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## **BRIEFING PAPER**

### **PROPOSED ETHICS CODE**

#### **APRIL 16, 2003 PUBLIC MEETING OF THE BOARD**

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At its public meeting on April 16, 2003, the Public Company Accounting Oversight Board (the “Board”) will consider whether to propose, and seek comment on, rules governing the Board’s ethical conduct. Section 101 of the Sarbanes-Oxley Act of 2002 (the “Act”) requires the Board to establish ethics rules and standards of conduct for Board members and staff. The purpose of the proposed Ethics Code (“EC” or “Code”) is to ensure the highest standards of ethical conduct within the Board’s operations, and to provide the public with confidence in the objectivity of the Board’s decisions by seeking to avoid both actual and perceived conflicts of interests.

The proposed Code consists of fourteen sections (EC1 through EC14). Appended to this paper is a list of the titles of each section. An overview of the proposed Ethics Code appears below.

#### **Overview of the Proposed Ethics Code**

As proposed, the Code would be applicable to the Board’s members and staff<sup>1/</sup>, as well as to designated contractors and consultants<sup>2/</sup>. In some circumstances,

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<sup>1/</sup> Certain restrictions only apply to “professional” staff (i.e., those who are exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (29 USC § 201 et seq.)). These include restrictions on financial interests, investment activity, acceptance of gifts, outside employment, speaking engagements, and post-employment activities, as well as provisions requiring recusal.

<sup>2/</sup> The term “designated contractors and consultants” means those persons or business organizations with whom the Board enters into contracts for services, and for which the contract contains a provision expressly incorporating this Code (in whole or in part). The Board will maintain a list of designated contractors and consultants, which

## BRIEFING PAPER

immediate family members<sup>3</sup> would either be subject to the Code, or impact the obligation of the Board member or staff under the Code. If adopted as proposed, the Code would provide, among other things, that:

- With narrow exceptions, Board members and professional staff may not, while employed by the Board, owe or be owed any financial or other obligation to or by any former employer, business partner or client. Routine banking and similar commercial relationships, and various forms of deferred compensation are excluded from this prohibition.
- Members of the Board may not share in the profits of, or receive payments from, a public accounting firm, other than fixed continuing payments under standard retirement arrangements. This provision is specifically required by Section 101(e)(3) of the Act.
- Board members, staff, and their immediate family may not have any financial interest in a public accounting firm. Board members, professional staff and their immediate family are also urged to avoid investments that affect or reasonably create the appearance of affecting their independence or objectivity. Personal investments are not otherwise restricted.
- Board members and professional staff are disqualified from participating in any Board function or activity if they (or their immediate family) hold any financial interest or other relationship which might affect or create the appearance of affecting his or her independence or objectivity. In those circumstances, the proposed Code prescribes a disclosure and recusal process.
- Board members and staff are prohibited from disclosing any confidential, non-public information obtained by virtue of their positions with the Board, and may not use such information for the financial gain of themselves or others.
- Board members may not undertake any employment or other activity for

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will be available to the public, and may contractually impose additional restrictions or limitations.

<sup>3/</sup> “Immediate family” means spouse, dependent children, and any other person whom the Board member or staff has enrolled in any of the Board’s employee benefit plans, whose financial interests and investments are reasonably within the knowledge of the Board member or staff.

## BRIEFING PAPER

compensation outside of service to the Board. Even if not for compensation, no Board member or staff may engage in any outside activity which interferes with his or her responsibilities to the Board, or creates even a reasonable appearance of a conflict of interest.

- Staff may only undertake outside employment or other activity for compensation if approved by the Board (or a Board designee, e.g., its Chief Administrative or Ethics officers).
- Board members and professional staff are prohibited from participating in any decision materially affecting a former employer, business partner or client for one year from the date of appointment or hire. This prohibition only applies, however, when the prior business relationship terminated within five years before joining the Board.
- Board members and professional staff are prohibited from practicing before the Board or the Securities and Exchange Commission, with respect to Board-related matters, for one year after leaving the Board. This provision is specifically required by Section 101(g)(3) of the Act.
- The Ethics Code represents a condition of employment with the Board. Board members and *all* staff must annually certify compliance.

The Board will designate an Ethics Officer to oversee compliance with these proposed rules and provide guidance to the Board and staff as necessary.

### Public Comment

Interested parties are encouraged to submit their views to the Board. Written comments should be sent to Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's website at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 003 in the subject or reference line and should be received by the Board no later than 5:00 PM (EDT) on May 9, 2003.

The Board will carefully consider all comments received. Following the close of the comment period, the Board will determine whether to amend its proposal, will adopt a final Ethics Code, and will submit this final Code to the Securities and Exchange Commission for approval. Pursuant to Section 107 of the Act, Board rules do not take

**BRIEFING PAPER**

effect until approved by the Commission.

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The PCAOB is a private-sector, non-profit corporation, created by the Sarbanes-Oxley Act of 2002. Its mission is to protect investors in the U.S. securities markets and to further the public interest by ensuring that public company financial statements are audited according to the highest standards of quality, independence and ethics. The Board will be principally funded by fees collected from public companies. The costs of processing and reviewing public accounting firm registration applications and annual reports will be recovered from fees paid by those firms

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## APPENDIX

### List of Proposed Sections within Ethics Code

|       |   |
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| EC1   | Application of Code   |
| EC2   | Definitions <ul style="list-style-type: none"><li>(a) Reference to Rules of the Board</li><li>(b) Code</li><li>(c) Designated Contractors and Consultants</li><li>(d) Honoraria</li><li>(e) Immediate Family</li><li>(f) Practice</li><li>(g) Professional Staff or Professional Staff of the Board</li><li>(h) Staff or Staff of the Board</li></ul> |
| EC3   | General Principles  |
| EC4   | Financial and Employment Interests  |
| EC5   | Investments   |
| EC6   | Outside Activities  |
| EC7   | Gifts, Reimbursements, Honoraria and Other Things of Value  |
| EC8   | Disqualification  |
| EC9   | Non-Public Information  |
| EC 10 | Speaking for the Board  |
| EC11  | Ethics Officer  |
| EC12  | Post-Employment Restrictions  |
| EC 13 | Waiver  |
| EC 14 | Certification   |