
PROPOSAL OF ETHICS CODE FOR
BOARD MEMBERS, STAFF AND
DESIGNATED CONTRACTORS AND
CONSULTANTS

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) PCAOB Release No. 2003-004
) April 18, 2003
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) PCAOB Rulemaking Docket
) Matter No. 003
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Summary: The Public Company Accounting Oversight Board (“Board” or “PCAOB”) has, pursuant to the direction contained in Section 101(g)(3) of the Sarbanes-Oxley Act of 2002 (“Act”), proposed an Ethics Code (“Code” or “EC”) to govern the conduct of its members, employees, and certain contractors and consultants. The proposed Code consists of fourteen sections (EC 1 through 14). The Board invites public comment on the proposed Code and will consider all comments received, modify its proposal as it deems appropriate, and submit final rules to the Securities and Exchange Commission (“Commission”) for approval pursuant to Section 107 of the Act. The Board’s Ethics Code does not take effect until approved by the Commission.

Public Comment: Interested persons may submit written comments to the Board. Such 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 or through the Board’s website at 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 (EST) on May 9, 2003.

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Board

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Section 101(g)(3) of the Act requires the Board to establish ethics rules and standards of conduct for members and staff of the Board. This requirement is one of several provisions of the Act that address issues relating to ethics, not only with regard to PCAOB governance but also as to a broad range of market participants (e.g., the accounting profession, certain public company officers, attorneys, securities professionals, securities analysts). One of the key purposes of the Act was to address conflicts of interest, both actual and perceived, in an effort to restore public confidence in the integrity of the equity securities market.^{1/} The Board – as the body charged with the responsibility to establish, among other things, standards of ethics and independence for public accounting firms^{2/} – must ensure that its own business integrity, values and principles are above reproach. It is with this goal that the Board has proposed its Ethics Code.

The Board seeks the views of persons interested in the proposed Ethics Code. Section A summarizes the application and scope of the proposed Code. Section B describes how comments and views may be submitted to the Board. Appendices 1 and 2 respectively contain the text of the proposed Code and a section-by-section analysis of the Code.

^{1/} President George W. Bush, Remarks at the Signing of H.R. 3763 (July 30, 2002) (available at <http://www.whitehouse.gov/news/release/2002/02/20020730-1.html>).

^{2/} See Section 101(c)(2) of the Act.

A. Summary of the Application and Scope of the Ethics Code

1. Whose conduct is affected by the Code?

The proposed Code establishes ethics rules and standards of conduct for the Board's members, staff,^{3/} and designated contractors and consultants.^{4/} In most situations, the Code's restrictions on staff behavior are only directed at professional staff.^{5/} This reflects the difference in responsibilities and pay levels. Duties of confidentiality, however, are imposed upon all of the Board's staff. In some circumstances, immediate family members^{6/} are either subject to the Code,^{7/} or impact the obligation of the Board member or staff under the Code.^{8/}

^{3/} Because the Board is a private sector, non-profit organization, its workforce is not subject to civil service laws. Compliance with the Ethics Code represents a condition of employment.

^{4/} EC1(a), (c). The term "designated contractors and consultants" is defined in EC2(c).

^{5/} As used in this Release, "professional staff" refers to employees who are exempt from the overtime provisions of the Fair Labor Standards Act (29 USC § 201 et seq.). (See definition in EC2(g).) Unless otherwise noted in this Release, reference to the Board's staff is limited to professional staff.

^{6/} The term "immediate family" is defined in EC2(e).

^{7/} EC1(b). See also EC5(a) prohibiting investments in public accounting firms.

^{8/} See, e.g., EC8(a) disqualifying Board members or staff from Board functions or activities if the financial or similar interest of their immediate family members might affect, or might reasonably create the appearance of affecting, the Board's independence or objectivity.

2. What general principles will guide interpretation of and compliance with the proposed Code?

Even if not specifically proscribed in the Code, certain overarching principles must be observed.^{9/} These include:

- Being ever mindful of the gravity of the Board's responsibilities, the sensitivities of the roles of those who are part of the decision-making structure of the Board, and the need to maintain the public's confidence in the independence and objectivity of the Board.
- Never using a position with the Board, or confidential information obtained through service for the Board, for private gain.
- Always maintaining, both in act and appearance, independence, objectivity, integrity and impartiality.

3. Are continuing financial relationships with former employers permitted?

In establishing its organizational structure, the Board is aware of two potentially conflicting realities. First, to fulfill its responsibilities under the Act, the Board will need to hire people with expertise in, among other areas, public company audits, financial structures and reporting responsibilities. Second, it was the public's eroding confidence in these fields that was largely responsible for the passage of the Act, and for the creation of the Board. Thus, the Board must hire many people who come from the private sector areas which will most directly be affected by the Board's work, but must do so with sufficient protections in place to ensure that all prior interests are wholly subsumed by the employee's new responsibilities to the PCAOB.

The proposed Ethics Code seeks to strike the necessary balance between these two realities. It does so by prohibiting all financial obligations, running to or from a former employer, business partner or client, except in

^{9/} EC3.

narrowly defined circumstances. Obligations *from* the former employer, business partner or client are only permitted if part of:^{10/}

- Routine banking and other routine commercial relationships;
- Investments that are otherwise permitted under the Code (see Question 4, below); or
- Payments that can legitimately be viewed as deferred compensation for services completed *before* joining the PCAOB; these include:
 - ♦ Benefits under bona fide pension, retirement, health and similar employee welfare or benefit plans, *provided* these benefits are related to the Board member's or staff's *prior service*;
 - ♦ Profit-sharing, stock bonus and similar payments, again *provided* that the payments are related to *prior service*;^{11/}
 - ♦ Royalties and like payments, but again *only* for writings or recordings completed *before* joining the Board.

Obligations *to* a former employer, business partner or client are only permitted if part of:^{12/}

- Routine banking and other routine commercial relationships;
- Covenants not to compete; or
- Non-disclosure agreements.

In both situations, the Board retains the right to permit other obligations that are consistent with the Code's overarching principles.

^{10/} EC4(a)(1).

^{11/} This provision would not prohibit a Board member or staff from receiving the proceeds from the liquidation of any capital accounts he or she may have with a public accounting firm at the time of his or her appointment or employment with the Board.

^{12/} EC4(a)(2).

Lastly, pursuant to the express restrictions contained in Section 101(e)(3) of the Act, Board members are expressly prohibited from sharing in any of the profits of – or receiving payments from – a public accounting firm, except for fixed continuing payments under standard accounting firm retirement packages (e.g., a pension allowance). Per the Act, the Commission may impose additional conditions on the receipt of such payments. The Board believes that it must defer to the Commission for any additional conditions, as those conditions could affect the pool of persons eligible for or willing to serve as appointees to the Board.

4. Are personal investments restricted?

Unlike the Commission, the Board is not charged with regulating the securities markets. The Board is charged with oversight only of public accounting firms. Thus, the proposed Code's specific restrictions as to personal investments are confined to this industry.^{13/} However, the Code also contains general direction to avoid any personal financial activity which might affect, or reasonably create the appearance of affecting, independence or objectivity.^{14/} In addition, Board members and staff are prohibited from disclosing or using for the financial gain of any person, any non-public information which might affect the value of particular securities or investments.^{15/}

5. Are activities outside of Board service, with or without compensation, limited?

Consistent with Section 101(e)(3) of the Act, no Board member may engage in any employment or other activity for compensation, outside of service to the Board.^{16/} Staff may only undertake outside employment with

^{13/} EC5(a). This section also applies to the immediate family of Board members and staff.

^{14/} EC5(b).

^{15/} EC5(c).

^{16/} EC6(a).

the consent of the Board (or a person to whom the Board may delegate this responsibility).^{17/} Additionally, neither Board members nor staff may undertake any outside activity, whether for compensation or not, which would affect the person's independence or objectivity, or otherwise hinder the Board's interests.^{18/}

6. Is the receipt of gifts or travel expenses permitted?

Solicitation or acceptance of anything of value, from any source, which might reasonably be perceived as interfering with independence or objectivity, is prohibited.^{19/} This prohibition includes honoraria.

Acceptance of payment for or reimbursement of official travel-related expenses is only permitted when two conditions are met.^{20/} First, the travel must be related to the Board member's or staff member's participation in an educational forum. This would include speeches or panel presentations at conferences, but would not include travel in connection with, for example, general business meetings. Second, the travel expenses may only be paid by:

- a governmental entity,
- an accredited institution of higher learning, or
- a tax-exempt entity,^{21/} *except* one which is principally funded by one or more public accounting firms a public company registered with the Commission.

^{17/} EC6(b).

^{18/} EC6(c).

^{19/} EC7(a).

^{20/} EC7(b).

^{21/} The tax-exemption must also be based on Section 501(c)(3) of the Internal Revenue Code. (EC7(b)(2)(C).)

Through these restrictions, the Board seeks to further protect against even the appearance that its objectivity or independence is compromised.

7. If an individual conflict of interest arises, what should the Board member or staff do?

The Board recognizes that not all potential conflicts of interest can be identified and appropriately addressed at the time of hire or appointment, and that new issues during the course of one's service to the Board may arise (e.g., a spouse may take a new job). If such a financial conflict of interest should arise, Board members and staff must (a) disclose, and (b) disqualify themselves under the code, from Board functions or activities involving or affecting the financial interest.^{22/}

8. Are there "look-back" restrictions?

Under the proposed Code, Board members and staff may not participate in any decision-making process which is reasonably likely to have a material effect on a former employer, business partner or client, when the prior relationship terminated within the previous five years.^{23/} In establishing this "look back" period, the Board concluded that the combination of one year from PCAOB employment and five years from prior employment represented a reasonable time beyond which conflicting loyalties (not affected by financial relationships, which are addressed above) are unlikely to continue.

This provision, as proposed, would prohibit, for example, a Board member or staff from leaving the employ of a public accounting firm, joining the PCAOB, and immediately beginning to inspect that firm. It would not prohibit, however, the same Board member or staff from participating in broad policymaking matters or decisions that will affect a larger population of persons, including that former employer.

9. What duties of confidentiality do Board members or staff have?

^{22/} EC8(a).

^{23/} EC8(c).

All Board members and staff (including administrative personnel) are required to maintain the confidentiality of all non-public information obtained through service to the Board.^{24/} Considering the broad application of this restriction, as well as the fact that the sensitivity of non-public information generally declines as time passes, the Board concluded that five years represented a reasonable time period during which confidentiality must be maintained.

10. Who may speak for the Board?

The proposed Ethics Code prohibits any individual Board member or staff from purporting to speak for the Board, without Board authorization.^{25/} Further, when a Board member or staff is making a statement (either orally or in writing) without such authorization, he or she must explicitly acknowledge this fact.

11. What are the “revolving-door” restrictions?

Two restrictions impact post-employment considerations.^{26/} First, if a Board member or staff is negotiating with a public accounting firm for prospective employment, the disclosure/disqualification rules of EC8 (see Question 9, above) apply. Second, for one year after leaving Board service, no former Board member or staff may practice^{27/} before the Board or the Commission (with respect to Board related matters). This second restriction is also mandated for Board members by Section 101(g)(3) of the Act.

12. Is any restriction within the Code subject to waiver, and if so, how?

^{24/} EC9.

^{25/} EC10.

^{26/} EC12.

^{27/} The term “practice” is defined in EC2(f).

The Board may waive any provision of the Code, so long as the provision is not otherwise required by law (including the Act).^{28/} Waivers must be requested in writing and evaluated by the Board's Ethics Officer. The Board will only grant a waiver after finding that the waiver would not otherwise hinder the interest or reputation of the Board.

13. How will the Board enforce the Code?

The Board intends to enforce the Code primarily in three ways. First, an Ethics Officer will be designated and empowered to counsel Board members and staff regarding compliance and violations (including issuing advisory opinions), and to make recommendations to the Board regarding waivers and potential violations.^{29/} Second, as noted earlier the Ethics Code represents a condition of employment with the Board. Third, each Board member and staff will be required to annually certify that he or she is in compliance with the Code.^{30/}

B. Request for Public Comment

Interested persons 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 or through the Board's website at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 003 in the subject or reference line, and must be received by the Board no later than 5:00 PM (EST) on May 9, 2003.

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On the 18th day of April, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

^{28/} EC13.

^{29/} EC13.

^{30/} EC14.



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ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Acting Secretary

April 16, 2003

APPENDICES:

1. Proposed Ethics Code
2. Section-by-Section Analysis of the Proposed Ethics Code

ETHICS CODE

EC1. Application of Code

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

- (a) Board members and staff;
- (b) the immediate family of Board members and staff; and
- (c) designated contractors and consultants to the Board.

EC2. Definitions

(a) Reference to Rules of the Board

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

(b) Code

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

(c) Designated Contractors and Consultants

The term “designated contractors and consultants” means those persons or business organizations with whom the Board enters into contracts for services, including contracts that provide for both goods and services, and for which the contract contains a provision expressly incorporating this Code, in whole or in part.

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

(d) Honoraria

The term “honoraria” means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. The waiver of conference fees is not “honoraria.”

Note: Items which are provided to all conference participants, including speakers, are not provided “in exchange for” a speech and thus not considered to be “honoraria.”

(e) Immediate Family

The term “immediate family” includes and is limited to a spouse, all dependent children, and any other person whom the Board member or staff has enrolled in any of the Board’s employee benefit plans, excluding life insurance, whose financial interests and investments (as specified in this Code) are known, or in the exercise of reasonable care, should have been known, by the Board member or staff.

(f) Practice

The term “practice” means:

- (1) knowingly acting as an agent or attorney for, or otherwise representing himself or herself or any other person in any formal or informal appearance before the Board or Commission; or
- (2) making any oral or written communication on behalf of himself or herself or any other person to, and with the intent to influence, the Board or Commission.

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

(g) Professional Staff or Professional Staff of the Board

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

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

(h) Staff or Staff of the Board

The terms “staff” or “staff of the Board” mean those persons who are employed by the Board

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

EC3. General Principles

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

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

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

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

EC4. Financial and Employment Interests

- (a) While employed by the Board, no Board member or professional staff shall:
- (1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner or client, except:
 - (A) Routine banking and other routine commercial relationships;
 - (B) Securities and other investments permitted by this Code;
 - (C) Benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;
 - (D) Profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client;
 - (E) Royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board; or

- (F) Such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board.
- (2) owe, directly or indirectly, any financial or other obligation to any former employer, business partner or client, except:
 - (A) Routine banking and other routine commercial relationships;
 - (B) Covenants not to compete;
 - (C) Non-disclosure agreements; or
 - (D) Such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board.

(b) Notwithstanding any other provision of this Code, pursuant to Section 101(e)(3) of the Act, no member of the Board may share in any of the profits of, or receive payments from, a public accounting firm, other than fixed continuing payments under standard arrangements for the retirement of members of public accounting firms.

EC5. Investments

(a) Except as provided in this Section, nothing in this Code prohibits Board members and staff, or their immediate family, from owning and holding securities (including futures), real estate, commodities (including futures), exchange-traded options and other investments held for personal investment purposes, except that

- (1) No Board member or professional staff, or members of his or her immediate family, may have any financial interest in a public accounting firm.

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

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

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- (1) Disseminate or otherwise disclose any confidential, non-public information obtained by virtue of their position with the Board, whether that information may be considered to be “material” under the securities laws or not.
- (2) Use such information for the financial gain of themselves or others.

EC6. Outside Activities

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

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

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

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

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

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

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

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

- (1) for travel that is in direct connection with the employee's participation in an educational forum; and
- (2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by:
 - (i) a federal, state or local governmental body,
 - (ii) an accredited institution of higher learning, or
 - (iii) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms or issuers.

EC8. Disqualification

(a) If a Board member or professional staff believes that he or she, or a member of his or her immediate family, may have a financial interest or other similar relationship which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to Board's function or activities, then he or she shall, at the earliest possible date:

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

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

(c) For a period of 12 months commencing on date of appointment or employment, no Board member or professional staff may participate in the making of a decision which is reasonably likely to have a material effect, direct or indirect, on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within 5 years from the date of appointment or employment with the Board.

EC9. Non-Public Information

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

(b) The provisions of this Section shall continue in effect 5 years after the termination of employment or Board membership, or until the information is made publicly available by other means.

EC10. Speaking for the Board

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

EC11. Ethics Officer

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

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

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

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

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

(b) Board members and professional staff may not negotiate prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

(c) Prohibition on Practice Before the Board or Commission

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Board members and professional staff shall be restricted from practice before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.

EC13. Waiver

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

EC14. Certification

Board members and staff agree to comply with this Code at the commencement of their service with the Board and shall annually certify in writing their continuing compliance with it.

Appendix 2 – Section-by-Section Analysis of Proposed Ethics Code

The proposed Ethics Code consists of fourteen rules (PCAOB Rules EC1 through EC14). Each of the proposed rules is discussed below.

EC1. Application of Code

EC1 provides that the Ethics Code shall apply, according to their terms, to Board members, the Board's staff, the immediate family of Board members and staff and certain contractors and consultants to the Board.

EC2. Definitions

EC 2 contains definitions of terms used in the Board's Ethics Code.¹

Reference to Rules of the Board

EC2(a) provides that, unless the context requires otherwise, the definitions provided in Section 1001 of the Rules of the Board apply to the words and terms contained in this Ethics Code.

Designated Contractors and Consultants

EC2(c) defines the term "designated contractors and consultants" as those persons or business organizations with whom the Board enters into contracts for services, including contracts that provide for both goods and services, and for which the contract contains a provision expressly incorporating this Code, in whole or in part. The Board will develop and maintain a list of designated contractors and consultants, which will be available to the public and will reserve the right to contractually impose additional restrictions and limitations on any contractor or consultant.

^{1/} Certain definitions in the Board's rules that are self-explanatory are not discussed below.

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Honoraria

EC3(d) defines “honoraria” as anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. “Nominal value” will initially be interpreted to mean fair market value of \$50 or less.

Immediate Family

EC2(e) defines “immediate family” as a spouse, all dependent children, and any other person whom the Board member or staff has enrolled in any of the Board’s employee benefit plans, excluding life insurance, whose financial interests and investments (as specified in this Code) are known, or in the exercise of reasonable care, should have been known, by the Board member or staff. The imputed knowledge provision is designed to ensure Board members and staff cannot intentionally remain uninformed of their spouses, dependent children and other person’s financial interests or investments in order to avoid the application of the Code.

Practice

EC2(f) defines “practice” as it relates to activities before the Board or Commission. Subparagraph (1) of the definition provides that practice means knowingly acting as an agent or attorney for, or otherwise representing himself or herself or any other person in any formal or informal appearance before the Board or Commission.

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Subparagraph (2) provides an alternative meaning, indicating that practice also means making any oral or written communication on behalf of himself or herself or any other person to, and with the intent to influence, the Board or Commission.

Professional Staff or Professional Staff of the Board

EC2(f) defines the terms “professional staff” or “professional staff of the Board” as those persons who are employed by the Board and who are exempt from minimum wage and overtime provisions under Federal law.

Staff or Staff of the Board

EC2(g) defines the terms “staff” or “staff of the Board” as those persons who are employed by the Board.

EC3. General Principles

EC3 provides broad principles designed to maintain the highest standards of ethical conduct among Board members and staff, and to provide the public with confidence in the objectivity of the Board’s decisions by seeking to avoid both actual and perceived conflicts of interest among Board members and staff. The three subparagraphs to paragraph (a) are intended to guide Board members and staff when a situation is not covered by the Code’s specific standards.

EC3(a)(1) instructs Board members and staff to at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public

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confidence in the objectivity and deliberative process of the Board. EC3(a)(2) instructs Board members and staff to take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board. EC3(a)(3) further instructs Board members and staff to recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

EC3(b) prohibits Board members and staff from acting in a manner that creates or reasonably results in the appearance of certain situations described in subparagraphs (1) through (5),^{2/} regardless of whether specifically prohibited by this Code.

It is envisioned that the Board, or its Ethics Officer, may issue interpretative guidance relating to these principles.

EC4. Financial and Employment Interests

EC4 limits Board member and/or professional staff from certain financial and employment interests. Subparagraph (a) prohibits Board members and professional

^{2/} The situations described in these subparagraphs are self-explanatory and are not discussed below

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staff from being owed or owning any financial or other obligation to a former employer, business partner or client, with limited exceptions.

EC4(a)(1) restricts Board members and professional staff from being owed any financial or other obligation, except those items contained in subparagraphs (A) through (F)³.

EC4(a)(1)(C) excepts from the general prohibition benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client. This rule would not restrict ongoing bona fide pension payments, even if the funding for those payments was tied to the profitability of the former employer, business partner or client (except with regard to Board members receiving profits or payments from public accounting firms, as discussed in EC4(b) below). However, EC8, as discussed below would restrict Board members and staff from participating in matters affecting such former employers, business partners or clients.

EC4(a)(1)(D) and (E) each excepts payments and the like for prior service. EC4(a)(1)(D) excepts profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client, while EC4(a)(1)(E) excepts

^{3/} Certain excepted items under this subparagraph are self-explanatory and are not discussed below.

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royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board.

EC4(a)(2) restricts Board members and professional staff from owing any financial or other obligation, except those items contained in subparagraphs (A) through (D).⁴

EC4(b) reiterates the statutory constraints on Board members receiving profits of, or payments from, public accounting firms. It provides that notwithstanding any other provision of this Code, pursuant to Section 101(e)(3) of the Act, no member of the Board may share in any of the profits of, or receive payments from, a public accounting firm, other than fixed continuing payments.

EC5. Investments

EC5 addresses the issue of investments by Board members and staff and their immediate family. Various subparagraphs apply to differing constituencies.

EC5(a) provides that there are no prohibited investments by Board members, staff and their immediate family, except that subparagraph (1) restricts Board members and professional staff, or members of their immediate family, from having any financial interest in a public accounting firm.

^{4/} The items excepted under this subparagraph are self-explanatory and are not discussed below.

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EC5(b) instructs Board members and professional staff to at all times be mindful of their responsibilities to the Board and to avoid personal financial activities which might affect or reasonably create the appearance of affecting their independence or objectivity.

EC5(c) instructs Board members and staff to at all times be mindful that, in the course and scope of their employment activities, they may obtain knowledge of confidential, non-public information which, if disclosed, might affect the value of particular securities or investments and places restrictions on the disclosure and use of non-public information. Subparagraph (1) prohibits the dissemination or disclosure of any confidential, non-public information obtained by virtue of their position with the Board, whether that information may be considered to be “material” under the securities laws or not and subparagraph (2) restricts the use such information for the financial gain of themselves or others.

EC6. Outside Activities

EC6 governs the participation in outside activities for Board members and staff.

EC6(a) provides that no member of the Board may undertake any employment or other activity for compensation outside of service to the Board.

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EC6(b) dictates that staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority.

EC6(c) prohibits any outside activity for Board members and staff, whether or not for compensation, which offend the provisions of subparagraphs (1) through (3).⁵

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

EC7 places restrictions on the receiving of gifts, honoraria, reimbursement for travel and other things of value by Board members and professional staff. EC7(a) provides that no Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, under the circumstances described in subparagraphs (1) and (2).⁶

EC7(b) describes the circumstances under which, and from whom, travel reimbursement may be paid. Subparagraph (1) limits such reimbursements for travel that is in direct connection with the employee's participation in an educational forum. Subparagraph (2) further limits reimbursement to educational forums that are principally sponsored by and the travel-related expenses are paid or reimbursed by a federal, state

^{5/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

^{6/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

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or local governmental body, an accredited institution of higher learning, or an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms or issuers.

EC8. Disqualification

EC8 contains provisions requiring the disclosure, recusal and disqualification of participation in certain matters by Board members or professional staff.

As referenced above in EC4, EC8(a) provides that if a Board member or professional staff believes that he or she, or a member of his or her immediate family, may have a financial interest or other similar relationship which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to Board's function or activities, then he or she must take certain action described in subparagraphs (1) and (2). Subparagraph (1) requires disclosure of such circumstances and facts and subparagraph (2) instructs the Board member or professional staff to recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.

EC8(b) indicates that for a member of the Board, disclosure shall be made to all other members of the Board. For professional staff of the Board, disclosure shall be made to the Board Chair, or the person or persons designated by the Chair.

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EC8(c) restricts Board members and professional staff for a period of 12 months commencing on date of appointment or employment from participating in the making of a decision which is reasonably likely to have a material effect on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within 5 years from the date of appointment or employment with the Board.

EC9. Non-Public Information

EC9 restricts Board members and staff from disseminating or disclosing certain information. Subparagraph (a) provides that unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly and subparagraph (b) provides that the restriction in EC9 shall continue in effect 5 years after the termination of employment or Board membership, or until the information is made publicly available by other means.

EC10. Speaking for the Board

EC10 provides that unless authorized to speak on behalf of the Board, Board members and professional staff shall include a disclaimer for any private publication or public statement by indicating that the view expressed are those of the author or

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speaker and do not necessarily reflect the view of the Board or other Board members or staff.

EC11. Ethics Officer

EC11 directs the Board to designate an Ethics Officer with the power and responsibilities identified in subparagraphs (a) through (c).⁷

EC12. Post-Employment Restrictions

EC12 imposes certain post-employment restrictions on Board members and professional staff. Subparagraph (a) prohibits Board members and professional staff from negotiating prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

Subparagraph (b) restricts Board members and professional staff from practicing before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.

⁷ The powers and responsibilities described in these subparagraphs are self-explanatory and are not discussed below.

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EC13. Waiver

EC13 establishes a mechanism for the Board to waive any provision of the Ethics Code, provided the granting of the waiver would not otherwise be prohibited by law. EC13 provides that waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer and that the Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board.

EC14. Certification

EC14 provides that Board members and staff agree to comply with this Code at the commencement of their service with the Board and shall annually certify in writing their continuing compliance with it.