

BYLAWS and RULES

OF THE

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

As of November 19, 2003

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

BYLAWS AND RULES

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Table of Contents

BYLAWS	1
ARTICLE I – NAME	1
ARTICLE II – OBJECT	1
ARTICLE III – OFFICES.....	1
ARTICLE IV –GOVERNING BOARD	1
4.1 Composition.	1
4.2. Powers and Duties.	1
4.3. Quorum and Majority.	1
4.4. Compensation and Expenses.....	2
ARTICLE V – BOARD MEETINGS	2
5.1. General.....	2
5.2. Regular Public Meetings.....	2
5.3. Special Meetings.	2
5.4. Telephonic Participation.	2
ARTICLE VI – OFFICERS.....	3
6.1. General.....	3
6.2. Other Officers.	3
6.3 Powers of the Chief Executive Officer.	3
ARTICLE VII – LIABILITY AND INDEMNIFICATION	4
7.1 No Personal Liability.	4
7.2 Indemnification.	4
7.3. Insurance.....	6
7.4. Severability.	6
ARTICLE VIII – BYLAW AMENDMENTS AND RULES OF THE CORPORATION.....	6
8.1. Amendments to Bylaws.	6
8.2. Rules.	6
ARTICLE IX – MISCELLANEOUS PROVISIONS	6
9.1. Fiscal Year.	6
9.2. Capital Expenditures.	6
9.3. Selection of Auditor.	6
ETHICS CODE.....	7
EC1. Application of Code	7
EC2. Definitions.....	7
EC3. General Principles	9
EC4. Financial and Employment Interests.....	10

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

EC5.	Investments	11
EC6.	Outside Activities	13
EC7.	Gifts, Reimbursements, Honoraria and Other Things of Value.....	13
EC8.	Disqualification	14
EC9.	Non-Public Information	15
EC10.	Speaking for the Board.....	15
EC11.	Ethics Officer	15
EC12.	Post-Employment Restrictions	16
EC13.	Waiver	16
EC14.	Certification	17
RULES		18
SECTION 1. GENERAL PROVISIONS		18
Rule 1000.	[Reserved]	18
Rule 1001.	Definitions of Terms Employed in Rules.....	18
(a)(i)	Accounting Support Fee	18
(a)(ii)	Accountant	18
(a)(iii)	Act	19
(a)(iv)	Associated Entity	19
(a)(v)	Audit	19
(a)(vi)	Audit Report	19
(a)(vii)	Audit Services	20
(a)(viii)	Auditing and Related Professional Practice Standards.....	20
(a)(ix)T	Accounting Board Demand.....	20
(a)(x)T	Accounting Board Request.....	20
(b)(i)	Board.....	20
(c)(i)	Commission.....	21
(c)(ii)T	Counsel.....	21
(e)(i)	Exchange Act	21
(f)(i)	Foreign Public Accounting Firm.....	21
(h)(i)T	Hearing Officer	21
(i)(i)	Issuer Market Capitalization	21
(i)(ii)	Investment Company Act	22
(i)(iii)	Issuer.....	22
(i)(iv)T	Interested Division	22
(n)(i)	Notice	22
(n)(ii)	Non-Audit Services.....	22
(o)(i)	Other Accounting Services	23
(o)(ii)T	Order Instituting Proceedings	23
(p)(i)	Person Associated With a Public Accounting Firm (and Related Terms) ...	23
(p)(ii)	Play a Substantial Role in the Preparation or Furnishing of an Audit Report	24
(p)(iii)	Public Accounting Firm.....	25
(p)(iii)T	Party	25

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

(p)(iv)T Person	25
(r)(i) Registered Public Accounting Firm.....	25
(r)(ii) Rules or Rules of the Board	25
(s)(i) Securities Act	25
(s)(ii) Securities Laws	26
(s)(iii) State	26
(s)(iii)T Secretary.....	26
(t)(i) Tax Services.....	26
Rule 1002T. Time Computation	26
SECTION 2. REGISTRATION AND REPORTING.....	27
Part 1 – Registration of Public Accounting Firms	27
Rule 2100. Registration Requirements for Public Accounting Firms.....	27
Rule 2101. Application for Registration.....	27
Rule 2102. Date of Receipt.....	27
Rule 2103. Registration Fee.	28
Rule 2104. Signatures.	28
Rule 2105. Conflicting Non-U.S. Laws.....	28
Rule 2106. Action on Applications for Registration.	29
(a) Standard for Approval.....	29
(b) Action on Application.	29
(c) Requests for More Information.	30
Part 2 – Reporting	30
Part 3 – Public Availability Of Applications And Reports	30
Rule 2300. Public Availability of Information Submitted to the Board; Confidential Treatment Requests.	30
(a) Except as provided in paragraph (b) below, an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application.	30
(b) Confidential Treatment Requests.	30
(c) Application Procedures.....	31
SECTION 3. PROFESSIONAL STANDARDS	32
Part 1 – General Requirements.....	32
Rule 3100. Compliance with Auditing and Related Professional Practice Standards.	32
Rule 3200T. Interim Auditing Standards.	32
Rule 3300T. Interim Attestation Standards.	32
Rule 3400T. Interim Quality Control Standards.	33
Rule 3500T. Interim Ethics Standards.	33
Rule 3600T. Interim Independence Standards.	34
Part 7 – Establishment of Professional Standards	34
Rule 3700. Advisory Groups.....	34
(a) Formation.	34
(b) Composition.	35

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

(c)	Selection of Members of Advisory Groups	35
(d)	Personal Membership.....	35
(e)	Ethical Duties of Advisory Group Members.....	35
(f)	Ad Hoc Task Forces.....	36
SECTION 4. INSPECTIONS.....		37
SECTION 5. INVESTIGATIONS AND ADJUDICATIONS		38
Rule 5000.	[Reserved].....	38
Part 1 – [Reserved]		38
Part 2 – Disciplinary Proceedings		38
Rule 5200T.	Commencement of Disciplinary Proceedings	38
(a)	[Reserved].....	38
(b)	Appointment of a Hearing Officer	38
(c)	Separation of Functions.....	39
(d)	Consolidation of Proceedings	39
Rule 5201T.	Notification of Commencement of Disciplinary Proceedings	40
(a)	[Reserved]	40
(b)	[Reserved]	40
(c)	Notice of a Hearing on a Registration Application	40
(d)	[Reserved]	40
Rule 5202T.	Record of Disciplinary Proceedings.....	40
(a)	Contents of the Record.....	40
(b)	Documents Not Admitted.....	41
(c)	Substitution of Copies.....	41
(d)	Preparation of Record and Certification of Record Index	41
(e)	Final Transmittal of Record Items to the Secretary.....	42
Rule 5203T.	Public and Private Hearings	42
Rule 5204T.	Determinations in Disciplinary Proceedings	42
(a)	[Reserved].....	42
(b)	Initial Decision of a Hearing Officer	42
(c)	Filing, Service and Publication	43
(d)	When Final	43
Rule 5205T.	Settlement of Disciplinary Proceedings Without a Determination After Hearing	43
(a)	Availability	43
(b)	Procedure.....	43
(c)	Consideration of Offers of Settlement.....	43
Rule 5206.	[Reserved].....	45
Part 3 – [Reserved]		45
Part 4 – Rules of Board Procedure		45
Rule 5400T.	Hearings	45
Rule 5401T.	Appearance and Practice Before the Board	45
(a)	Representing Oneself.....	45
(b)	Representing Others	45

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

(c) Designation of Address for Service; Notice of Appearance; Power of Attorney; Withdrawal	45
Rule 5402T. Hearing Officer Disqualification and Withdrawal	46
(a) Motion for Withdrawal	46
(b) Appointment of a Replacement Hearing Officer	47
Rule 5403T. Ex Parte Communications	47
Rule 5404T. Service of Papers by Parties	47
Rule 5405T. Filing of Papers With the Board: Procedure	48
(a) When to File	48
(b) Where to File	48
Rule 5406T. Filing of Papers: Form	48
(a) Specifications	48
(b) Form of Briefs	49
Rule 5407T. Filing of Papers: Signature Requirement and Effect	49
Rule 5408T. Motions	49
(a) Generally	49
(b) Opposing and Reply Briefs	49
(c) Length Limitation	50
Rule 5409T. Default and Motions to Set Aside Default	50
(a) Default	50
(b) Motion to Set Aside Default	50
Rule 5410T. Additional Time For Service by Mail	50
Rule 5411T. Modifications of Time, Postponements and Adjournments	51
Rules 5412. – 5419. [Reserved]	51
Rule 5420T. Stay Requests	51
(a) Leave to Participate to Request a Stay	51
(b) Stay to Protect Ongoing Commission Investigation	51
(c) Other Stays	51
Rule 5421T. Answer to Allegations	52
(a) When Required	52
(b) When to File	52
(c) Contents of Answer and Effect of Failure to Deny	52
Rule 5422T. Availability of Documents For Inspection and Copying	52
(a) Documents to be Available for Inspection and Copying	52
(b) Documents That May Be Withheld	53
(c) Procedures Concerning Withheld Documents	53
(d) Timing of Inspection and Copying	54
(e) Place of Inspection and Copying	54
(f) Copying Costs and Procedures	55
(g) Failure to Make Documents Available – Harmless Error	55
Rule 5423T. Production of Witness Statements	55
(a) Availability	55
(b) Failure to Produce - Harmless Error	55
(c) Definition of Statement	56
Rule 5424T. Accounting Board Demands and Commission Subpoenas	56

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

(a) Accounting Board Demands and Requests	56
Rule 5425T. Depositions to Preserve Testimony for Hearing	57
(a) Procedure	57
(b) Required Finding When Ordering a Deposition	58
(c) Procedure at Depositions	58
(d) Objections to Questions or Evidence.....	58
(e) Filing of Depositions	58
Rule 5426T. Prior Sworn Statements of Witnesses in Lieu of Live Testimony.....	58
Rules 5427. – 5439. [Reserved]	59
Rule 5440T. Record of Hearings.....	59
(a) Recordation	59
(b) Availability of a Transcript.....	59
(c) Transcript Correction	60
Rule 5441T. Evidence: Admissibility	60
Rule 5442T. Evidence: Objections and Offers of Proof.....	60
(a) Objections	60
(b) Offers of Proof	60
Rule 5443T. Evidence: Presentation Under Oath or Affirmation.....	61
Rule 5444T. Evidence: Presentation, Rebuttal and Cross-examination.....	61
Rule 5445T. Post-hearing Briefs and Other Submissions.....	61
Rules 5446. – 5459. [Reserved]	61
Rule 5460T. Board Review of Determinations of Hearing Officers	61
(a) Petition for Review of Initial Decision by Hearing Officers	61
(b) Review on Board's Initiative.....	62
(c) De Novo Review.....	62
(d) Limitations on Matters Reviewed.....	62
(e) Summary Affirmance	62
Rule 5461T. Interlocutory Review	63
(a) Availability	63
(b) Certification Process.....	63
(c) Proceedings Not Stayed.....	63
Rule 5462T. Briefs Filed with the Board.....	64
(a) Briefing Schedule Order	64
(b) Contents of Briefs.....	64
(c) Length Limitation	64
Rule 5463T. Oral Argument Before the Board	65
(a) Availability	65
(b) Procedure.....	65
(c) Time Allowed.....	65
(d) Participation of Board Members	65
Rule 5464T. Additional Evidence	66
Rule 5465T. Record Before the Board.....	66
(a) Contents of the Record.....	66
(b) Transmittal of Record to Board.....	66
(c) Review of Documents Not Admitted	67

**Public Company Accounting Oversight Board
Bylaws and Rules – Table of Contents**

Rule 5466T. Reconsideration	67
(a) Scope of Rule	67
(b) Procedure	67
Rule 5467. – 5499. [Reserved]	67
Part 5 – Hearings on Disapproval of Registration Applications	67
Rule 5500T. Commencement of Hearing on Disapproval of a Registration Application	67
Rule 5501T. Procedures for a Hearing on Disapproval of a Registration Application	68
 SECTION 7. FUNDING	 69
Rule 7000. [Reserved]	69
Rule 7100. Accounting Support Fee	69
Rule 7101. Allocation of Accounting Support Fee	69
(a) Classes of Issuers	69
(b) Allocation of Accounting Support Fee Among Issuers	70
(c) Adjustments	71
Rule 7102. Assessment of Accounting Support Fee	71
(a) Amount of Assessment	71
(b) Notice of Assessment	71
(c) Petition for Correction	71
Rule 7103. Collection of Accounting Support Fee.	72
(a) Accounting Support Fee Payment Due Date	72
(b) Confirmation of Payment of Accounting Support Fee by Registered Accounting Firm	72
(c) Report to the Commission of Non-payment of an Accounting Support Fee	73
(d) Excess Fees	73
Rule 7104. Service as Designated Collection Agent	73
 APPENDIX	 74
FORM 1 – APPLICATION FOR REGISTRATION	74
<u>GENERAL INSTRUCTIONS</u>	74
PART I – IDENTITY OF THE APPLICANT	75
PART II – LISTING OF APPLICANT'S PUBLIC COMPANY AUDIT CLIENTS AND RELATED FEES	76
PART III – [RESERVED]	79
PART IV – STATEMENT OF APPLICANT'S QUALITY CONTROL POLICIES ...	79
PART V – LISTING OF CERTAIN PROCEEDINGS INVOLVING THE APPLICANT	79
PART VI – LISTING OF FILINGS DISCLOSING ACCOUNTING DISAGREEMENTS WITH PUBLIC COMPANY AUDIT CLIENTS	81
PART VII – ROSTER OF ASSOCIATED ACCOUNTANTS	82
PART VIII – CONSENTS OF APPLICANT	83
PART IX – SIGNATURE OF APPLICANT	84
PART X – EXHIBITS	84

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

BYLAWS

**ARTICLE I
NAME**

1. The name of the Corporation shall be the Public Company Accounting Oversight Board, Inc.

**ARTICLE II
OBJECT**

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

**ARTICLE III
OFFICES**

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

3.2. Other Offices. The Governing Board of the Corporation ("Governing Board") may designate other office locations, outside of the District of Columbia, as the Governing Board may determine are necessary or appropriate to meet the Corporation's objectives.

**ARTICLE IV
GOVERNING BOARD**

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

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

4.3. Quorum and Majority. A majority of the members of the Governing Board shall constitute a quorum. An act approved by majority vote of the members of the Governing Board present at a meeting of the Board at which a quorum is present shall

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

be the act of the Board. If a Board member has recused himself or herself from a decision, and a quorum of otherwise qualified Board members cannot be assembled in time to meet the exigencies of that particular situation, the recused Board member may be counted for quorum purposes only. As used in this section, "the exigencies of that particular situation" shall be defined to require circumstances in which the Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise prevent the deferral of action until a quorum of non-recused Board members is available.

4.4. Compensation and Expenses. The Governing Board shall set the compensation for its Members. Members of the Governing Board shall be reimbursed by the Board for reasonable expenses incurred in the discharge of their duties.

**ARTICLE V
BOARD MEETINGS**

5.1. General. As soon as practical after the adoption of these bylaws, the Governing Board shall adopt a written policy defining the circumstances under which meetings of the Board will be open to the public (the "Open Meeting Policy").

5.2. Regular Public Meetings. The Governing Board shall hold at least one public meeting each month, which meeting shall take place on the first Tuesday of each month (the "Regular Public Meeting"), or at such other time as the Chair shall determine. The Board shall ensure that, under procedures defined in its Open Meeting Policy, the public is informed, at least five (5) calendar days in advance, of the time, location, and general topics scheduled for discussion of each Regular Public Meeting.

5.3. Special Meetings. The Governing Board may hold additional meetings ("Special Meetings"), which may be public or non-public (in accordance with the Open Meeting Policy) as it deems necessary or appropriate to further the purposes of the Act. The Open Meeting Policy shall set forth procedures for providing the public with reasonable notice of public Special Meetings.

5.4. Telephonic Participation. The Governing Board may meet via telephone or teleconference, and any member may participate in a meeting by telephone, provided

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

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

**ARTICLE VI
OFFICERS**

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

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

6.3 Powers of the Chief Executive Officer.

- (a) The Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including responsibility and authority for the appointment, dismissal, and supervision of personnel (other than Board members and personnel employed regularly and full-time within the immediate offices of the Board members), the distribution of business among such personnel and among organizational units of the Corporation, the use and expenditure of funds (including the procurement of goods and services), and the development (for Board review) of strategic policy initiatives.
- (b)
 - (1) In carrying out any of the responsibilities under the provisions of this section 6.3, the Chief Executive Officer shall be governed by the general policies of the Governing Board and by such rules and decisions as the Governing Board may lawfully make.
 - (2) The appointment by the Chief Executive Officer of the officers of the Corporation designated in and established under section 6.2

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

shall be subject to the approval of, and made in consultation with, the Governing Board, and the dismissal of the officers of the Corporation designated in and established under section 6.2 shall be made in consultation with the Governing Board, except that when the Board determines that the dismissal arises out of a conflict regarding the general policies of the Governing Board, it is also subject to the approval of the Governing Board.

- (3) Each Governing Board member has responsibility and authority for the appointment, dismissal, and supervision of personnel employed regularly and full-time within the immediate office of the Board member, subject to the Governing Board's overall personnel policies.
- (4) The Chief Executive Officer has the responsibility and authority to develop, and present to the Board for approval, an annual budget as well as mid-year adjustments, if any. There is reserved to the Governing Board its responsibility and authority with respect to determining the distribution of funds according to major programs and purposes, including those related to salary schedules and other conditions of employment.

**ARTICLE VII
LIABILITY AND INDEMNIFICATION**

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

7.2 Indemnification.

- (a) Unless otherwise prohibited by law and as provided in section 7.2(b), the Corporation shall indemnify any employee, officer, or Governing Board member, or any former employee, officer, or Governing Board member,

Public Company Accounting Oversight Board Bylaws and Rules – Bylaws

against any and all expenses and liabilities actually and necessarily incurred by him or her, or imposed on him or her, in connection with any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals), to which he or she may be or is made a party by reason of being or having been such employee, officer, or Board member.

- (b) Notwithstanding section 7.2(a), there shall be no indemnification in relation to matters as to which the Board finds that the employee, officer, or Board member acted in bad faith or engaged in willful misconduct in the performance of a duty to the Corporation.
- (c) Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel and other related fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such employee, officer, or Board member.
- (d) The Corporation may advance expenses to, or where appropriate may itself, at its expense, undertake the defense of any employee, officer, or Board member; provided, however, that such employee, officer, or Board member shall undertake to repay or to reimburse such expense if it should be ultimately determined that he or she is not entitled to indemnification under this Article.
- (e) The provisions of this Article shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after adoption hereof.
- (f) The indemnification provided by this Article shall not be deemed exclusive of any other rights to which such employee, officer, or Board member may be entitled under any applicable law.
- (g) The indemnification provided by this Article shall not restrict the power of the Governing Board to provide any additional indemnification permitted by law.

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

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

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

**ARTICLE VIII
BYLAW AMENDMENTS AND RULES OF THE CORPORATION**

8.1. Amendments to Bylaws. The Governing Board may from time to time amend, repeal, or supplement these bylaws.

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

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

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

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

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

ETHICS CODE

EC1. Application of Code

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

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

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

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

EC2. Definitions

- (a) Reference to Rules of the Board

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

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

- (b) Code

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

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

- (c) Dependent

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

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

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

(d) Designated Contractors and Consultants

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

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

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

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

(e) Honoraria

The term "honoraria" means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. Neither the waiver of conference fees nor acceptance of a modest speakers-only meal constitutes "honoraria."

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."

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

(f) Practice

The term "practice" means –

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

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

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

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

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

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

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

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

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

- (h) Staff or Staff of the Board

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

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

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

EC3. General Principles

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

- (1) Board members and staff should at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

the need for public confidence in the objectivity and deliberative process of the Board.

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

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

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

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

EC4. Financial and Employment Interests

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

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

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

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

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

EC5. Investments

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

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

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

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

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

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

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

- (1) For initial disclosures, statements shall be filed with the Ethics Officer within the first 60 days of commencement of service with the Board, or 60 days from the effective date of this Code, whichever is later.
- (2) Subsequent disclosures shall be filed with the Ethics Officer on May 1, commencing the first year following the initial disclosure.
- (3) Disclosure statements by Board Members shall be made available to the public.
- (4) Disclosure statements by professional staff shall remain confidential.

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

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

**Public Company Accounting Oversight Board
Bylaws and Rules – Ethics Code**

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.

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

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

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

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

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

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

- (1) for travel that is in direct connection with the employee's participation in an educational forum; and
- (2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by –

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

- (A) a federal, state or local governmental body, or an association of such bodies,
- (B) an accredited institution of higher learning,
- (C) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms or issuers, or
- (D) institutions equivalent to those in EC 7(b)(2)(A) – (C) outside the United States.

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

EC8. Disqualification

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

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

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

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

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

(c) For a period of 12 months commencing on date of appointment or employment, no Board member or professional staff may participate in the making of a

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

decision which is reasonably likely to have a material effect, direct or indirect, on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within five years from the date of appointment or employment with the Board. For purposes of this section, participating in the making of a decision which affects a former employer, business partner or client to the same degree as similarly situated people or business organizations, does not constitute an "indirect" effect.

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

EC9. Non-Public Information

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

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

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

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

EC10. Speaking for the Board

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

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

EC11. Ethics Officer

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

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

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

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

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

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

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

- (1) Board members and professional staff may not negotiate prospective employment with a public accounting firm or issuer, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.
- (2) For purposes of this section, "negotiating prospective employment" means participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute "negotiating prospective employment."

(b) Prohibition on Practice Before the Board or Commission

- (1) Board members and professional staff shall be restricted from practice before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.
- (2) Former Board members and professional staff shall not practice before the Board, or the Commission with respect to Board-related matters, on a particular matter in which the Board member or professional staff participated personally and substantially as a Board or staff member and which involved a specific party or specific parties at the time of such participation.

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

EC13. Waiver

Unless otherwise prohibited by law, the Board (or person to whom the Board may delegate this responsibility as to staff) may grant a request for waiver of any provision of this Code. Such waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer. The Board will only grant waiver requests after a

Public Company Accounting Oversight Board Bylaws and Rules – Ethics Code

finding that the waiver would not otherwise hinder the interests or reputation of the Board. Waivers will be made available to the public, subject to the withholding of information that would constitute a clearly unwarranted invasion of personal privacy.

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

EC14. Certification

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

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

RULES

SECTION 1. GENERAL PROVISIONS

Rule 1000. [Reserved]

[Reserved]

Rule 1001. Definitions of Terms Employed in Rules.

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

(a)(i) Accounting Support Fee

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

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

(a)(ii) Accountant

The term "accountant" means a natural person –

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

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

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

(a)(iii) Act

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

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

(a)(iv) Associated Entity

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

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

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

(a)(v) Audit

The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable Rules of the Board under Section 103 of the Act, in accordance with then applicable generally accepted auditing standards for such purposes), for the purpose of expressing an opinion on such statements.

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

(a)(vi) Audit Report

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

- (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and
- (2) in which a public accounting firm either –
 - (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or
 - (ii) asserts no such opinion can be expressed.

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

(a)(vii) Audit Services

The term "audit services" means –

- (1) subject to paragraph (a)(vii)(2) of this Rule, professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports.
- (2) effective after December 15, 2003, professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

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

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

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

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

(a)(ix)T Accounting Board Demand

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(a)(x)T Accounting Board Request

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(b)(i) Board

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

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

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

(c)(i) Commission

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

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

(c)(ii) Counsel

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(e)(i) Exchange Act

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

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

(f)(i) Foreign Public Accounting Firm

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

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

(h)(i) Hearing Officer

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(i)(i) Issuer Market Capitalization

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

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

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

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

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

(i)(ii) Investment Company Act

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

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

(i)(iii) Issuer

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

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

(i)(iv) Interested Division

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(n)(i) Notice

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

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

(n)(ii) Non-Audit Services

The term "non-audit services" means –

- (1) subject to paragraph (n)(ii)(2) of this Rule, services related to financial information systems design and implementation as defined in Rule 2-01(c)(4)(ii) of Regulation S-X, 17 C.F.R. 2-01(c)(4)(ii), and

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

all other services, other than audit services or other accounting services.

- (2) effective after December 15, 2003, all other services other than audit services, other accounting services, and tax services.

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

(o)(i) Other Accounting Services

The term "other accounting services" means –

- (1) subject to paragraph (o)(i)(2) of this Rule, services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.
- (2) effective after December 15, 2003, assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.

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

(o)(ii) Order Instituting Proceedings

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

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

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

- (1) shares in the profits of, or receives compensation in any other form from, that firm; or

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

- (2) participates as agent on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks or a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

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

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

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

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

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

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

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

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

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

(p)(iii) Public Accounting Firm

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

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

(p)(iii)T Party

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(p)(iv)T Person

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(r)(i) Registered Public Accounting Firm

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

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

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

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

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

(s)(i) Securities Act

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

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

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

(s)(ii) Securities Laws

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

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

(s)(iii) State

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

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

(s)(iii)T Secretary

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

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

(t)(i) Tax Services

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

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

Rule 1002T. Time Computation

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

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

SECTION 2. REGISTRATION AND REPORTING

Part 1 – Registration of Public Accounting Firms

Rule 2100. Registration Requirements for Public Accounting Firms.

Effective October 22, 2003 (or, for foreign public accounting firms, April 19, 2004), each public accounting firm that –

- (a) prepares or issues any audit report with respect to any issuer; or
- (b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer

must be registered with the Board.

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

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

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

Rule 2101. Application for Registration.

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

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

Rule 2102. Date of Receipt.

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

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Registration and Reporting

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

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

Rule 2103. Registration Fee.

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

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

Rule 2104. Signatures.

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

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

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

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

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

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

Public Company Accounting Oversight Board
Bylaws and Rules – Rules–Registration and Reporting

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

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

Rule 2106. Action on Applications for Registration.

(a) Standard for Approval.

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

(b) Action on Application.

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

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

(c) Requests for More Information.

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

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

Part 2 – Reporting

[Reserved]

Part 3 – Public Availability Of Applications And Reports

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

(a) Except as provided in paragraph (b) below, an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application.

(b) Confidential Treatment Requests.

A public accounting firm may request confidential treatment of any information submitted to the Board in connection with its application for registration, provided that the information as to which confidential treatment is requested –

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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules–Registration and Reporting**

(c) Application Procedures.

To request confidential treatment of information submitted to the Board in connection with an application for registration, the applicant must –

- (1) identify in accordance with the instructions on Form 1 the information that it desires to keep confidential; and
- (2) include as an exhibit to Form 1 a detailed explanation as to why, based on the facts and circumstances of the particular case, the information meets the requirements of paragraph (b) of this Rule.

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

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

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

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

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

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

SECTION 3. PROFESSIONAL STANDARDS

Part 1 – General Requirements

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

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

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

Rule 3200T. Interim Auditing Standards.

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)).

Note: Under Section 102(a) of the Act, public accounting firms are not required to be registered with the Board until 180 days after the date of the determination of the Commission under section 101(d) that the Board has the capacity to carry out the requirements of Title I of the Act (the "mandatory registration date"). The Board intends that, during the period preceding the mandatory registration date, the Interim Auditing Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

[Effective pursuant to SEC Release Nos 33-8233 & 34-47746; April 25, 2003]

Rule 3300T. Interim Attestation Standards.

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports for issuers, a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003.

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Professional Standards

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Attestation Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

[Effective pursuant to SEC Release Nos 33-8233 & 34-47746; April 25, 2003]

Rule 3400T. Interim Quality Control Standards.

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

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20-40 (AICPA 2002)); and

(b) the AICPA SEC Practice Section's Requirements of Membership (d), (f)(first sentence), (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), (f), (j), (m), (n)(1) and (o)).

Note: The second sentence of requirement (f) of the AICPA SEC Practice Section's Requirements of Membership provided for the AICPA's peer review committee to "authorize alternative procedures" when the requirement for a concurring review could not be met because of the size of the firm. This provision is not adopted as part of the Board's Interim Quality Control Standards. After the effective date of the Interim Quality Control Standards, requests for authorization of alternative procedures to a concurring review may, however, be directed to the Board.

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Quality Control Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

[Effective pursuant to SEC Release Nos 33-8233 & 34-47746; April 25, 2003]

Rule 3500T. Interim Ethics Standards.

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)).

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Professional Standards

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Ethics Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

[Effective pursuant to SEC Release Nos 33-8233 & 34-47746; April 25, 2003]

Rule 3600T. Interim Independence Standards.

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

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)); and

(2) Standards Nos. 1, 2, and 3, and Interpretations 99-1, 00-1, and 00-2, of the Independence Standards Board.

Note: The Board's Interim Independence Standards do not supercede the Commission's auditor independence rules. See Rule 2-01 of Reg. S-X, 17 C.F.R. 240.2-01. Therefore, to the extent that a provision of the Commission's rule is more restrictive – or less restrictive – than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Independence Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

[Effective pursuant to SEC Release Nos 33-8233 & 34-47746; April 25, 2003]

Part 7 – Establishment of Professional Standards

Rule 3700. Advisory Groups.

(a) Formation.

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

(b) Composition.

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

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

(c) Selection of Members of Advisory Groups.

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

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

(d) Personal Membership.

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

(e) Ethical Duties of Advisory Group Members.

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

**Public Company Accounting Oversight Board
Bylaws and Rules – Rules–Professional Standards**

(f) Ad Hoc Task Forces.

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

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

SECTION 4. INSPECTIONS

[Reserved]

SECTION 5. INVESTIGATIONS AND ADJUDICATIONS

Rule 5000. [Reserved]

Part 1 – [Reserved]

[Reserved]

Part 2 – Disciplinary Proceedings

Rule 5200T. Commencement of Disciplinary Proceedings

(a) [Reserved]

(b) Appointment of a Hearing Officer

As soon as practicable after the Board has issued an order instituting proceedings, or after a registration applicant has requested a hearing pursuant to Rule 5500(b), the Secretary shall assign a hearing officer to preside over the proceeding and shall serve the parties with notice of the hearing officer's assignment. Subject to Rules 5402 and 5403, the hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. The powers of the hearing officer include, but are not limited to, the following –

- (1) obtaining a court reporter to administer oaths and affirmations;
- (2) issuing accounting board demands pursuant to Rule 5424;
- (3) receiving relevant evidence and ruling upon the admission of evidence and offers of proof;
- (4) regulating the course of a proceeding and the conduct of the parties and their counsel;
- (5) holding prehearing and other conferences and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;
- (6) recusing himself or herself upon motion made by a party or upon his or her own motion;

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.

(c) Separation of Functions

The staff of the Division of Enforcement and Investigations may not participate or advise in the decision, or in Board review of the decision, in any proceeding in which the Division of Enforcement and Investigations is the interested division, except as a witness or counsel in the proceeding. Any other employee or agent of the Board engaged in the performance of investigative or prosecutorial functions for the Board in a proceeding may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. A hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

(d) Consolidation of Proceedings

By order of the Board or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Board or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this Rule, no distinction is made between joinder and consolidation of proceedings.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5201T. Notification of Commencement of Disciplinary Proceedings

- (a) [Reserved]
- (b) [Reserved]
- (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) [Reserved]

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5202T. 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;
- (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;

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

(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.

(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

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

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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5203T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5204T. Determinations in Disciplinary Proceedings

(a) [Reserved]

(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 pursuant to Rule 5500 to prepare initial decisions within 45 days after the deadline for filing post-hearing briefs or other submissions.

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

(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.

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5205T. 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

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

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

(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.

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

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 5206 as if the Director of Registration and Inspections were the Director of Enforcement and Investigations.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5206. [Reserved]

Part 3 – [Reserved]

Part 4 – Rules of Board Procedure

GENERAL

Rule 5400T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5401T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5402T. 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) Appointment of a Replacement Hearing Officer

Upon withdrawal of a hearing officer, or in the event that a hearing officer is incapacitated or is otherwise unable to continue to serve after being appointed, the Secretary will appoint a replacement hearing officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement hearing officer is appointed after a hearing has commenced, the replacement hearing officer may recall any witness or may certify familiarity with any part or all of the record.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5403T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5404T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5405T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5406T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5407T. Filing of Papers: Signature Requirement and Effect

Following the issuance of an order instituting proceedings, every filing of 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. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5408T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5409T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5410T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5411T. 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, consistent with paragraph (b) of this Rule, postpone or adjourn any hearing.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rules 5412. – 5419. [Reserved]

PREHEARING RULES

Rule 5420T. 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, 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, 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5421T. 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 5500. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5422T. Availability of Documents For Inspection and Copying

(a) Documents to be Available for Inspection and Copying

(1) [Reserved]

(2) [Reserved]

(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

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

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 that has not been disclosed to any person other than Board members, Board 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;

(ii) any other document that is privileged, including any other document protected by the attorney work product doctrine;

(iii) any document that would disclose the identity of a confidential source; and

(iv) 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)(ii) 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)(ii).

(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)(iii) or (b)(1)(iv) of this Rule and a brief description of the reason for withholding each

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

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 –

(i) with respect to any document withheld pursuant to paragraph (b)(1)(iii) –

(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)(iv) –

(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 5500.

(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.

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5423T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5424T. 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.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5425T. 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 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5426T. Prior Sworn Statements of 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 in lieu of live testimony may be granted if –

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

- (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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rules 5427. – 5439. [Reserved]

CONDUCT OF HEARINGS

Rule 5440T. 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.

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Rule 5441T. Evidence: Admissibility

The Board or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

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Rule 5442T. 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 pursuant to Rule 5445; or
- (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).

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

Rule 5443T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5444T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5445T. Post-hearing Briefs and Other Submissions

(a) At the end of the hearing in any proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500 in which an initial decision is to be issued, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which post-hearing briefs or other submissions are to be filed. Unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary –

(i) the party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing; and

(ii) the total period within which all such filings and any opposition and reply submissions are to be filed shall be no longer than 90 days after the end of the hearing.

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Rules 5446. – 5459. [Reserved]

APPEALS TO THE BOARD

Rule 5460T. 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 –

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

(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, in a proceeding instituted pursuant to 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.

(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.

(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 and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board.

[Effective pursuant to SEC Release No. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5461T. 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 –

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5462T. 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 5460; 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 5204(d);

(ii) certification of a ruling for interlocutory review pursuant to Rule 5461(c).

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5463T. 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.

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5464T. 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 5465T. Record Before the Board

The Board shall determine each matter on the basis of the record.

(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
 - (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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5466T. 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 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5467. – 5499. [Reserved]

Part 5 – Hearings on Disapproval of Registration Applications

Rule 5500T. 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 –

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

(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

(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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

Rule 5501T. 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. 34-48765; File No. PCAOB-2003-06, November 10, 2003]

SECTION 7. FUNDING

Rule 7000. [Reserved]

[Reserved]

Rule 7100. Accounting Support Fee.

The Board shall calculate an accounting support fee each year. The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board.

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

Rule 7101. Allocation of Accounting Support Fee.

(a) Classes of Issuers

For purposes of allocating the accounting support fee, those entities that are issuers as of the date the accounting support fee is calculated under Rule 7100 shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization during the preceding calendar year is greater than \$25 million, other than those described in paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: Average, monthly market capitalization will be based on closing stock prices on the closest trading day on or before the last day of each calendar month measured.

(2) Investment Company Issuers

All issuers (i) who, as of the date the accounting support fee is calculated under Rule 7100, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization during the preceding calendar year is greater than \$250 million, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly-available.

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Funding

Note: Average, monthly market capitalization will be based on closing stock prices on the closest trading day on or before the last day of each calendar month measured.

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the accounting support fee is calculated under Rule 7100, (i) have a basis, under a Commission rule or pursuant to other action of the Commission or its staff, not to file audited financial statements, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: As of April 16, 2003, issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year.

(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2) or (a)(3) of this Rule.

(b) Allocation of Accounting Support Fee Among Issuers

The accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the accounting support fee in an amount equal to the accounting support fee multiplied by a fraction –

- (i) the numerator of which is the average, monthly market capitalization of the issuer during the preceding calendar year, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly market capitalization of the issuer; and
- (ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Funding

one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the accounting support fee equal to \$0.

(c) Adjustments

After the accounting support fee is calculated under Rule 7100 and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

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

Rule 7102. Assessment of Accounting Support Fee.

(a) Amount of Assessment

Each issuer is required to pay its share of the accounting support fee, as allocated under Rule 7101, rounded to the nearest hundred.

Note: If an issuer's share of the accounting support fee is less than \$50, that issuer will not be assessed. If the issuer's share of the accounting support fee is exactly \$50 more than a multiple of \$100, then the share will be rounded up to the nearest \$100.

(b) Notice of Assessment

The Board will use its best efforts to send a notice to each issuer, either electronically or by first-class mail, at the address shown on such issuer's most recent periodic report filed with the Commission, at the address submitted to the Commission's EDGAR system, or at such other address as the issuer provides to the Board. The Board's failure to send an issuer a notice, or the issuer's failure to receive a notice sent by the Board, shall not constitute a waiver of the Board's right to assess such issuer for its share of the accounting support fee or of the issuer's responsibility to pay its share of the accounting support fee.

(c) Petition for Correction

Any issuer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Funding

mistake in classification or calculation, in writing, on or before the 30th day after the notice is sent. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 7103 shall be suspended while such a petition is pending before the Board.

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

Rule 7103. Collection of Accounting Support Fee.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the notice is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

(b) Confirmation of Payment of Accounting Support Fee by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the registered public accounting firm has ascertained that the issuer has outstanding no past-due share of the accounting support fee or has a petition pursuant to Rule 7102(c) pending.

(2) A registered public accounting firm may sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, even though the issuer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 7102(c), if the issuer needs the report or consent in order to submit a report to, or make a filing with, the Commission or to issue securities. The issuer shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer is assessed under Rule 7102.

Note 1: A registered public accounting firm may ascertain that an issuer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer or a confirmation from the Board that no past-due share of the accounting support fee is outstanding.

Public Company Accounting Oversight Board Bylaws and Rules – Rules–Funding

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule7103stay@pcaobus.org.

(c) Report to the Commission of Non-payment of an Accounting Support Fee

If an issuer has not paid its share of the accounting support fee by the 60th day after the notice was sent, and the issuer does not have a petition pursuant to Rule 7102(c) pending, the Board may send a second notice to such issuer by certified mail. If the Board has sent such a second notice and has not been paid by the 90th day after the original notice was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall – * * * (C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(d) Excess Fees

If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.

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

Rule 7104. Service as Designated Collection Agent.

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7102 and 7103 as if the accounting support fee of the standard-setting body were the accounting support fee of the Board.

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

APPENDIX

FORM 1 – APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

1. The definitions in the *Board's rules* apply to this form. Italicized terms in the instructions to this form are defined in the *Board's rules*. See Rule 1001.
2. Any *public accounting firm* applying to the *Board* for registration pursuant to Section 102 of the *Act* must file this form with the *Board*. See Rule 2101.
3. In addition to these instructions, the *rules* contained in Section 2 of the *Board's rules* govern applications for registration. Please read these *rules* and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, applicants must submit this form, and all exhibits to the form, to the *Board* electronically by completing the Web-based version of Form 1. [Website details to be inserted before registration system is operational]. See Rule 2101.
5. This form must be accompanied by a registration fee in accordance with Section 102(f) of the *Act*. The amount of the required fee is available at [Website details to be inserted before registration system is operational]. An application for registration will not be deemed received by the *Board* until the registration fee has been paid. See Rule 2102.
6. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that either contains information reasonably identified by the applicant as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. An applicant that requests confidential treatment must identify the portion of the application that it desires to keep confidential, and include, as Exhibit 99.1 to the application for registration, a detailed explanation as to why, based on the facts and circumstances of the particular case, the information is proprietary or is protected from disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information. The *Board* will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The *Board* will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).
7. If an applicant is prohibited by the law(s) of a non-U.S. jurisdiction from submitting to the *Board* information requested by all or a part of an Item to this form, the applicant shall so indicate by making a notation under the relevant item

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

number of the form and furnishing, as Exhibit 99.2 to the application for registration, the following information: (i) a copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the *Board* with a consent or waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

8. Where this form requires disclosure of a sum of money, such amount must be stated in U.S. dollars and rounded to the nearest thousand. If such amount was received or paid in a currency other than U.S. dollars, the amount must be converted to U.S. dollars.
9. Where this form requires non-historical (i.e., current) information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application. Such information will be deemed current for purposes of this form.
10. Information submitted as part of this form, including any exhibit to this form, must be in the English language.

PART I – IDENTITY OF THE APPLICANT

Item 1.1 Name of Applicant

State the legal name of the applicant; if different, also state the name or names under which the applicant (or any predecessor for which the applicant is the successor in interest with respect to the entity's liabilities) issues *audit reports*, or has issued any *audit report* during the five years prior to the date of this application.

Item 1.2 Applicant Contact Information

State the physical address (and, if different, mailing address) of the applicant's headquarters office. State the telephone number and facsimile number of the applicant's headquarters office. If available, state the Website address of the applicant.

Item 1.3 Primary Contact and Signatories

State the name, title, physical business address (and, if different, business mailing address), telephone number, fax number, and e-mail address of a partner or authorized officer of the applicant who will serve as the applicant's primary contact with the *Board* regarding this application. Provide the same information for every person whose

**Public Company Accounting Oversight Board
Bylaws and Rules – Appendix**

signature appears in Part VIII or Part IX of this form, if any of those persons are different from the primary contact.

Item 1.4 Applicant's Form of Organization

State the applicant's legal form (e.g., proprietorship, partnership, limited liability partnership) and the jurisdiction (e.g., the *state* of the United States or comparable non-U.S. jurisdiction) under the law of which the applicant is organized or exists.

Item 1.5 Applicant's Offices

If the applicant has more than one office, furnish, as Exhibit 1.5, the physical address (and, if different, mailing address) of each of the applicant's offices.

Item 1.6 *Associated Entities* of Applicant

State the name and physical address (and, if different, mailing address) of all *associated entities* of the applicant that engage in the practice of public accounting or preparing or issuing *audit reports*, or comparable reports prepared for clients that are not *issuers*. Do not include any person listed in Item 7.1.

Item 1.7 Applicant's Licenses

List every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing *state*, agency, board, or other authority.

PART II – LISTING OF APPLICANT'S PUBLIC COMPANY AUDIT CLIENTS AND RELATED FEES

Item 2.1 *Issuers* for Which Applicant Prepared *Audit Reports* During the Preceding Calendar Year

List the names of all *issuers* for which the applicant prepared or issued any *audit report* dated during the calendar year preceding the calendar year in which this application is filed. In addition to the *issuer's* name, this list must include, with respect to each *issuer*

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission*).
- b. The date of the *audit report*.
- c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

**Public Company Accounting Oversight Board
Bylaws and Rules – Appendix**

- d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.
- e. The total amount of fees billed for *non-audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

Note: Only fees billed by the principal accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company *issuers*, the fees disclosed in response to paragraphs (c) – (e) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

Item 2.2 *Issuers for Which Applicant Prepared Audit Reports During the Current Calendar Year*

List the names of all *issuers* for which the applicant prepared or issued any *audit report* dated during the current calendar year. (Do not include *audit reports* the applicant expects to prepare or issue during this calendar year, but that have not yet been issued. These are called for in Item 2.3 below.) In addition to the *issuer's* name, include, with respect to each *issuer* –

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission*).
- b. The date of the *audit report*.
- c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.
- d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.
- e. The total amount of fees billed for *non-audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

Note: Only fees billed by the principal accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company *issuers*, the

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

fees disclosed in response to paragraphs (c) – (e) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

Item 2.3 *Issuers for Which Applicant Expects to Prepare Audit Reports During the Current Calendar Year*

List the names of all *issuers* for which the applicant expects to prepare or issue any *audit report* dated during the calendar year in which this application is filed. In addition to the *issuer's* name, include, with respect to each *issuer*, the *issuer's* business address (as shown on its most recent filing with the *Commission*).

Note: An applicant may presume that it is expected to prepare or issue an *audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it issued an *audit report* during the preceding calendar year for an *issuer*, absent an indication from the *issuer* that it no longer intends to engage the applicant.

Item 2.4 *Issuers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit*

For applicants that did not prepare or issue an *audit report* dated during the preceding or current calendar year, and that do not expect to prepare or issue an *audit report* dated during the current calendar year, list the names of all *issuers* for which the applicant *played, or expects to play, a substantial role in the preparation or furnishing of an audit report* dated during the preceding or current calendar year. In addition to the *issuer's* name, this list must include, with respect to each *issuer* –

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission*).
- b. The name of the *public accounting firm* that issued, or is expected to issue, the *audit report*.
- c. The date of the *audit report*, if it has been issued.
- d. The type of substantial role played by the applicant with respect to the *audit report*.

Note: Applicants that disclosed the name of an *issuer* in response to any of Items 2.1 – 2.3 need not respond to this Item. In responding to the part of this Item that asks about *issuers* for which the applicant expects to *play a substantial*

**Public Company Accounting Oversight Board
Bylaws and Rules – Appendix**

role in the preparation or furnishing of an audit report, an applicant may presume that it is *expected to play a substantial role in the preparation or furnishing of an audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it *played a substantial role in the preparation and furnishing of an audit report* during the preceding calendar year, absent an indication from the *issuer* or principal accounting firm that it no longer intends to engage the applicant.

PART III – [RESERVED]

PART IV – STATEMENT OF APPLICANT'S QUALITY CONTROL POLICIES

Item 4.1 Applicant's Quality Control Policies

Furnish, as Exhibit 4.1, a narrative, summary description, in a clear, concise and understandable format, of the quality control policies of the applicant for its accounting and auditing practices, including procedures used to monitor compliance with independence requirements.

PART V – LISTING OF CERTAIN PROCEEDINGS INVOLVING THE APPLICANT

Item 5.1 Certain Criminal, Civil and Administrative Proceedings

- a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent –
1. in any pending criminal proceeding, or was a defendant in any such proceeding in which a judgment was rendered against the applicant or such person, whether by plea or after trial, during the previous five years;
 2. in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction) arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an *issuer*, or was a defendant or respondent in any such proceeding in which a judgment or award was rendered against the applicant or such person, whether by consent or otherwise, during the previous five years;
 3. in any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an *issuer*, or was a respondent in any such proceeding in which a finding of violation was rendered, or a sanction entered, against the applicant or such person, whether by consent or otherwise, during

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

the previous five years. Administrative or disciplinary proceedings include those of the *Commission*; the *Board*; any other federal, *state*, or non-U.S. agency, board, or administrative or licensing authority; and any professional association or body. Investigations that have not resulted in the commencement of a proceeding need not be included;

- b. In the event of an affirmative response to Item 5.1.a, furnish the following information with respect to each such proceeding:
1. The name, filing date, and case or docket number of the proceeding.
 2. The name and address of the court, tribunal, or body in which such proceeding was filed.
 3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any *person associated with the applicant* at the time that the events in question occurred.
 4. The name of the *issuer* or other client that was the subject of the *audit report* or comparable report.
 5. With respect to each person named in Item 5.1.b.3, the statutes, rules, or other requirements such person was found to have violated (or, in the case of a pending proceeding, is charged with having violated).
 6. With respect to each person named in Item 5.1.b.3, the outcome of the proceeding, including any sentence or sanction imposed. (If no judgment or award has yet been rendered, enter the word "pending.")

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.2 Pending Private Civil Actions

- a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent in any pending civil proceeding or alternative dispute resolution proceeding initiated by a non-governmental entity involving conduct in

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

connection with an *audit report*, or a comparable report prepared for a client that is not an *issuer*.

- b. In the event of an affirmative response to Item 5.2.a, furnish the following information with respect to each such proceeding:
1. The name, filing date, and case or docket number of the proceeding.
 2. The name and address of the court, tribunal or body in which such proceeding was filed.
 3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any *person associated with the applicant* at the time that the events in question occurred.
 4. The name of the *issuer* or other client that was the subject of the *audit report* or comparable report.
 5. With respect to each person named in Item 5.2.b.3, the statutes, rules, or other requirements such person is alleged to have violated.

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.3 Applicant's Discretionary Statement Regarding Proceedings Involving the Applicant's Audit Practice

With respect to any case or proceeding listed in response to Items 5.1 or 5.2, the applicant may, at its discretion, furnish, as Exhibit 5.3, a statement or statements describing the proceeding and the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration.

PART VI – LISTING OF FILINGS DISCLOSING ACCOUNTING DISAGREEMENTS WITH PUBLIC COMPANY AUDIT CLIENTS

Item 6.1 Existence of Disagreements With *Issuers*

- a. Indicate whether or not the applicant has been the former accountant with respect to any disclosure of a disagreement with an *issuer* made by such *issuer*

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

during the current or preceding calendar year in a filing with the *Commission* pursuant to Item 304(a)(1)(iv) of Regulation S-K, 17 C.F.R. 229.304(a)(1)(iv).

- b. Indicate whether or not the applicant has been the former accountant with respect to any filing made by an *issuer* during the current or preceding calendar year with the *Commission* containing a letter submitted by the applicant to the *Commission* pursuant to Item 304(a)(3) of Regulation S-K, 17 C.F.R. 229.304(a)(3), in which the applicant stated that it disagreed with a statement of the issuer in response to Item 304(a).

Item 6.2 Listing of Disagreements With *Issuers*

In the event of an affirmative response to Items 6.1.a or 6.1.b, furnish the following information with respect to each such filing:

- a. The name of the *issuer*.
- b. The name and date of the filing containing the disclosure of the disagreement or the applicant's letter.

Item 6.3 Copies of Filings

Furnish, as Exhibit 6.3, a copy of every filing described in Item 6.2.

PART VII – ROSTER OF ASSOCIATED ACCOUNTANTS

Item 7.1 Listing of *Accountants* Associated with Applicants

List the names of all *accountants* associated with the applicant who participate in or contribute to the preparation of *audit reports*. For each such person, list every license or certification number (if any) authorizing him or her to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing *state*, agency, board, or other authority.

Note: For purposes of this Item, applicants that are not *foreign public accounting firms* must list all *accountants* who are *persons associated with the applicant* and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year. Applicants that are *foreign public accounting firms* must list all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

**Public Company Accounting Oversight Board
Bylaws and Rules – Appendix**

Item 7.2 Number of Firm Personnel

State the –

- a. Total number of *accountants* employed by the applicant.
- b. Total number of certified public accountants, or *accountants* with comparable licenses from non-U.S. jurisdictions, employed by the applicant.
- c. Total number of personnel employed by the applicant.

PART VIII – CONSENTS OF APPLICANT

Item 8.1 Consent to Cooperate with the *Board* and Statement of Acceptance of Registration Condition

Furnish, as Exhibit 8.1, a statement, signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104, in the following form –

- a. [Name of applicant] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002.
- b. [Name of applicant] agrees to secure and enforce similar consents from each of its *associated persons* as a condition of their continued employment by or other association with the firm.
- c. [Name of applicant] understands and agrees that cooperation and compliance, as described in the firm's consent in paragraph (a), and the securing and enforcement of such consents from its *associated persons* in accordance with paragraph (b), shall be a condition to the continuing effectiveness of the registration of the firm with the Public Company Accounting Oversight Board.

Note 1: Other than the insertion of the name of the applicant in paragraphs (a), (b), and (c) of this Item, Exhibit 8.1 must be in the exact words contained in this instruction. The consents required by paragraph (b) of this Item must be in the exact words of Note 2 below and must be secured by the applicant not later than 45 days after submitting this application or, for persons who become *associated persons* of the firm subsequent to the submission of this application, at the time of the person's association with the firm. Consents required by paragraph (b) of this Item are not required to be furnished as an exhibit to this form.

Public Company Accounting Oversight Board Bylaws and Rules – Appendix

Note 2: Other than the insertion of the name of the *associated person*, the consents required by paragraph (b) of this Item must state: [Name of *associated person*] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002. [Name of *associated person*] understands and agrees that this consent is a condition of their continued employment by or other association with [name of applicant].

Note 3: For applicants that are *foreign public accounting firms*, the term "*associated persons*" as used in this Item means all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

PART IX – SIGNATURE OF APPLICANT

Item 9.1 Signature of Partner or Authorized Officer

The application must be signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the applicant. The signature must be accompanied by the name of the signer, the capacity in which the signer signed the application, and the date of signature.

PART X – EXHIBITS

To the extent applicable under the foregoing instructions, each application must be accompanied by the following exhibits:

Exhibit 1.5 Listing of Offices

Exhibit 4.1 Statement of Quality Control Policies

Exhibit 5.3 Discretionary Statements Regarding Proceedings Involving Audit Practice

Exhibit 6.3 Securities and Exchange Commission Filings Disclosing Accounting Disagreements With Public Company Audit Clients

Exhibit 8.1 Consent of Applicant for Registration

**Public Company Accounting Oversight Board
Bylaws and Rules – Appendix**

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.2 Evidence of Conflicting Non-U.S. Law

Note: Where an exhibit consists of more than one document, each document must be numbered consecutively (e.g., Exhibit 4.1.1, Exhibit 4.1.2, Exhibit 4.1.3, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

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