, promotion, or other change in employment event and the tax services are –

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.



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Note: In an engagement for an issuer audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006); SEC Release No. 34-58415, File No. PCAOB-2008-03 (August 22, 2008); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 3524. Audit Committee Pre-approval of Certain Tax Services**

In connection with seeking audit committee pre-approval to perform for an issuer audit client any permissible tax service, a registered public accounting firm shall –

- (a) describe, in writing, to the audit committee of the issuer –
  - (1) the scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and
  - (2) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;
- (b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and
- (c) document the substance of its discussion with the audit committee of the issuer.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 3525. Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting**

In connection with seeking audit committee pre-approval to perform for an issuer audit client any permissible non-audit service related to internal control over financial reporting, a registered public accounting firm shall –

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- (a) describe, in writing, to the audit committee of the issuer the scope of the service;
- (b) discuss with the audit committee of the issuer the potential effects of the service on the independence of the firm; and

Note: Independence requirements provide that an auditor is not independent of his or her audit client if the auditor is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the auditor is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. Several principles guide the application of this general standard, including whether the auditor assumes a management role or audits his or her own work. Therefore, an auditor would not be independent if, for example, management had delegated its responsibility for internal control over financial reporting to the auditor or if the auditor had designed or implemented the audit client's internal control over financial reporting.

- (c) document the substance of its discussion with the audit committee of the issuer.

[Effective pursuant to SEC Release No. 34-56152, File No. PCAOB-2007-02 (July 27, 2007); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 3526. Communication with Audit Committees Concerning Independence**

A registered public accounting firm must –

- (a) prior to accepting an initial engagement pursuant to the standards of the PCAOB –

- (1) describe, in writing, to the audit committee of the potential audit client, all relationships between the registered public accounting firm or any affiliates of the firm and the potential audit client or persons in financial reporting oversight roles at the potential audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

- (2) discuss with the audit committee of the potential audit client the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm, should it be appointed the potential audit client's auditor; and

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(3) document the substance of its discussion with the audit committee of the potential audit client.

(b) at least annually with respect to each of its audit clients –

(1) describe, in writing, to the audit committee of the audit client, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) discuss with the audit committee of the audit client the potential effects of the relationships described in subsection (b)(1) on the independence of the registered public accounting firm;

(3) affirm to the audit committee of the audit client, in writing, that, as of the date of the communication, the registered public accounting firm is independent in compliance with Rule 3520; and

(4) document the substance of its discussion with the audit committee of the audit client.

[Effective pursuant to SEC Release No. 34-58415, File No. PCAOB-2008-03 (August 22, 2008); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Part 7 – Establishment of Professional Standards**

**Rule 3700. Advisory Groups.**

**(a) Formation.**

To assist it in carrying out its responsibility to establish auditing and related professional practice standards, the Board will convene one or more advisory groups, in accordance with Section 103(a)(4) of the Act.

**(b) Composition.**

Advisory groups, in combination or as sub-groups designated by the Board within one advisory group, will contain individuals with expertise in one or more of the following areas –

- (1) accounting;
- (2) auditing;
- (3) corporate finance;

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- (4) corporate governance;
- (5) investing in public companies; and
- (6) other areas that the Board deems to be relevant to one or more auditing or related professional practice standards.

### **(c) Selection of Members of Advisory Groups.**

Members of advisory groups will be selected by the Board, in its sole discretion, based upon nominations, including self-nominations, received from any person or organization.

Note: The Board will announce, from time to time, periods during which it will receive nominations to an advisory group. During those periods, nominations may be submitted by any person or organization, including, but not limited to, any investor, any accounting firm, any issuer, broker, dealer, and any institution of higher learning.

### **(d) Personal Membership.**

Membership in an advisory group will be personal to the individuals selected to serve on the advisory group. A member's functions and responsibilities, including attendance at meetings, may not be delegated to others.

### **(e) Ethical Duties of Advisory Group Members.**

Members of an advisory group shall comply with EC3, EC8(a), EC9, and, with respect to any private publication or public statement about the Board or any advisory group or any of the activities of the Board or any advisory group, EC10 of the Board's Ethics Code.

### **(f) Ad Hoc Task Forces.**

The Board may, in its discretion, establish ad hoc task forces. The membership of such task forces may include, but is not limited to, advisory group members. To the extent not otherwise required, members of ad hoc task forces shall comply with paragraph (e) of this Rule.

[Effective pursuant to SEC Release No. 34-48730, File No. PCAOB-2003-05 (October 31, 2003); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**SECTION 4. INSPECTIONS**

**Rule 4000. General**

(a) Every registered public accounting firm shall be subject to all such regular and special inspections as the Board may from time-to-time conduct in order to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the Board's rules, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) In furtherance of the Board's inspection process, the Board may at any time request that a registered public accounting firm provide to the Board additional information or documents relating to information provided by the firm in any report filed pursuant to Section 2 of these Rules, or relating to information that has otherwise come to the Board's attention. Any request for information or documents made pursuant to this Rule, and any information or documents provided in response to such a request, shall be considered to be in connection with the next regular or special inspection of the registered public accounting firm.

(c) Inspection steps and procedures shall be performed by the staff of the Division of Registration and Inspections, and by such other persons as the Board may authorize to participate in particular inspections or categories of inspections.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004); and SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009)]

**Rule 4001. Regular Inspections**

In performing a regular inspection, the staff of the Division of Registration and Inspections and any other person authorized by the Board to participate in the inspection shall take such steps, and perform such procedures, as the Board determines are necessary or appropriate. Such steps and procedures must include, but need not be limited to, those set forth in Section 104(d)(1) and (2) of the Act and such other tests of the audit, supervisory, and quality control procedures of the firm as the Director of the Division of Registration and Inspections or the Board determines.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

**Rule 4002. Special Inspections**

In performing a special inspection, the staff of the Division of Registration and Inspections and any other person authorized by the Board to participate in the inspection shall take such steps, and perform such procedures, as are necessary or appropriate concerning the issue or issues specified by the Board in connection with its authorization of the special inspection.

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Note: Under Section 104(b)(2) of the Act, the Board may authorize a special inspection on its own initiative or at the request of the Commission.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4003. Frequency of Inspections**

(a) During each calendar year, beginning no later than the calendar year following the calendar year in which its application for registration with the Board is approved, a registered public accounting firm that, during the prior calendar year, issued audit reports with respect to more than 100 issuers shall be subject to a regular inspection.

(b) At least once in every three calendar years, beginning with the three-year period following the calendar year in which its application for registration with the Board is approved, a registered public accounting firm that, during any of the three prior calendar years, issued an audit report, other than by consenting to an issuer's use of a previously issued audit report, with respect to at least one issuer, but no more than 100 issuers, shall be subject to a regular inspection.

(c) With respect to a registered public accounting firm that has filed a completed Form 1-WD under Rule 2107, the Board shall have the discretion to forego any regular inspection that would otherwise commence during the period beginning on the date of Board receipt of a completed Form 1-WD and continuing until the firm's registration is deemed withdrawn or the firm withdraws the Form 1-WD.

(d) Notwithstanding paragraph (b) of this Rule, with respect to any registered public accounting firm that became registered in 2003 or 2004 –

(1) this Rule does not require the first inspection of the firm sooner than the fourth calendar year following the first calendar year in which the firm, while registered, issued an audit report with respect to an issuer; and

(2) this Rule does not require the second inspection of the firm sooner than the fifth calendar year following the first calendar year in which the firm, while registered, issued an audit report with respect to an issuer.

(e) Notwithstanding any other provision of this Rule, if, in two consecutive calendar years, a registered public accounting firm issues no audit reports with respect to an issuer other than by consenting to an issuer's use of a previously issued audit report, the Board shall have the discretion to forego any inspection of that firm that would otherwise be required because of any audit report that the firm had issued with respect to an issuer prior to such calendar years.

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(f) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule would set a 2008 deadline for the first Board inspection, such deadline is extended to 2009.

(g) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule, other than paragraphs (a) and (f), would set a 2009 deadline for the first Board inspection and that is headquartered in a country in which no foreign registered public accounting firm that the Board inspected before 2009 is headquartered, such deadline is extended to 2012, provided, however, that from among the group of all such firms, the Board shall conduct some first inspections in each of the years from 2009 to 2012, scheduled according to such criteria as the Board shall publicly announce.

(h) In each calendar year, the Board shall conduct regular inspections of some registered public accounting firms that reported on an annual report on Form 2 having played a substantial role in the preparation or furnishing of an audit report with respect to an issuer in any of the four most recent annual reporting periods through March 31 of that calendar year without having reported on an annual report on Form 2 having issued an audit report with respect to an issuer in any of those reporting periods. The number of such registered public accounting firms that the Board shall inspect in any particular calendar year shall be at least five percent of the number of registered public accounting firms that, by June 30 of the preceding calendar year, reported on an annual report on Form 2 for the reporting period ending on March 31 of the preceding calendar year having played a substantial role in the preparation or furnishing of an audit report with respect to an issuer without having issued an audit report with respect to an issuer in that reporting period.

[Effective pursuant to SEC Release No. 34-56738, File No. PCAOB-2006-03 (November 2, 2007), SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004), SEC Release No. 34-59991, File No. PCAOB-2008-06 (May 28, 2009); SEC Release No. 34-60497, File No. PCAOB-2008-04 (August 13, 2009); SEC Release No. 34-61649, File No. PCAOB-2009-01 (March 4, 2010); and SEC Release No. 34-78289, File No. PCAOB-2007-04 (July 11, 2016)]

### **Rule 4004. Procedure Regarding Possible Violations**

If the Board determines that information obtained by the Board's staff during any inspection indicates that the registered public accounting firm subject to such inspection, any associated person thereof, or any other person, may have engaged, or may be engaged, in any act, practice, or omission to act that is or may be in violation of the Act, the rules of the Board, any statute or rule administered by the Commission, the firm's own quality control policies, or any professional standard, the Board shall, if it determines appropriate –

- (a) report information concerning such act, practice, or omission to –
  - (1) the Commission; and

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(2) each appropriate state regulatory authority; and

(b) commence an investigation of such act, practice, or omission in accordance with Section 105(b) of the Act and the Board's rules thereunder or a disciplinary proceeding in accordance with Section 105(c) of the Act and the Board's rules thereunder.

Note: The Board may, as appropriate, make referrals or report information to regulatory and law enforcement agencies other than those specifically described in Rule 4004.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4005. Record Retention and Availability**

[Reserved]

### **Rule 4006. Duty to Cooperate With Inspectors**

Every registered public accounting firm, and every associated person of a registered public accounting firm, shall cooperate with the Board in the performance of any Board inspection. Cooperation shall include, but is not limited to, cooperating and complying with any request, made in furtherance of the Board's authority and responsibilities under the Act, to –

(a) provide access to, and the ability to copy, any record in the possession, custody, or control of such firm or person, and

(b) provide information by oral interviews, written responses, or otherwise.

[Effective pursuant to SEC Release No. 34-56738, File No. PCAOB-2006-03 (November 2, 2007) and SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4007. Procedures Concerning Draft Inspection Reports**

(a) The Director of the Division of Registration and Inspections shall make a draft inspection report available for review by the firm that is the subject of the report. The firm may, within the 30 days after the draft inspection report is first made available for the firm's review, or such longer period as the Board may order, submit to the Board a written response to the draft report.

(b) (1) In submitting a response pursuant to paragraph (a), the firm may indicate any portions of the response for which the firm requests confidential treatment under Section 104(f) of the Act, and may supply any supporting authority or other justification for according confidential treatment to the information.



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(2) The Board shall attach to, and make part of the inspection report, any response submitted pursuant to paragraph (a), but shall redact from the response attached to the inspection report any information for which the firm requested confidential treatment and which it is reasonable to characterize as confidential.

(c) After receiving and reviewing any response letter pursuant to paragraph (a) of this rule, the Board may take such action with respect to the draft inspection report as it considers appropriate, including adopting the draft report as the final report, revising the draft report, or continuing or supplementing the inspection before issuing a final report. In the event that, prior to issuing a final report, the Board directs the staff to continue or supplement the inspection or revise the draft report, the Board may, in its discretion, afford the firm the opportunity to review any revised draft inspection report.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4008. Procedures Concerning Final Inspection Reports**

Promptly following the Board's issuance of a final inspection report, the Board shall –

(a) make the final report available for review by the firm that is the subject of the report;

(b) transmit to the Commission the final report, any additional letter or comments by the Board or the Board's inspectors that the Board deems appropriate, and any response submitted by the firm to a draft inspection report; and

(c) transmit to each appropriate state regulatory authority, in appropriate detail, the final report, any additional letter or comments by the Board or the Board's inspectors that the Board deems appropriate, and any response submitted by the firm to a draft inspection report.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4009. Firm Response to Quality Control Defects**

(a) With respect to any final inspection report that contains criticisms of, or potential defects in, the quality control systems of the firm under inspection, the firm may submit evidence or otherwise demonstrate to the Director of the Division of Registration and Inspections that it has improved such systems, and remedied such defects no later than 12 months after the issuance of the Board's final inspection report. After reviewing such evidence, the Director shall advise the firm whether he or she will recommend to the Board that the Board determine that the firm has satisfactorily addressed the criticisms or defects in the quality control system of the firm identified in the final inspection report and, if not, why not.

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(b) If the Board determines that the firm has satisfactorily addressed the criticisms or defects in the quality control system, the Board shall provide notice of that determination to the Commission and to any appropriate state regulatory authority to which the Board had supplied any portion of the final inspection report.

(c) The Board shall notify the firm of its final determination concerning whether the firm has addressed the criticisms or defects in the quality control system of the firm identified in the final inspection report to the satisfaction of the Board.

(d) The portions of the Board's inspection report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board shall be made public by the Board –

(1) upon the expiration of the 12-month period described in paragraph (a) of this rule if the firm fails to make any submission pursuant to paragraph (a); or

(2) upon the expiration of the period in which the firm may seek Commission review of any board determination made under paragraph (c) of this rule, if the firm does not seek Commission review of the Board determination; or

(3) in the event the firm requests Commission review of the determination, upon completion of the Commission's processes related to that request unless otherwise directed by the Commission.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004); SEC Release No. 34-56738, File No. PCAOB-2006-03 (November 2, 2007); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 4010. Board Public Reports**

Notwithstanding any provision of Rules 4007, 4008, and 4009, the Board may, at any time, publish such summaries, compilations, or other general reports concerning the procedures, findings, and results of its various inspections as the Board deems appropriate. Such reports may include discussion of criticisms of, or potential defects in, quality control systems of any firm or firms that were the subject of a Board inspection, provided that no such published report shall identify the firm or firms to which such criticisms relate, or at which such defects were found, unless that information has previously been made public in accordance with Rule 4009, by the firm or firms involved, or by other lawful means.

[Effective pursuant to SEC Release No. 34-49787, File No. PCAOB-2003-08 (June 1, 2004)]

### **Rule 4011. Statement by Foreign Registered Public Accounting Firms**

A foreign registered public accounting firm that seeks to have the Board rely, to the extent deemed appropriate by the Board, on a non-U.S. inspection when the Board conducts an inspection of such firm pursuant to Rule 4000 shall submit a written

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statement signed by an authorized partner or officer of the firm to the Board certifying that the firm seeks such reliance for all Board inspections.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]

### **Rule 4012. Inspections of Foreign Registered Public Accounting Firms**

(a) If a foreign registered public accounting firm has submitted a statement pursuant to Rule 4011, the Board will, at an appropriate time before each inspection of such firm, determine the degree, if any, to which the Board may rely on the non-U.S. inspection. To the extent consistent with the Board's responsibilities under the Act, the Board will conduct its inspection under Rule 4000 in a manner that relies to that degree on the non-U.S. inspection. In making that determination, the Board will evaluate –

(1) information concerning the level of the non-U.S. system's independence and rigor, including the adequacy and integrity of the system, the independence of the system's operation from the auditing profession, the nature of the system's source of funding, the transparency of the system, and the system's historical performance; and

(2) discussions with the appropriate entity or entities within the system concerning an inspection work program.

(b) The Board's evaluation made pursuant to paragraph (a) may include, but not be limited to, consideration of –

(1) the adequacy and integrity of the system, including –

(i) whether the system has the authority to inspect audit and review engagements, evaluate the sufficiency of the quality control system, and perform such other testing as deemed necessary of foreign public accounting firms; and whether the system can exercise such authority without the approval of, or consultation with, any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(ii) whether the system has the authority to conduct investigations and disciplinary proceedings of foreign public accounting firms, any persons of such firms, or both, that may have violated the laws and standards relating to the issuance of audit reports, and whether the system can exercise such authority without the approval of, or consultation with, any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(iii) whether the system has the authority to impose appropriate sanctions for violations of the non-U.S. jurisdiction's laws and standards relating to the issuance of audit reports, and whether the system can exercise such authority without the approval of, or consultation with, any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms; and

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(iv) whether the persons within the system have adequate qualifications and expertise;

(2) the independence of the system from the auditing profession, including –

(i) whether the system has the authority to establish and enforce ethics rules and standards of conduct for the individual or group of individuals who govern the system and its staff and has prohibited conflicts of interest, and whether the system can exercise such authority without the approval of, or consultation with, any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(ii) whether the person or persons governing the system –

(A) have been appointed, or otherwise selected, by the government of the non-U.S. jurisdiction, without the approval of, or consultation with, any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms; and

(B) may be removed only by the government of the non-U.S. jurisdiction and may not be removed by any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(iii) whether a majority of the individuals with whom the system's decision-making authority resides do not hold licenses or certifications authorizing them to engage in the business of auditing or accounting and did not hold such licenses or certificates for at least the last five years immediately before assuming their position within the system;

(iv) whether a majority of the individuals with whom the system's decision-making authority resides, including the individual who functions as the entity's chief executive or equivalent thereof, are not practicing public accountants; and

(v) whether each entity within the system has the authority to conduct its day-to-day operations without the approval of any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(3) the source of funding for the system, including whether the system has an appropriate source of funding that is not subject to change, approval or influence by any person affiliated or otherwise connected with a public accounting firm or an association of such persons or firms;

(4) the transparency of the system, including whether the system's rulemaking procedures and periodic reporting to the public are openly visible and

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accessible; and

(5) the system's historical performance, including whether there is a record of disciplinary proceedings and appropriate sanctions, but only for those systems that have existed for a reasonable period of time.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]

### **Rule 4020T. Interim Inspection Program Related to Audits of Brokers and Dealers**

#### (a) Purposes of Interim Inspection Program

This rule provides for an interim program of inspection in connection with audits of brokers and dealers in order, among other things –

(1) to assess the degree of compliance of registered public accounting firms and their associated persons with the Act, the Board's rules, the Commission's rules, and professional standards in connection with the performance of audits, issuance of audit reports, and related matters involving brokers and dealers;

(2) to inform the Board's consideration, in connection with establishing a permanent program of inspection to assess the matters described in paragraph (1), of –

- (i) whether to differentiate among classes of brokers and dealers;
- (ii) whether to exempt any category of public accounting firms; and
- (iii) the establishment of minimum inspection frequency schedules.

#### (b) Definitions

When used in this rule, the term "interim program," means the interim program of inspection described in paragraph (c).

#### (c) Interim Program of Inspection

On an interim basis, the Board shall conduct a program of inspection, for the purposes described in paragraph (a), that may include inspection procedures to assess the policies, practices, and procedures of any registered public accounting firm related to the performance of audits or the issuance of audit reports for any broker or dealer after July 21, 2010 and related matters involving brokers and dealers. The provisions of Rules 4000(b), 4000(c), 4004, 4006, 4007, 4008, 4009 and 4010 shall apply to the interim program.

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### (d) Reporting

No less frequently than every twelve months, beginning twelve months after the date this rule takes effect and continuing until rules for a permanent program of inspection in connection with audits of brokers and dealers take effect, the Board will publish a report that describes the progress of the interim program, including data about the number of registered public accounting firms and the number of broker or dealer audits that have been subjected to inspection procedures and any significant observations from those procedures.

[Effective pursuant to SEC Release No. 34-65163, File No. PCAOB-2011-01 (August 18, 2011); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**SECTION 5. INVESTIGATIONS AND ADJUDICATIONS**

**Rule 5000. General**

A registered public accounting firm, and any person associated with such a firm, shall comply with all Board orders to which the firm or person is subject.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Part 1 – Inquiries and Investigations**

**Rule 5100. Informal Inquiries**

**(a) Commencement of an Informal Inquiry**

The Director of Enforcement and Investigations may undertake an informal inquiry where it appears that, or to determine whether, an act or practice, or omission to act, by a registered public accounting firm, any associated person of that firm, or both, may violate –

- (1) any provision of the Act;
- (2) the Rules of the Board;
- (3) the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act; or
- (4) professional standards.

**(b) Informal Inquiry Activities**

In an informal inquiry, the Director of Enforcement and Investigations may request documents, information or testimony from, or an interview with, any person.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5101. Commencement and Closure of Investigations**

**(a) Commencement of Investigations**

**(1) Order of Formal Investigation**

Upon the recommendation of the Director of Enforcement and Investigations or the Director of Registration and Inspections, or upon the Board's own initiative, or otherwise, the Board may issue an order of formal investigation when it appears that an

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act or practice, or omission to act, by a registered public accounting firm or any person associated with a registered public accounting firm may violate any provision of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

### **(2) Designation of Staff**

In an order of formal investigation, the Board may designate members, or groups of members, of the Board's staff to issue accounting board demands to, and otherwise require or request cooperation of, any person pursuant to Section 105(b)(2) of the Act, and the Board's Rules thereunder, to the extent the information sought is relevant to the matters described in the Board's order of investigation.

### **(b) Closure of Investigations**

Upon the recommendation of the Director of Enforcement and Investigations, or on its own initiative, the Board may issue an order terminating or suspending, for a specified period of time, a formal investigation.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

## **Rule 5102. Testimony of Registered Public Accounting Firms and Associated Persons in Investigations**

### **(a) General**

The Board, and the staff of the Board designated in an order of formal investigation, may require the testimony of any registered public accounting firm or any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation.

### **(b) Accounting Board Demand for Testimony**

The Board, and the staff of the Board designated in an order of formal investigation, shall require testimony by serving an accounting board demand that –

(1) gives reasonable notice of the time and place for the taking of testimony;

(2) states the method or methods by which the testimony shall be recorded, which may be by sound or sound-and-visual, but shall include by stenographic means; and



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(3) if the person to be examined is a registered public accounting firm, a description with reasonable particularity of the matters on which examination is requested.

**(c) Conduct of Examination**

**(1) Oath or Affirmation**

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

**(2) General**

Examinations shall be conducted before a reporter designated by the Board's staff.

**(3) Persons Permitted to be Present**

Persons permitted to be present at an examination pursuant to this Rule are limited to –

- (i) the person being examined and his or her counsel, subject to Rule 5109(b);
- (ii) any Board member or member of the staff of the Board;
- (iii) the reporter; and
- (iv) such other persons as the Board, or the staff of the Board designated in the order of formal investigation, determine are appropriate to permit to be present; provided, however, that in no event shall a person other than the witness who has been or is reasonably likely to be examined in the investigation be present.

**(4) Examinations of Registered Public Accounting Firms**

A registered public accounting firm subject to an accounting board demand shall designate one or more individuals who consent to testify on its behalf, and shall set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the registered public accounting firm.

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**(d) Transcript**

A witness shall have 15 days, or such longer period as the Director of Enforcement and Investigations may allow, after being notified by the reporter that the transcript, or, where applicable, video or other recording, is available in which to review the transcript or other recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the witness for making them. The reporter shall make a certificate in writing to accompany the transcript, which shall indicate –

(1) that the witness was duly sworn by the officer and that the transcript is a true record of the testimony given by the witness; and

(2) whether the witness requested to review the transcript and, if so, that the reporter has appended any changes made by the witness during the period allowed.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5103. Demands for Production of Audit Workpapers and Other Documents from Registered Public Accounting Firms and Associated Persons**

**(a) General**

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board demand for the production of audit work papers or any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board or its staff considers relevant or material to the investigation.

**(b) Time and Manner of Production**

An accounting board demand shall set forth a reasonable time and place for production. Unless an accounting board demand expressly requires the production of original documents, copies of the requested documents may be produced. If the originals are not produced, they shall be maintained in a reasonably accessible manner, shall be readily available for inspection by the staff, and shall not be destroyed without the staff's consent. Unless an accounting board demand expressly requests or permits printed copies of electronic documents, documents that exist in electronic form shall be produced in that form.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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**Rule 5104. Examination of Books and Records in Aid of Investigations**

Upon demand and without regard to the Board's Rules under Section 104 of the Act, the Board, and, with the approval of the Director of Enforcement and Investigations, the staff of the Board designated in an order of formal investigation, may examine the books and records of any registered public accounting firm or associated person to verify the accuracy of any documents or information supplied in the course of an informal inquiry or formal investigation.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5105. Requests for Testimony or Production of Documents from Persons Not Associated With Registered Public Accounting Firms**

**(a) Testimony**

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request for the testimony of any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation.

**(1) Requests for Testimony**

An accounting board request for testimony pursuant to subparagraph (a) of this Rule shall –

(i) give appropriate notice, subject to the needs of the investigation of the time and place for the taking of testimony;

(ii) state the method or methods by which the testimony shall be recorded, which may be by sound or sound-and-visual, but shall include by stenographic means; and

(iii) if the person to be examined is an issuer, broker, dealer, partnership, association, governmental agency, or other organized entity, provide a description with reasonable particularity of the matters on which examination is requested.

**(2) Conduct of Examination and Transcript**

An examination requested pursuant to this Rule shall be conducted consistent with Rules 5102(c) and a transcript shall be prepared consistent with Rule 5102(d). If the person to be examined is an issuer, broker, dealer, partnership, association, or governmental agency, the person to be examined shall designate one or more individuals who consent to testify on its behalf and shall set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the organization.

**(b) Documents**

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request to any person, including any issuer, broker, or dealer for the production of any document that is relevant or material to an investigation, with appropriate notice, subject to the needs of the investigation. A request issued pursuant to this Rule shall set forth a reasonable time and place for production, subject to the needs of the investigation.

Note: Failure to comply with an accounting board request pursuant to Rule 5105 may result in a Board request for the issuance of a Commission subpoena, pursuant to Rule 5111.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5106. Assertion of Claim of Privilege**

**(a) Required Information Supporting Assertion**

When a claim of privilege is asserted in objecting to any accounting board demand for information, including but not limited to testimony or an examination under Rule 5104, and an answer or document is not provided on the basis of such assertion,

(1) the person asserting the privilege, or his or her attorney, shall identify the nature of the privilege (including attorney work product) that is being claimed and indicate the relevant jurisdiction's privilege rule being invoked; and

(2) the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information –

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(i) for documents: (A) the type of document, (e.g., letter or memorandum); (B) the general subject matter of the document; (C) the date of the document; and (D) such other information as is sufficient to identify the document for a Commission subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other; and

(ii) for oral communications: (A) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (B) the date and place of communication; and (C) the general subject matter of the communication.

**(b) Claims During Testimony**

Where a claim of privilege is asserted during testimony, and information is not provided on the basis of such assertion, the information set forth in paragraph (a) shall be furnished –

(1) at the deposition, to the extent it is readily available from the witness or otherwise; or

(2) to the extent the information is not readily available at the deposition, in writing within five business days after the deposition session at which the privilege is asserted, unless otherwise agreed by the staff of the Board.

**(c) Claims Other than During Testimony**

Where a claim of privilege is asserted in response to an accounting board demand for information other than during testimony, the information set forth in paragraph (a) shall be furnished in writing at the time of the response to such accounting board demand, unless otherwise agreed by the Board or its staff.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5107. Uniform Definitions in Demands and Requests for Information**

**(a) General**

The full text of the definitions and rules of construction set forth in paragraphs (c) and (d) is deemed incorporated by reference into all accounting board demands. This Rule shall not preclude (1) the definition of other terms specific to the particular inquiry or investigation, (2) the use of abbreviations, or (3) a more narrow definition of a term defined in paragraph (c).

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**(b) Scope**

This Rule is not intended to broaden or narrow the scope of the Board's authority to request information permitted by the Act.

**(c) Definitions**

The following definitions apply to all accounting board demands –

**(1) Communication**

The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

**(2) Document**

The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. In no event shall the term "document" be construed to be limited to audit work papers.

**(3) Identify (with respect to person)**

When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent requests for the identification of that person.

**(4) Identify (with respect to documents)**

When referring to documents, to "identify" means to give, to the extent known, the (i) type of document, (ii) general subject matter, (iii) date of the document; and (iv) author(s), addressee(s) and recipients(s).

**(5) Person**

The term "person" is defined as any natural person or any business, legal or governmental entity or association.

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**(6) Concerning**

The term "concerning" means relating to, referring to, describing, evidencing or constituting.

**(d) Rules of Construction**

The following rules of construction apply to all discovery requests –

**(1) All/Each**

The terms "all" and "each" shall be construed as all and each.

**(2) And/Or**

The connectives "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request for information all responses that might otherwise be construed outside of its scope.

**(3) Number**

The use of the singular form of any word includes the plural and vice versa.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5108. Confidentiality of Investigatory Records**

(a) Informal inquiries and formal investigations, and any documents, testimony or other information prepared or received by or specifically for the Board or the staff of the Board in connection with such inquiries and investigations, shall be confidential in the hands of the Board, unless and until presented in connection with a public proceeding or released in accordance with Section 105(c) of the Act, and the Board's Rules thereunder; provided, however, that the Board may make such information available –

(1) to the Commission; and

(2) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors, to the following –

(a) the Attorney General of the United States;

(b) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), other than the Commission, and the

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Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(c) State attorneys general in connection with any criminal investigation;

(d) any appropriate State regulatory authority;

(e) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and

(f) any foreign auditor oversight authority, concerning a public accounting firm with respect to which it has been empowered by a foreign government to inspect or otherwise enforce laws, if:

(i) the foreign auditor oversight authority provides:

(A) such assurances of confidentiality as the Board may request;

(B) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(C) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(ii) the Board determines that it is appropriate to share such information.

(b) Nothing in paragraph (a) of this rule shall prohibit the Board or the staff of the Board from disclosing any documents, testimony, or other information to any other person as is reasonably necessary to carry out the Board's responsibility, under Section 105 of the Act, to conduct investigations according to fair procedures.

Note: Under Section 105(b)(5) of the Act, the documents described in Rule 5108 "shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the federal government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c)" of Section 105 of the Act.



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Note: The Director of Enforcement and Investigations may engage in and may authorize members of the Board's staff to engage in discussions with persons identified in Rule 5108, or their staff, concerning information obtained in an informal inquiry or a formal investigation.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 5109. Rights of Witnesses in Inquiries and Investigations**

#### **(a) Review of Order of Formal Investigation**

Any person who is compelled to testify or produce documents pursuant to a subpoena issued pursuant to Rule 5111, or who testifies or produces documents pursuant to an accounting board demand or request, shall, upon request, be shown the Board's order of formal investigation. In the discretion of the Director of Enforcement and Investigations, a copy of the order of formal investigation may also be furnished to such a person for his or her retention, subject to such limits on dissemination as the Director may require.

#### **(b) Right to Counsel**

Any person compelled to testify pursuant to a subpoena issued pursuant to Rule 5111, or who appears pursuant to an accounting board demand or request, may be accompanied, represented and advised by counsel, subject to Rule 5102(c)(3), provided, however, that the counsel provide the Board's staff with a notice of appearance that states, or state on the record at the commencement of testimony, that the counsel represents the witness.

#### **(c) Inspection and Copying**

Upon written request to the Director of Enforcement and Investigations and proper identification, a witness may inspect the official transcript of the witness's own testimony. Upon written request and payment of the appropriate fees to cover the cost of production or reproduction, a person who has submitted documentary evidence or testimony in an informal inquiry or formal investigation may procure a copy of such evidence or the transcript of such testimony, except that prior to such evidence or testimony being presented in connection with a proceeding or released in accordance with Section 105(c) of the Act, and the Board's Rules thereunder, the Director of Enforcement and Investigations may for good cause deny such request.

#### **(d) Statements of Position**

Registered public accounting firms, and persons associated with firms, who become involved in an informal inquiry or a formal investigation may, on their own initiatives, submit a written statement to the Board setting forth their interests and

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positions in regard to the subject matter of the investigation. Upon request, the Board's staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to those persons and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Board for the commencement of a disciplinary proceeding. In the event a recommendation for the commencement of a disciplinary proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Board in conjunction with the staff recommendation.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5110. Noncooperation with an Investigation**

**(a) Grounds for Instituting Proceedings**

The Board may institute a disciplinary proceeding pursuant to Rule 5200(a)(3) for noncooperation with an investigation if it appears to the Board, on the recommendation of the Director of Enforcement and Investigations or otherwise, that a registered public accounting firm, or a person associated with a such a firm –

- (1) may have failed to comply with an accounting board demand;
- (2) may have knowingly made any false material declaration or made or used any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration;
- (3) may have abused the Board's processes for the purpose of obstructing an investigation; or
- (4) may otherwise have failed to cooperate in connection with an investigation.

**(b) Special and Expedited Procedures**

Disciplinary proceedings instituted solely pursuant to Rule 5200(a)(3) for noncooperation with an investigation shall be subject to special and expedited procedures as described in Rules 5201(b)(3), 5300(b), 5302(d), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii).

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

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**Rule 5111. Requests for Issuance of Commission Subpoenas in Aid of an Investigation**

**(a) General**

The Board may seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and the production of, any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation.

**(b) Application for a Subpoena**

An application for a subpoena submitted to the Commission shall include –

- (1) a completed form of subpoena; and
- (2) such other information as the Commission may require.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5112. Coordination and Referral of Investigations**

**(a) Commission Notification of Order of Formal Investigation**

As soon as practicable after entry of an order of formal investigation pursuant to Rule 5101 that involves a potential violation of the securities laws, the Secretary of the Board shall send a copy of the order to the Commission, or any staff of the Commission designated to receive orders of formal investigation by the Board, and Board staff shall thereafter coordinate their work with the work of the Commission's Division of Enforcement, as necessary to protect any ongoing Commission investigation.

**(b) Board Referrals of Investigations**

The Board may refer any investigation:

- (1) to the Commission;
- (2) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and
- (3) in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of any other Federal functional regulator (as

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defined in section 509 of the Gramm-Leach-Bliley Act) or the Director of the Federal Housing Finance Agency, to such regulator.

**(c) Commission-directed Referrals of Investigations**

At the direction of the Commission, the Board may refer any investigation to –

- (1) the Attorney General of the United States;
- (2) the attorney general of one or more States; and
- (3) an appropriate State regulatory authority.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5113. Reliance on the Investigations of Non-U.S. Authorities**

Upon the recommendation of the Director of Enforcement and Investigations or upon the Board's own motion, the Board may, in appropriate circumstances, rely upon the investigation or a sanction, if any, of a foreign registered public accounting firm by a non-U.S. authority.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]

**Part 2 – Disciplinary Proceedings**

**Rule 5200. Commencement of Disciplinary Proceedings**

**(a) Grounds for Commencement of Disciplinary Proceedings**

The Board may commence a disciplinary proceeding when –

(1) it appears to the Board, as the result of an investigation or otherwise, that a hearing is warranted to determine whether a registered public accounting firm, or an associated person of such a firm, has engaged in any act or practice, or omitted to act, in violation of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards;

(2) it appears to the Board, as the result of an investigation or otherwise, that a hearing is warranted to determine whether a registered public accounting firm, or any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, has failed reasonably to supervise an associated person, either as required by the Rules of the Board relating to auditing or

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quality control standards, or otherwise, with a view to preventing violations of this Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under the Act, or professional standards, and that such associated person has committed a violation of the Act, or of any such rules, laws, or standards;

(3) it appears to the Board that a hearing is warranted pursuant to Rule 5110.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**(b) Appointment of a Hearing Officer**

As soon as practicable after the Board has issued an order instituting proceedings, or after a registration applicant has requested a hearing pursuant to Rule 5500(b), the Secretary shall assign a hearing officer to preside over the proceeding and shall serve the parties with notice of the hearing officer's assignment. Subject to Rules 5402 and 5403, the hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. The powers of the hearing officer include, but are not limited to, the following –

- (1) obtaining a court reporter to administer oaths and affirmations;
- (2) issuing accounting board demands pursuant to Rule 5424;
- (3) receiving relevant evidence and ruling upon the admission of evidence and offers of proof;
- (4) regulating the course of a proceeding and the conduct of the parties and their counsel;
- (5) holding prehearing and other conferences and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;
- (6) recusing himself or herself upon motion made by a party or upon his or her own motion;
- (7) ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

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(8) subject to any limitations set forth elsewhere in these Rules, considering and ruling upon all procedural and other motions;

(9) preparing an initial decision as provided in Rule 5204;

(10) upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Board;

(11) informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods; and

(12) scheduling hearing dates, except that a hearing officer may not, absent the approval of the Board, change a hearing date set by Board order.

**(c) Separation of Functions**

The staff of the Division of Enforcement and Investigations may not participate or advise in the decision, or in Board review of the decision, in any proceeding in which the Division of Enforcement and Investigations is the interested division, except as a witness or counsel in the proceeding. Any other employee or agent of the Board engaged in the performance of investigative or prosecutorial functions for the Board in a proceeding may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. A hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

**(d) Consolidation of Proceedings**

By order of the Board or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Board or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this Rule, no distinction is made between joinder and consolidation of proceedings.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5201. Notification of Commencement of Disciplinary Proceedings**

**(a) Notice**

Whenever an order instituting proceedings is issued by the Board, the Secretary shall give each firm or person charged appropriate notice of the order within a time reasonable in light of the circumstances. If the order instituting proceedings sets a hearing date, each party shall be given notice of the hearing within a time reasonable, in light of the circumstances, in advance of the hearing.

Note: Paragraph (a) requires that appropriate notice of an order instituting proceedings be given. Where emergency or expedited action is sought, notice of a hearing may be given prior to formal service of the order instituting proceedings by any means calculated to give actual notice that a hearing will be held.

**(b) Content of Order Instituting Proceedings**

An order instituting proceedings issued pursuant to subparagraph (a) shall include a short and plain statement of the matters of fact and law to be considered and determined with respect to each person charged, including –

(1) in the case of a proceeding instituted pursuant to Rule 5200(a)(1) –

(i) the conduct alleged to have violated the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports or the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under the Act and professional standards; and

(ii) the rule, statute or standard violated;

(2) in the case of a proceeding instituted pursuant to Rule 5200(a)(2) –

(i) the failure to supervise alleged to have violated the Rules of the Board or to have failed to prevent violations of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports or the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under the Act and applicable professional standards; and

(ii) the violative conduct of the supervised associated person and the rule, statute or standard violated; or

(3) in the case of a proceeding instituted solely pursuant to Rule 5200(a)(3), the conduct alleged to constitute the failure to cooperate with an investigation.

**(c) Notice of a Hearing on a Registration Application**

In the case of a proceeding pursuant to Rule 5500, the notice of a hearing shall state proposed grounds for disapproving the registration application.

**(d) Amendment to Order Instituting Proceedings**

**(1) By the Board**

Upon motion by the interested division, the Board may, at any time, amend an order instituting proceedings, or a notice of a hearing, to include new matters of fact or law.

**(2) By the Hearing Officer**

Upon motion by the interested division, the hearing officer may, at any time prior to the filing of an initial decision or, if no proposed initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Board, amend an order instituting proceedings to include new matters of fact or law that are within the scope of the original order instituting proceedings.

Note: Where amendments to an order instituting proceedings are intended to correct an error, to conform the order to the evidence or to take into account subsequent developments which should be considered in disposing of the proceeding, and the amendments are within the scope of the original order, either a hearing officer or the Board has authority to amend the order. Since, however, the Board has not delegated its authority to authorize orders instituting proceedings, hearing officers do not have authority to initiate new charges or to expand the scope of matters set down for hearing beyond the framework of the original order instituting proceedings.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5202. Record of Disciplinary Proceedings**

**(a) Contents of the Record**

**(1) Record of a Disciplinary Proceeding**

A hearing record shall consist of –

(i) the order instituting proceedings, each notice of hearing and any amendments;



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(ii) each application, supplemental application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(iii) each stipulation, transcript of testimony and document or other information admitted into evidence;

(iv) each written communication accepted by the hearing officer pursuant to Rule 5420;

(v) with respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal pursuant to Rule 5402, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(vi) all motions, briefs and other papers filed on interlocutory appeal;

(vi) any proposed findings and conclusions;

(viii) each written order or notice issued by the hearing officer or the Board; and

(ix) any other document or item accepted into the record by the Board or the hearing officer.

**(2) Record on Disapproval of Application for Registration**

The record on a disapproval of an application with respect to which the applicant has elected to waive its opportunity for a hearing pursuant to Rule 5500 shall consist of –

(i) the application for registration, and any supplemented application;

(ii) any additional information provided by the applicant;

(iii) any other information obtained by the Board in connection with the application;

(iv) the notice of a hearing and any written order issued by the Board; and

(v) any other document or item accepted into the record by the Board.

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**(b) Documents Not Admitted**

Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any documents offered in evidence but excluded until all opportunities for Commission and judicial review have been exhausted or waived.

**(c) Substitution of Copies**

A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this Rule.

**(d) Preparation of Record and Certification of Record Index**

Promptly after the close of a hearing, the hearing officer shall transmit to the Secretary an index of any motions, exhibits or any other documents submitted to, or accepted into evidence by, the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any party may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. The initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

**(e) Final Transmittal of Record Items to the Secretary**

After the close of a hearing, the hearing officer shall transmit to the Secretary originals of exhibits or any other documents submitted to, or accepted into evidence by, the hearing officer, and any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5203. Public and Private Hearings**

No hearing shall be public unless ordered by the Board. In any proceeding commenced pursuant to Rule 5200(a), the Board shall not order that a hearing be public except for good cause shown and with consent of the parties.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5204. Determinations in Disciplinary Proceedings**

**(a) Burden of Proof**

In any disciplinary proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5200(a)(3), the interested division shall bear the burden of proving an alleged violation or failure to supervise by a preponderance of the evidence. A respondent raising an affirmative defense shall bear the burden of proving that affirmative defense by a preponderance of the evidence.

**(b) Initial Decision of a Hearing Officer**

Unless the Board directs otherwise, a hearing officer shall prepare an initial decision in any proceeding in which the Board directs a hearing officer to preside at a hearing. An initial decision shall include findings and conclusions, including sanctions, if appropriate, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and such other information as the Board may require.

Note: Unless the Board has directed otherwise, the Board expects hearing officers in proceedings instituted pursuant to Rule 5200(a)(1) or Rule 5200(a)(2) to prepare initial decisions within 60 days after the deadline for filing post-hearing briefs or other submissions; the Board expects hearing officers in proceedings instituted solely pursuant to Rule 5200(a)(3) to prepare initial decisions within 30 days after the deadline for filing post-hearing briefs; and the Board expects hearing officers in proceedings pursuant to Rule 5500 to prepare initial decisions within 45 days after the deadline for filing post-hearing briefs or other submissions.

**(c) Filing, Service and Publication**

The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties. In a public proceeding, the Secretary shall as soon as practicable thereafter publish the initial decision, unless the Board otherwise directs.

**(d) When Final**

(1) An initial decision as to a party shall become the final decision of the Board as to that party upon issuance of a notice of finality by the Secretary.

(2) Subject to subparagraph (3) of this paragraph, the Secretary shall issue a notice of finality no later than 20 days after the lapsing of the time period for filing a petition for review of the initial decision.

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- (3) The Secretary shall not issue a notice of finality as to any party
- (i) who has filed a timely petition for review; or
  - (ii) with respect to whom the Board has ordered review of the initial decision pursuant to Rule 5460(b).

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5205. Settlement of Disciplinary Proceedings Without a Determination After Hearing**

**(a) Availability**

Any firm or person who is notified that a proceeding may or will be instituted against him or her, or any firm or person that is a party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

**(b) Procedure**

An offer of settlement shall state that it is made pursuant to this Rule; shall recite or incorporate as a part of the offer the provisions of paragraphs (c)(2) and (3) of this Rule; shall be signed by the person making the offer, not by counsel; and shall be submitted to the Director of Enforcement and Investigations.

**(c) Consideration of Offers of Settlement**

(1) The Director of Enforcement and Investigations shall present an offer of settlement to the Board with his or her recommendation, except that, if the recommendation is unfavorable, the offer shall not be presented to the Board unless the person making the offer so requests.

(2) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer –

- (i) all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;
- (ii) the filing of post-hearing briefs or other submissions, proposed findings of fact and conclusions of law;
- (iii) proceedings before, and an initial decision by, a hearing officer;
- (iv) all post-hearing procedures; and

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(v) judicial review by any court.

(3) By submitting an offer of settlement the person further waives –

(i) such provisions of the Rules of Board Procedure or other requirements of law as may be construed to prevent any member of the Board's staff from participating in the preparation of, or advising the Board as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) any right to claim bias or prejudice by the Board based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(4) If the Board rejects the offer of settlement, the person making the offer shall be notified of the Board's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer. Rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(3) of this Rule with respect to any discussions concerning the rejected offer of settlement.

(5) Final acceptance of any offer of settlement will occur only upon the issuance of findings and an order by the Board.

Note: In a hearing on disapproval of registration, an offer of settlement will be considered and handled by the Director of Registration and Inspections in accordance with Rule 5205 as if the Director of Registration and Inspections were the Director of Enforcement and Investigations.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5206. Automatic Stay of Final Disciplinary Actions**

No final disciplinary sanction of the Board shall be effective until the later of –

(a) Commission action to dissolve the stay provided by Section 105(e) of the Act; or

(b) the expiration of the period during which, on its own motion, or upon application pursuant to Section 19(d)(2) of the Exchange Act, the Commission may institute review of the sanction.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Part 3 – Disciplinary Sanctions**

**Rule 5300. Sanctions**

**(a) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(1) or Rule 5200(a)(2)**

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to the applicable limitations under Section 105(c)(5) of the Act, including –

- (1) temporary suspension or permanent revocation of registration;
- (2) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;
- (3) temporary or permanent limitation on the activities, functions or operations of such firm or person (other than in connection with required additional professional education or training);

Note: Limitations on the activities, functions or operations of a firm may include prohibiting a firm from accepting new audit clients for a period of time, requiring a firm to assign a reviewer or supervisor to an associated person, requiring a firm to terminate one or more audit engagements, and requiring a firm to make functional changes in supervisory personnel organization and/or in engagement team organization.

- (4) a civil money penalty for each such violation, in an amount not to exceed the maximum amount authorized by Sections 105(c)(4)(D)(i) and 105(c)(4)(D)(ii) of the Act, including penalty inflation adjustments published in the Code of Federal Regulations at 17 C.F.R. § 201 Subpart E;
- (5) censure;
- (6) require additional professional education or training;
- (7) require a registered public accounting firm to engage an independent monitor, subject to the approval of the Board, to observe and report on the firm's compliance with the Act, the Rules of the Board, the provisions of the securities

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laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, or professional standards;

(8) require a registered public accounting firm to engage counsel or another consultant to design policies to effectuate compliance with the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, or professional standards;

(9) require a registered public accounting firm, or a person associated with such a firm, to adopt or implement policies, or to undertake other actions, to improve audit quality or to effectuate compliance with the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, or professional standards; and

(10) require a registered public accounting firm to obtain an independent review and report on one or more engagements.

### **(b) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(3)**

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm, or a person associated with such a firm, has failed to comply with an accounting board demand, has given false testimony or has otherwise failed to cooperate in an investigation, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, including –

(1) the sanctions described in subparagraphs (1) – (5) of paragraph (a) of this Rule;

(2) requiring a registered public accounting firm to engage a special master or independent monitor, appointed by the hearing officer, to monitor and report on the firms' compliance with an accounting board demand or with future accounting board demands; or

(3) authorizing the hearing officer to retain jurisdiction to monitor compliance with an accounting board demand or with future account board demands and to rule on future disputes, if any, related to such demands.

Note 1: Rule 5300 does not preclude the imposition of any sanction, on consent, in the context of a settlement, notwithstanding that the sanction is not listed in the Rule.

Note 2: The maximum penalty amounts authorized by the Act are periodically adjusted for inflation by the Commission, pursuant to the Federal Civil Penalties

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Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and vary depending upon the date the violation occurs. The maximum penalty amounts are published at 17 C.F.R. § 201 Subpart E.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

### **Rule 5301. Effect of Sanctions**

#### **(a) Effect on Persons**

No person that is suspended or barred from being associated with a registered public accounting firm, or has failed to comply with any sanction pursuant to Rule 5300, may willfully become or remain associated with any registered public accounting firm, without the consent of the Board, pursuant to Rule 5302, or the Commission.

Note: A person who is suspended or barred from being associated with a registered public accounting firm may not, in connection with the preparation or issuance of any audit report, (i) share in the profits of, or receive compensation in any other form from, any registered public accounting firm, or (ii) participate as agent on behalf of such a firm in any activity of that firm. See Rule 1001(p)(i).

#### **(b) Effect on Registered Public Accounting Firms**

No registered public accounting firm that knows, or, in the exercise of reasonable care should have known, of the suspension or bar of a person may permit such person to become or remain associated with it, without the consent of the Board, pursuant to Rule 5302, or the Commission.

Note: Rule 5301(b) prohibits a registered public accounting firm from permitting a person subject to a suspension or bar, in connection with the preparation or issuance of any audit report, to (i) share in the profits of, or receive compensation in any other form from, such firm, or (ii) participate as agent on behalf of such a firm in any activity of that firm. See Rule 1001(p)(i).

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **Rule 5302. Applications for Relief From, or Modification of, Revocations and Bars**

#### **(a) Application for Registration After a Revocation of Registration**

Unless the Board orders otherwise, any public accounting firm whose registration has been revoked pursuant to a Board determination that permitted the firm an opportunity to reapply for registration after a specified time period has lapsed may file



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an application for registration pursuant to Rule 2101 after the specified time period has lapsed. The revocation of the firm's registration shall continue, however, unless and until an application for registration is approved pursuant to Rule 2106(b)(1).

**(b) Petition to Terminate a Bar**

**(1) Scope**

Any person subject to a bar imposed by an order that contains a proviso that a petition to terminate the bar may be made to the Board after a specific period of time may file a petition for Board consent to associate, or to change the terms and conditions of association, with a registered public accounting firm.

**(2) Form of Petition**

A petition to terminate a bar shall be supported by an affidavit that addresses the factors set forth in subparagraph (b)(4) of this Rule and shall include as exhibits –

- (i) a copy of the Board order imposing the bar;
- (ii) a copy of any Commission or court order concerning the bar;
- (iii) a written statement by the proposed registered public accounting firm with which the petitioner wishes to associate that describes –
  - (A) the terms and conditions of employment and supervision to be exercised over such petitioner and, where applicable, by such petitioner;
  - (B) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the petitioner;
  - (C) the compliance and disciplinary history, during the two years preceding the filing of the petition, of the registered public accounting firm with which the petitioner wishes to be associated; and
  - (D) the names of any other associated persons in the same registered public accounting firm who have previously been barred by the Board or the Commission, and whether they are to be supervised by the petitioner.

**(3) Required Showing**

The petitioner shall make a showing satisfactory for the Board to be able to determine that the proposed association would be consistent with the public interest.

**(4) Factors to be Addressed**

The affidavit required by paragraph (b)(2) of this Rule shall address each of the following –

- (i) the time period since the imposition of the bar;
- (ii) any restitution or similar action taken by the petitioner to recompense any person injured by the misconduct that resulted in the bar;
- (iii) the petitioner's compliance with the order imposing the bar;
- (iv) the petitioner's employment during the period subsequent to the imposition of the bar;
- (v) the capacity or position in which the applicant proposes to be associated;
- (vi) the manner and extent of supervision to be exercised over such petitioner and, where applicable, by such petitioner;
- (vii) any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her reassociation; and
- (viii) any other information material to the petition.

**(5) Notification to Petitioner and Written Statement**

In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall have 30 days to submit a written statement in response.

**(c) Application for Termination of Other Revocations and Bars**

Unless the Board orders otherwise, any firm or person that is subject to a revocation or bar pursuant to a Board determination that does not provide for an opportunity to reapply for registration, or to terminate a bar, may request leave to file an application for registration, or a petition to terminate a bar, at any time. The sanction shall continue, however, unless and until the Board has permitted and granted such an application or petition for good cause shown.

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**(d) Application for Termination of Sanctions for Noncooperation**

Unless the Board orders otherwise, any firm or person that has remedied the noncooperation that formed the basis for a disciplinary sanction may file an application for termination of any such sanction that is ongoing. The sanction shall continue, however, unless and until it has been terminated by the Board.

**(e) Applications for Termination of Other Sanctions**

Unless the Board orders otherwise, any firm or person subject to a sanction pursuant to subparagraphs (3), (6), (7), (8), (9) or (10) of Rule 5300(a) may file an application for termination of any continuing sanction at any time, and the applicant may, in the Board's discretion, be afforded a hearing. The sanction shall continue, however, unless and until it has been terminated by the Board for good cause shown.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5303. Use of Money Penalties**

Subject to the availability in advance in an appropriations act, all civil money penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, administered by the Board or by an entity or agent identified by the Board.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5304. Summary Suspension for Failure to Pay Money Penalties**

**(a) Registered Public Accounting Firms**

If, thirty days after exhaustion of all reviews and appeals, and the termination of any stay authorized by law or the Rules of the Board, a registered public accounting firm has failed to pay a money penalty imposed pursuant to Rule 5300(a)(4), the Board may, after seven days' notice in writing, summarily suspend the registration of the registered public accounting firm. Such a suspension of registration shall lapse upon payment, within 90 days, of the money penalty, plus interest. If payment is not made within 90 days, a suspension of registration shall be lifted only upon –

(1) payment of the money penalty, plus interest; and

(2) the filing of an application for registration pursuant to Rule 2101, and Board approval of that application pursuant to the Board's Rules relating to registration.

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**(b) Associated Persons**

If, thirty days after exhaustion of all reviews and appeals, and the termination of any stay, authorized by law or the Rules of the Board, an associated person has failed to pay a money penalty imposed pursuant to Rule 5300(a)(4), the Board may, after seven days' notice in writing, summarily suspend the associated person. If such a money penalty is not paid within 90 days of such notice, the Board may summarily bar such person.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Part 4 – Rules of Board Procedure**

**GENERAL**

**Rule 5400. Hearings**

Hearings for the purpose of taking evidence shall be held only upon order of the Board. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5401. Appearance and Practice Before the Board**

A person shall not be represented before the Board or a hearing officer except as stated in paragraphs (a) or (b) of this Rule or as otherwise permitted by the Board or a hearing officer.

**(a) Representing Oneself**

In any proceeding, an individual may appear on his or her own behalf.

**(b) Representing Others**

In any proceeding, a person may be represented by counsel; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

**(c) Designation of Address for Service; Notice of Appearance; Power of Attorney; Withdrawal**

**(1) Representing Oneself**

When an individual first makes any filing or otherwise appears on his or her own behalf before the Board or a hearing officer, he or she shall file with the Secretary both

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an electronic and a mailing address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours, and the individual shall promptly advise the Secretary of changes to that information during the course of the proceeding.

**(2) Representing Others**

When a person first makes any filing or otherwise appears in a representative capacity before the Board or a hearing officer, that person shall file with the Secretary, and keep current, a written notice stating the name of the proceeding; the representative's name, mailing address, electronic address and telephone number; and the name and electronic and mailing addresses of the person or persons represented; and, if the person is an attorney, a declaration that the attorney is admitted to practice before the Supreme Court of the United States or the highest court of any state, as defined in Section 3(a)(16) of the Exchange Act.

**(3) Power of Attorney**

Any individual appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his or her authority to act in such capacity.

**(4) Withdrawal**

Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Board or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal. Leave to withdraw shall not be withheld absent good cause.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5402. Hearing Officer Disqualification and Withdrawal**

**(a) Motion for Withdrawal**

A party who has a reasonable, good faith basis to believe that a hearing officer has a conflict of interest or personal bias, or circumstances otherwise exist such that the hearing officer's fairness may reasonably be questioned, may make a motion to the hearing officer that the hearing officer withdraw, which shall be filed with the Secretary. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding. A motion for withdrawal shall be filed within 15 days after the later of –

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(1) when the party learned of the facts believed to constitute the basis for the disqualification; or

(2) when the party was notified of the assignment of the hearing officer.

**(b) Appointment of a Replacement Hearing Officer**

Upon withdrawal of a hearing officer, or in the event that a hearing officer is incapacitated or is otherwise unable to continue to serve after being appointed, the Secretary will appoint a replacement hearing officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement hearing officer is appointed after a hearing has commenced, the replacement hearing officer may recall any witness or may certify familiarity with any part or all of the record.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5403. Ex Parte Communications**

Except to the extent permitted for the disposition of ex parte matters as authorized by law or the Board's Rules –

(a) the person presiding over an evidentiary hearing may not consult a person or party on a fact in issue, unless on notice and with opportunity for all parties to participate; and

(b) neither a party, nor any Board staff that substantially assists the interested division on the particular matter, whether before or during the hearing, may –

(1) communicate with the person presiding over an evidentiary hearing on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) communicate with the Board or any member of the Board on a fact in issue, unless on notice and opportunity for all parties to participate or under circumstances in which a party excluded from the communication has waived the rights described in Rule 5205(c)(3) with respect to the matters that are the subject of the communication.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5404. Service of Papers by Parties**

In every proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in a manner calculated to bring the paper to the attention of the party to be served.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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**Rule 5405. Filing of Papers With the Board: Procedure**

**(a) When to File**

All papers required to be served by a party upon any person shall be filed with the Board at the time of service or promptly thereafter. Papers required to be filed with the Board must be received within the time limit, if any, for such filing.

**(b) Where to File**

Unless otherwise permitted by the Secretary, filing of papers with the Board shall be made by electronically filing them with the Secretary.

Note: When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Secretary, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date received electronically by the Secretary. Upon request, the Secretary may permit regulators granted permission to participate on a limited basis (to request a stay), amici curiae, nonparties and others to file in paper form. Where practicable, the Secretary will scan such a filing into the docket file.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5406. Filing of Papers: Form**

**(a) Specifications**

Papers filed in connection with any proceeding shall –

(1) be formatted in a Portable Document Format on pages measuring 8½ x 11 inches, except that, upon consent of the Secretary for good cause, a document may be filed in paper form;

Note: To the extent that the reduction of larger documents would render them illegible, the Secretary may consent to the filing of such documents on larger paper, in electronic or paper form.

(2) include at the head of the paper, or on a title page, the name of the Board, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(3) be paginated with margins at least 1 inch wide; and

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(4) be double-spaced in a 12-point font, with single-spaced footnotes and single-spaced indented quotations.

**(b) Form of Briefs**

All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5407. Filing of Papers: Signature Requirement and Effect**

Following the issuance of an order instituting proceedings, a party who represents himself or herself shall sign his or her individual name and state the date and his or her address and telephone number on every filing. Every filing of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number.

Note: If practicable, a party's or an attorney's signature should be scanned into an electronic document. In any event, however, the use of an attorney's electronic mail address, or password for the Board's electronic filing system, shall constitute the signature of that attorney.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5408. Motions**

**(a) Generally**

Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. Unless otherwise ordered by the Board or the hearing officer, if a motion is properly made to the Board concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Board. No oral argument shall be heard on any motion unless the Board or the hearing officer otherwise directs.

**(b) Opposing and Reply Briefs**

Except as provided in Rule 5427, and unless otherwise ordered by the Board or a hearing officer, a brief in opposition to a motion shall be filed within five days after service of the motion. Reply briefs are only permitted with leave of the hearing officer.



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**(c) Length Limitation**

Except as provided in Rule 5427, a brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. The hearing officer may grant requests for leave to file briefs in excess of 10 pages, upon a showing of good cause.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5409. Default and Motions to Set Aside Default**

**(a) Default**

A party to a proceeding may be deemed to be in default and the Board or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings or notice of a hearing, the allegations of which may be deemed to be true, if that party fails –

- (1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified;
- (2) to answer when required to do so by a Board order, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or
- (3) to cure a deficient filing within the time specified by the Board or the hearing officer.

**(b) Motion to Set Aside Default**

A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Board at any time, may for good cause shown set aside a default.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5410. Additional Time For Service by Mail**

If service is made by mail, three days shall be added to the prescribed period for response.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

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**Rule 5411. Modifications of Time, Postponements and Adjournments**

Except as otherwise provided by law, the Board, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision, may, for good cause shown, extend or shorten any time limits prescribed by these Rules for the filing of any papers and may, postpone or adjourn any hearing.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rules 5412. – 5419. [Reserved]**

**PREHEARING RULES**

**Rule 5420. Stay Requests**

**(a) Leave to Participate to Request a Stay**

The Board or the hearing officer may grant leave to participate on a limited basis only to an authorized representative of the Commission, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, an appropriate state regulatory authority, an appropriate self-regulatory organization, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a Commission investigation or proceeding, a criminal investigation or prosecution, a self-regulatory organization, or a state regulatory proceeding, arising out of the same or similar facts that are at issue in the pending Board or disciplinary proceeding. Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. A stay granted pursuant to this Rule may be granted for such a period and upon such conditions as the Board or the hearing officer deems appropriate.

**(b) Stay to Protect Ongoing Commission Investigation**

Upon a showing that a stay requested pursuant to this Rule is necessary to protect an ongoing Commission investigation, the motion for the stay shall be granted.

**(c) Other Stays**

Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for the stay shall be favored.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5421. Answer to Allegations**

**(a) When Required**

In its order instituting proceedings, the Board may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer.

**(b) When to File**

Unless additional time is granted by the hearing officer or the Board, a party filing an answer as provided in paragraph (a) of this Rule shall do so within 20 days after service upon the party of an order instituting proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and within 5 days after service upon the party of an order instituting proceedings solely pursuant to Rule 5200(a)(3). If the order instituting proceedings is amended, the Board or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

**(c) Contents of Answer and Effect of Failure to Deny**

Unless otherwise directed by the hearing officer or the Board, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5422. Availability of Documents For Inspection and Copying**

**(a) Documents to be Available for Inspection and Copying**

(1) Proceedings Commenced Pursuant to Rule 5200(a)(1) and 5200(a)(2)

Unless otherwise provided by this Rule, or by order of the Board or the hearing officer, in proceedings pursuant to Rule 5200(a)(1) or Rule 5200(a)(2), the Division of Enforcement and Investigations shall make available for inspection and copying by any party to the proceeding –

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(i) each request, subpoena, or accounting board demand for documents, testimony, or information issued in the investigation or in the informal inquiry, if any, that preceded the investigation or disciplinary proceeding;

(ii) responses to any such requests, subpoenas, and accounting board demands, including any documents produced in response;

(iii) testimony transcripts and exhibits, and any other verbatim records of witness statements;

(iv) all other documents prepared or obtained by the Division of Enforcement and Investigations in connection with the investigation prior to the institution of proceedings, except that the Division need not produce any documents described in subparagraph (b) that it does not intend to introduce as evidence.

**(2) Proceedings Commenced Solely Pursuant to Rule 5200(a)(3)**

Unless otherwise provided by this Rule, or by order of the Board, the Division of Enforcement and Investigations shall make available for inspection and copying by any party to the proceeding all documents upon which the Division intends to rely in seeking a finding of noncooperation but shall not be required to make available any other documents.

**(3) Proceedings Commenced Pursuant to Rule 5500**

Unless otherwise provided by this Rule, or by order of the Board or the hearing officer, in proceedings pursuant to Rule 5500, the Division of Registration and Inspections shall make available for inspection and copying by the applicant documents obtained by that division in connection with the registration application prior to the notice of hearing, except that the Division need not produce any documents described in subparagraph (b) that it does not intend to introduce as evidence.

**(b) Documents That May Be Withheld**

(1) The interested division may decline to make available for inspection and copying –

(i) any document prepared by, a member of the Board or of the Board's staff, or persons retained by the Board or Board staff to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration, provided that the document has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff as described above;

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(ii) any document accessed from generally available public sources, such as legal research or other subscription databases, databases of securities filings, databases of periodicals, and public web sites, except to the extent that the interested division intends to introduce such documents as evidence;

(iii) any other document that is privileged, including any other document protected by the attorney work product doctrine;

(iv) any document that would disclose the identity of a confidential source; and

(v) any other document that the staff identifies for the hearing officer's consideration as to whether the document may be withheld as not relevant to the subject matter of the proceeding or otherwise for good cause shown.

(2) Nothing in this paragraph (b), or in paragraph (a)(2) above, authorizes the interested division in connection with a disciplinary proceeding or hearing on disapproval of registration to withhold documents that contain material exculpatory evidence.

**(c) Procedures Concerning Withheld Documents**

(1) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the respondent with a log of documents withheld pursuant to paragraph (b)(1)(iii) of this Rule. The log shall provide the same information that a person would be required to supply to the Board under Rule 5106 in connection with a privilege assertion. On a motion by any respondent, a hearing officer may, in his or her discretion, require the interested division to submit any document listed on the log for inspection by the hearing officer in camera. A hearing officer may order that any such document be made available to a respondent for inspection and copying only if the hearing officer determines that the document is not a document described in paragraph (b)(1)(iii).

(2) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the hearing officer and each respondent with a list of documents withheld pursuant to paragraph (b)(1)(iv) or (b)(1)(v) of this Rule and a brief description of the reason for withholding each document. The list provided to the respondent may be redacted as necessary to protect interests related to the interested division's reason for withholding the document. The hearing officer may require the interested division to submit any such document for inspection by the hearing officer in camera. The hearing officer may order that any such document be made available to the respondent for inspection and copying only if the hearing officer determines that –

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(i) with respect to any document withheld pursuant to paragraph (b)(1)(iv) –

(A) producing the document would not have the effect of identifying a confidential source; or

(B) the document contains material, exculpatory evidence, provided, however, that to the extent such evidence can be disclosed without disclosing the identity of a confidential source, such identity shall not be disclosed.

(ii) with respect to any document withheld pursuant to paragraph (b)(1)(v) –

(A) the document is relevant to the subject matter of the proceeding and no good cause exists for withholding it; or

(B) the document contains material, exculpatory evidence.

**(d) Timing of Inspection and Copying**

Unless otherwise ordered by the Board or the hearing officer, the interested division shall make documents available for inspection and copying to any respondent who is not in default under Rule 5409 no later than 14 days after the institution of proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and no later than 7 days after proceedings have been instituted solely pursuant to Rule 5200(a)(3).

**(e) Place of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Rule shall be made available to a party for inspection and copying at the Board office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A party shall not be given custody of the documents or leave to remove the documents from the Board's offices pursuant to the requirements of this Rule other than by written agreement of the interested division. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

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**(f) Copying Costs and Procedures**

A party may obtain a photocopy of any documents made available for inspection. The party shall be responsible for the cost of photocopying. The respondent shall be given access to the documents at the Board's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

**(g) Failure to Make Documents Available – Harmless Error**

In the event that a document required to be made available to a party pursuant to this Rule is not made available by the interested division, no rehearing or rededecision of a proceeding already heard or decided shall be required, unless the party shall establish that the failure to make the document available was not harmless error.

Note: The interested division's obligation under this Rule relates to documents obtained by that division. Documents located only in the files of other divisions or offices are beyond the scope of the Rule, except that documents located in the files of other divisions and that the interested division intends to introduce as evidence shall, for purposes of this Rule, be treated as if they have been obtained by the interested division and must therefore be made available under this Rule.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5423. Production of Witness Statements**

**(a) Availability**

Upon motion by any respondent in a disciplinary proceeding, the hearing officer may order that the interested division produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. § 3500, if the Board were a governmental entity. Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

**(b) Failure to Produce - Harmless Error**

In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the interested division, no rehearing or rededecision of a proceeding already heard or decided shall be required unless the

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respondent establishes that the failure to turn over the statement was not harmless error.

**(c) Definition of Statement**

For purposes of this Rule, the term "statement" shall have the meaning set forth in 18 U.S.C. § 3500(e).

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5424. Accounting Board Demands and Commission Subpoenas**

**(a) Accounting Board Demands and Requests**

In connection with any hearing ordered by the Board, a party may request the issuance of an accounting board demand of a registered public accounting firm or an associated person of such a firm, or an accounting board request of any other person. Such a demand or request may call for the attendance and testimony of a witness at the designated time and place of the hearing or for the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, an application for issuance of such a demand or request shall be made in writing and served on each party. A party whose application for such a demand or request has been denied or modified may not submit any other application seeking substantially the same testimony or other evidence specified in the denied application or excluded from an otherwise granted application.

**(1) Unavailability of Hearing Officer**

In the event that the hearing officer assigned to a proceeding is unavailable, any member of the Board, or other person designated by the Board for this purpose, may grant an application for the issuance of an accounting board demand or request. A party seeking such issuance may submit the application to the Secretary, who shall direct it to a person authorized to grant the request, deny the request, or grant the request with modifications.

**(2) Signing May be Delegated**

A hearing officer may authorize issuance of an accounting board demand, or an accounting board request, and may delegate the manual signing of the demand or request to any other person.

**(3) Standards for Issuance**

Where it appears that an application for an accounting board demand or request is reasonable in scope and is reasonably calculated to encompass, or lead to the



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discovery of, admissible evidence, the application shall be granted. If it appears that the accounting board demand or request sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, designed to seek irrelevant information, or sought for the purpose of harassment or delay, the application shall be denied. The hearing officer or other person ruling on the application may, in his or her discretion, as a condition precedent to the issuance of the demand or request, require the party seeking the demand or request to show the general relevance and reasonable scope of the testimony or other evidence sought. After consideration of all the circumstances, the hearing officer or other person ruling on the application may grant the application upon such conditions or with such modifications as fairness requires. In making the determination, the hearing officer or other person ruling on the application may inquire of the parties whether they will stipulate to the facts sought to be proved.

Note: Whenever possible, the parties should explore the extent to which stipulations of fact may obviate the need for issuance of accounting board demands and requests to non-parties, and the hearing officer or other person ruling on an application for issuance of an accounting board demand or request should encourage the parties to reach such stipulations when possible.

### **(4) Witness Fees**

A witness, other than a party, who is summoned to a Board proceeding pursuant to an accounting board demand, or an accounting board request, or who is deposed pursuant to Rule 5425, shall be paid his or her reasonable expenses by the party at whose instance the witness appears.

### **(b) Commission Subpoenas**

In connection with any hearing ordered by the Board, and upon the application of any party or on its own initiative, the Board may seek issuance by the Commission of a subpoena to any person, including any client of a registered public accounting firm, requiring the person to provide any testimony or produce any documents that the Board considers relevant or material to a Board proceeding.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

## **Rule 5425. Depositions to Preserve Testimony for Hearing**

### **(a) Procedure**

Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters

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concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

Note: Depositions under the Rules of Board Procedure are used only to preserve testimony of a witness who would be unlikely to be able to attend the hearing. They are not permitted for purposes of discovery.

**(b) Required Finding When Ordering a Deposition**

In the discretion of the Board or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, or otherwise unavailable, and that the taking of a deposition will serve the interests of justice.

**(c) Procedure at Depositions**

A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

**(d) Objections to Questions or Evidence**

Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted in the transcript, but no person other than the hearing officer shall have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence during the deposition shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

**(e) Filing of Depositions**

The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5426. Prior Sworn Statements of Nonparty Witnesses in Lieu of Live Testimony**

At a hearing, any person wishing to introduce a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement of a nonparty witness in lieu of live testimony may be granted if –

- (a) the witness is dead;
- (b) the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;
- (c) the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;
- (d) the party offering the prior sworn statement has been unable to procure the attendance of the witness by accounting board demand; or,
- (e) in the discretion of the Board or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5427. Motion for Summary Disposition**

**(a) For Interested Division**

After a party has filed an answer and documents have been made available to that respondent for inspection and copying pursuant to Rule 5422, or after service of a motion for summary disposition by the respondent, the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent.

**(b) For Respondent**

A respondent party may at any time make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent.

**(c) Pre-motion Conference Required**

A party seeking summary disposition shall request and attend a pre-motion conference with the hearing officer before filing its motion for summary disposition.

**(1) Due-date for Filing**

At the pre-motion conference, the hearing officer will schedule a due-date for the submission of the motion for summary disposition and may, but is not required to, schedule a due-date for the submission of a response to the motion for summary disposition.

**(2) Review and Decide Procedure**

If the hearing officer has not scheduled a due-date for a response to the motion for summary disposition, upon review of the motion the hearing officer may decide to deny the motion or to require a response to the motion. A hearing officer shall not grant a motion for summary disposition until after the due-date for filing a response to the motion has passed.

**(d) Decision on Motion**

The hearing officer shall promptly grant a motion for summary disposition if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a disposition as a matter of law. A summary disposition, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to a sanction. A hearing officer's decision to deny a motion for summary disposition is not subject to interlocutory appeal.

**(e) Lengths of Briefs**

Neither a brief in support of a motion for summary disposition, nor a brief in response to such a motion, shall exceed 25 pages in length, without leave of the hearing officer. Reply briefs are discouraged and are not permitted without leave of the hearing officer.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rules 5428. – 5439. [Reserved]**

## **CONDUCT OF HEARINGS**

### **Rule 5440. Record of Hearings**

#### **(a) Recordation**

All hearings shall be recorded and a written transcript thereof shall be prepared.

#### **(b) Availability of a Transcript**

Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings shall be available for purchase only by parties, provided, however, that any person compelled to testify at a hearing may purchase a copy of that person's own testimony.

#### **(c) Transcript Correction**

Prior to the filing of post-hearing briefs or other submissions, or within such earlier time as directed by the Board or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **Rule 5441. Evidence: Admissibility**

The Board or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **Rule 5442. Evidence: Objections and Offers of Proof**

#### **(a) Objections**

Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Board, however, unless raised –

- (1) pursuant to interlocutory review in accordance with Rule 5461;
- (2) in a proposed finding or conclusion filed in a post-hearing brief or other submission filed pursuant to Rule 5445; or

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(3) in a petition for Board review of an initial decision filed in accordance with Rule 5460.

**(b) Offers of Proof**

Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 5202(b).

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5443. Evidence: Presentation Under Oath or Affirmation**

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5444. Evidence: Presentation, Rebuttal and Cross-examination**

In any proceeding, a party may present its case or defense by oral or documentary evidence, submit rebuttal evidence, and conduct such cross-examination as, in the discretion of the Board or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, shall be determined by the Board or the hearing officer in each proceeding.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5445. Post-hearing Briefs and Other Submissions**

(a) At the end of the hearing in any proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500 in which an initial decision is to be issued, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which post-hearing briefs or other submissions are to be filed. Unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary –

(i) the party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing; and

(ii) the total period within which all such filings and any opposition and reply submissions are to be filed shall be no longer than 90 days after the end of the hearing.

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(b) In any proceeding instituted solely pursuant to Rule 5200(a)(3), the hearing officer may, in his or her discretion, render an initial decision without allowing for post-hearing briefs or other submissions, or may allow for such briefs or other submissions according to an expedited schedule.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rules 5446. – 5459. [Reserved]**

**APPEALS TO THE BOARD**

**Rule 5460. Board Review of Determinations of Hearing Officers**

**(a) Petition for Review of Initial Decision by Hearing Officers**

Any party to a hearing may obtain Board review of an initial decision by filing a petition for review that –

(1) sets forth specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for each exception; and

(2) is filed –

(i) in a proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, within 30 days after service of the initial decision on the petitioner or within 10 days after the filing of a petition for review by another party, whichever is later; or

(ii) in a proceeding instituted solely pursuant to Rule 5200(a)(3), within 10 days after service of the initial decision on the petitioner.

**(b) Review on Board's Initiative**

The Board may, on its own initiative, order review of any initial decision, or a portion of any initial decision, at any time before the initial decision becomes final pursuant to Rule 5204(d).

**(c) De Novo Review**

Based on a petition for review, or on its own initiative, the Board may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper based on the record.

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**(d) Limitations on Matters Reviewed**

Review by the Board of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to Rule 5462(a). On notice to all parties, however, the Board may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

**(e) Summary Affirmance**

The Board may summarily affirm an initial decision based upon the petition for review, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board.

Note: For purposes of Rule 5460(a), with respect to any party that has entered an appearance and provided an electronic mail address as required by Rule 5401, service of the initial decision is deemed to occur on the date the Secretary transmits the initial decision to that electronic mail address.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5461. Interlocutory Review**

**(a) Availability**

The Board will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Board may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this Rule if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Board may, at any time, on its own motion, direct that any matter be submitted to it for review.

**(b) Certification Process**

A ruling submitted to the Board for interlocutory review shall be certified in writing by the hearing officer as appropriate for interlocutory review and shall specify the basis for certification. The hearing officer shall certify a ruling only if –

(1) the ruling would compel testimony of Board members, officers or employees or the production of documentary evidence in their custody; or

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that –



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(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding.

**(c) Proceedings Not Stayed**

The filing of an application for interlocutory review or the grant of interlocutory review shall not stay proceedings before the hearing officer unless he or she, or the Board, shall so order. The Board will not consider the motion for a stay unless the motion has first been made to the hearing officer.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5462. Briefs Filed with the Board**

**(a) Briefing Schedule Order**

Upon a timely and valid petition for review, or upon its own timely motion to review an initial decision, other than review ordered pursuant to Rule 5469, the Board shall issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs may be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Board. The briefing schedule order shall be issued –

(1) at the time the Board orders review on its own initiative pursuant to Rule 5460(b), or orders interlocutory review on its own motion pursuant to Rule 5461(a); or

(2) within 21 days, or such longer time as provided by the Board, after –  
(i) the last day permitted for filing a petition for review pursuant to Rule 5460(a);

(ii) certification of a ruling for interlocutory review pursuant to Rule 5461(b).

**(b) Contents of Briefs**

Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

**(c) Length Limitation**

Opening and opposition briefs shall not exceed 30 pages and reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Board.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

**Rule 5463. Oral Argument Before the Board**

**(a) Availability**

The Board, on its own motion or the motion of a party, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Board will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Board determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

**(b) Procedure**

Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Board shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Board, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

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**(c) Time Allowed**

Unless the Board orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Board may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

Note: The term "side" is used in this Rule to indicate that the time allowed is afforded to opposing interests rather than to individual parties. If multiple parties have a common interest, they may constitute only a single side.

**(d) Participation of Board Members**

A member of the Board who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5464. Additional Evidence**

Upon its own motion or the motion of a party, the Board may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Board. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. Any other party may file a response to the motion within 5 days after the motion is filed, or such longer time as the Board may allow. The Board may accept or hear additional evidence, or it may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

[Effective pursuant to SEC Release No. 34-48765, File No. PCAOB-2003-06 (November 10, 2003)]

**Rule 5465. Record Before the Board**

The Board shall determine each matter on the basis of the record.

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**(a) Contents of the Record**

In proceedings for final decision before the Board, the record shall consist of –

- 5202(a);
- (1) all items part of the hearing record below in accordance with Rule 5202(a);
  - (2) any petitions for review, cross-petitions or oppositions; and
  - (3) all briefs, motions, submissions and other papers filed on appeal or review.

**(b) Transmittal of Record to Board**

Within 14 days after the last date set for filing briefs or such later date as the Board directs, the Secretary shall transmit the record to the Board.

**(c) Review of Documents Not Admitted**

Any document offered in evidence but excluded by the hearing officer or the Board and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Board on appeal but shall be transmitted to the Board by the Secretary if so requested by the Board. In the event that the Board does not request the document, the Secretary shall retain the document not admitted into the record until the later of –

- (1) the date upon which the Board's order becomes final, or
- (2) the conclusion of any Commission and judicial review of that order.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5466. Reconsideration**

**(a) Scope of Rule**

A party may file a motion for reconsideration of a final order issued by the Board.

**(b) Procedure**

A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Board may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the

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relief sought. Except with permission of the Board, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Board.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

### **Rule 5467. Receipt of Petitions for Commission or Judicial Review**

A registered public accounting firm –

(a) that has filed a petition for Commission review of a final disciplinary sanction of the Board pursuant to Section 19(d)(2) of the Exchange Act, or a petition for court review of a Commission order with respect to such a sanction pursuant to Section 25(a)(1) of the Exchange Act, or

(b) that is associated with a person, other than a person primarily associated with another registered public accounting firm, who has filed such a petition,

shall file a notice and copy of the petition with the Secretary within 10 days after the petition is made.

Note: Appeals of final disciplinary sanctions by the Board are instituted by the filing of a petition for review in accordance with the Commission's Rules of Practice. Unless directed otherwise by statute, appeals of Commission orders and decisions on a sanction imposed by the Board to a court of appeals are instituted by the filing of a petition for review in accordance with the Federal Rules of Appellate Procedure. See Fed. R. App. P. 15(a).

### **Rule 5468. Appeal of Actions Made Pursuant to Delegated Authority**

#### **(a) Notice of Intention to Petition for Review**

A person intending to seek Board review of an action made pursuant to delegated authority shall file a written notice of intention to petition for review within five days after actual notice to the petitioner of the action or service of notice of the action, whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to Rule 5401(c). The Board will allow late filing of a notice of intention to petition for review upon a showing that a delay in service, through no fault of the petitioner's, made compliance with the time limit set forth in this paragraph impossible or unreasonably burdensome.

#### **(b) Petition for Review**

Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (a) of this Rule, the person seeking review shall file a petition for

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review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form. The Board will review all actions made pursuant to delegated authority with respect to which timely notices of intention to petition for review, and timely petitions for review, have been filed.

**Rule 5469. Board Consideration of Actions Made Pursuant to Delegated Authority**

**(a) Board Review**

Upon a petition for review, or upon its own initiative, the Board may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to delegated authority. The Board may, in its discretion, act summarily on the basis of the petition, act on the basis of the petition and any written response provided by the staff and served on the petitioner, or request the submission of additional statements in support of or in opposition to the petition.

**(b) No Stay of Effect of Delegated Action**

An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Board. The effect of any action made pursuant to delegated authority shall not be stayed, and no petition for review shall operate as a stay, unless otherwise ordered by the Board.

**Rules 5470. – 5499. [Reserved]**

**Part 5 – Hearings on Disapproval of Registration Applications**

**Rule 5500. Commencement of Hearing on Disapproval of a Registration Application**

The Board may commence a proceeding to determine whether to approve or disapprove a public accounting firm's application for registration when, based on review of an application for registration as a registered public accounting firm –

(a) the Board determines, pursuant to Rule 2106(b)(2)(ii), to provide the applicant with written notice of a hearing to determine whether to approve or disapprove the application; and

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(b) within such period, as the Board permits, after the date of service of a notice of a hearing whether to approve or disapprove an application for registration pursuant to Rule 2106(b)(2)(ii), the public accounting firm served with such notice files with the Secretary a written request for a hearing date and a notice of appearance pursuant to Rule 5401(c), and includes with the request –

(1) a statement that the public accounting firm has elected not to treat the notice as a written notice of disapproval for purposes of Section 102(c) of the Act; and

(2) a statement describing with specificity why the public accounting firm believes that the Board should not issue a written notice of disapproval.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**Rule 5501. Procedures for a Hearing on Disapproval of a Registration Application**

Proceedings instituted pursuant to Rule 5500 shall be subject to procedures as described in Parts 2 and 4 of Section 5 of the Board's Rules.

[Effective pursuant to SEC Release No. 34-49704, File No. PCAOB-2003-07 (May 14, 2004)]

**SECTION 6. INTERNATIONAL**

**Rule 6001. Assisting Non-U.S. Authorities in Inspections**

The Board may, as it deems appropriate, provide assistance in an inspection of a registered public accounting firm organized and operating under the laws of the United States conducted pursuant to the laws and/or regulations of a non-U.S. jurisdiction. The Board may consider the independence and rigor of the non-U.S. system in determining the extent of the Board's assistance.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]

**Rule 6002. Assisting Non-U.S. Authorities in Investigations**

The Board may, as it deems appropriate, provide assistance in an investigation of a registered public accounting firm organized and operating under the laws of the United States conducted pursuant to the laws and/or regulations of a non-U.S. jurisdiction. The Board may consider the independence and rigor of the non-U.S. system in determining the extent of the Board's assistance.

[Effective pursuant to SEC Release No. 34-50291, File No. PCAOB-2004-04 (August 30, 2004)]



**SECTION 7. FUNDING**

**Rule 7000. [Reserved]**

[Reserved]

**Rule 7100. Accounting Support Fees.**

The Board shall establish a total accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers (the "broker-dealer accounting support fee"). The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

**Rule 7101. Allocation of Issuer Accounting Support Fee.**

**(a) Classes of Issuers**

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer accounting support fee is calculated shall be divided into four classes:

**(1) Equity Issuers**

All issuers whose average, monthly issuer market capitalization is greater than \$75 million during the calendar year preceding the date the issuer accounting support fee is calculated, other than those described in paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: The monthly issuer market capitalization will be based on closing share price of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month during which trading in the common equity occurred.

**(2) Investment Company Issuers**

All issuers (i) who, as of the date the accounting support fee is calculated, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the calendar year preceding the date the issuer accounting support fee is calculated, and

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(iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly available.

Note: The monthly issuer market capitalization will be based on closing share price of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month during which trading in the common equity occurred.

**(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports**

All issuers that, as of the date the issuer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings, and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: Issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated.

**(4) All Other Public Company Issuers**

All issuers other than those described in paragraphs (a)(1), (a)(2), or (a)(3) of this Rule.

**(b) Allocation of Issuer Accounting Support Fee Among Issuers**

The issuer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

**(1) Equity and Investment Company Issuers**

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

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(i) the numerator of which is the average, monthly market capitalization of the issuer during the calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

**(2) All Other Classes**

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the issuer accounting support fee equal to \$0.

**(c) Adjustments**

After the issuer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

**Rule 7102. Allocation of Broker-Dealer Accounting Support Fee**

**(a) Classes of Brokers and Dealers**

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

**(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million**

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

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**(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule**

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

**(b) Allocation of Broker-Dealer Accounting Support Fee**

The broker-dealer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

**(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million**

Each broker and dealer described in paragraph (a)(1) of this Rule shall be allocated a share of the broker-dealer accounting support fee in an amount equal to the broker-dealer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

**(2) All Other Brokers and Dealers**

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

**(c) Adjustments**

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.

[Effective pursuant to SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

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**Rule 7103. Assessment of Accounting Support Fees.**

**(a) Amount of Assessment**

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102, rounded to the nearest \$100.

Note: If the allocated share of the accounting support fee to an issuer, broker, or dealer is less than \$50, the assessed share of the accounting support fee will be zero. If the allocated share of the accounting support fee is \$50 or \$50 more than the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100.

**(b) Notice of Assessment**

The Board will use its best efforts to send an invoice to each issuer, broker, and dealer, either electronically or by first-class mail, at the address shown in the most recent periodic report filed with the Commission by the issuer, or with the designated self-regulatory organization by the broker or dealer, at the address contained in the Commission's EDGAR system or the broker's or dealer's designated self-regulatory organization, or at such other address as the issuer, broker, or dealer provides to the Board. The Board's failure to send an issuer, broker, or dealer an invoice, or the failure to receive an invoice sent by the Board, shall not constitute a waiver of the Board's right to assess the issuer, broker, or dealer for its share of the accounting support fee or of the issuer's, broker's, or dealer's responsibility to pay its share of the accounting support fee.

**(c) Petition for Correction**

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 60th day after the invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer, broker, or dealer a written explanation of its decision. The provisions of Rule 7104 shall be suspended while such a petition is pending before the Board.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011); and SEC Release No. 34-72087, File No. PCAOB-2013-03 (May 2, 2014)]

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**Rule 7104. Collection of Accounting Support Fees.**

**(a) Accounting Support Fee Payment Due Date**

Unless the Board directs otherwise, payment shall be due on the 30th day after the invoice is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

**(b) Determination of Payment of Accounting Support Fees by Registered Accounting Firm**

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements,

(ii) issue a consent to include an audit report issued previously,  
or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

unless the registered public accounting firm has ascertained that the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 7103(c) pending.

(2) A registered public accounting firm may:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements,

(ii) issue a consent to include an audit report issued previously,  
or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

even though the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 7103(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the

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case of an issuer only, to issue securities. The registered public accounting firm shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103.

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer.

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to [rule7104stay@pcaobus.org](mailto:rule7104stay@pcaobus.org).

### **(c) Reports of Nonpayment**

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the invoice was sent, and the issuer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such issuer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall – \* \* \* (C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

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### **Rule 7105. Service as Designated Collection Agent.**

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7103 and 7104 as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]

### **Rule 7106. Excess Funds.**

If in any Board fiscal year, the Board receives funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess funds in escrow. Such escrowed excess funds shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's total accounting support fee in that next fiscal year.

[Effective pursuant to SEC Release No. 34-48278, File No. PCAOB-2003-02 (August 1, 2003); and SEC Release No. 34-65162, File No. PCAOB-2011-02 (August 18, 2011)]