

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

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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)]

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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 –

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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).

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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.

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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)]

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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) Presiding Official

All proceedings shall be presided over by the Board or, if the Board orders, by a hearing officer.

(c) Assignment of a Hearing Officer

Subject to Rule 5200(b), 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;

Public Company Accounting Oversight Board

Bylaws and Rules – Rules – Investigations and Adjudications

(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;

(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.

(d) 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.

(e) 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.

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;

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

- (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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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.

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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 –

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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) Assignment 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 assigned, the Secretary will assign a replacement hearing officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement hearing officer is assigned 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); and File No. PCAOB-2019-01 (January 29, 2019)]

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)]

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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)]

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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 –

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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;

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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 –

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

Public Company Accounting Oversight Board Bylaws and Rules – Rules – Investigations and Adjudications

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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 –

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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.

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

(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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications**

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules – Investigations and Adjudications

(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)]