

File No. PCAOB-2003-04
Consists of 150 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rules

by

Public Company Accounting Oversight Board

In Accordance with Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of the Proposed Rules

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") proposed rules to establish an Ethics Code ("Code" or "EC") for Board members, staff and certain designated contractors and consultants. The proposed Code consists of rules governing the ethical obligations of said persons, to the extent specified in each section. The proposed rules are attached as Exhibit A to this rule filing.

(a) Not applicable.

(b) Not applicable.

2. Procedures of the Board

(a) The Board adopted the proposed rules, and authorized them for filing with the Commission, at its public meeting on June 30, 2003. No other action by the Board is necessary for the filing of these proposed rules.

(b) Questions regarding this filing may be directed to Gordon Seymour, Acting General Counsel (202/207-9034; seymourg@pcaobus.org) or Don Marlais, Special Counsel to Board Member Kayla J. Gillan (202/207-9063; marlaisd@pcaobus.org).

3. Board's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rules

(a) Purpose

The Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, to oversee the audits of public companies that are subject to the

securities laws, and related matters, in order to protect the interests of investors and 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.

Section 101(g)(3) of the Act requires the Board to establish ethics rules and standards of conduct for members and staff of the Board. The adopted Code consists of fourteen sections (EC 1 through 14).

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

4. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Board's Statement on Comments on the Proposed Rule Change Received from the Public

The Board released its proposed Code for public comment on April 18, 2003. See Exhibit 2(a)(1). The Board received eight written comment letters relating to its proposal. See Exhibits 2(a)(2) and 2(a)(3).

The Board carefully considered all comments it received. In response to the written comments received, the Board clarified and modified certain aspects of its proposed Code. The Board's response to the comments it received and the changes made to the Code in response to these comments are summarized in Exhibit 3 to this filing.

6. Extension of Time Period for Commission Action

The Board does not consent to an extension of the time period specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rules Based on Rules of Another Board or of the Commission

The proposed rules are not based on the rules of another board or of the Commission. As discussed in Exhibit 3 to this filing, certain elements of the Board's proposed rules are drawn from parts of the codes of ethics and conduct adopted by the Financial Accounting Standards Board, the Securities Investor Protection Corporation, the U.S. House of Representatives, the U.S. Senate, the Office of Government Ethics, and the Commission..

9. Exhibits

Exhibit A – Text of the Proposed Rules

Exhibit 1 – Form of Notice of Proposed Rules for Publication in the Federal Register.

Exhibit 2(a)(1) – PCAOB Release No. 2003-004 (April 18, 2003).

Exhibit 2(a)(2) – Alphabetical List of Comments

Exhibit 2(a)(3) – Written comments on the rules proposed in PCAOB Release No. 2003-004

Exhibit 3 – PCAOB Release No. 2003-008 (June 30, 2003)

10. Signatures

Pursuant to the requirements of the Act and the Securities Exchange Act of 1934, as amended, the Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Public Company Accounting Oversight Board

By: _____
William J. McDonough
Chairman

EXHIBIT A

Text of the Proposed Rules

Underlining indicates additions

ETHICS CODE

EC1. Application of Code

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

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

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

EC2. Definitions

(a) **Reference to Rules of the Board**

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

(b) **Code**

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

(c) **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.

(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.

(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."

(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
- (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.

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

The terms "professional staff" or "professional staff of the Board" mean those persons who are employed by the Board and who are exempt, pursuant to Section

13(a)(1) of the Fair Labor Standards Act (29 USC § 201 et sec.), from Sections 6 and 7 (minimum wage and overtime provisions) of that act.

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

(h) **Staff or Staff of the Board**

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

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

EC3. General Principles

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

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

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

- (1) using his or her official position with the Board, or confidential information obtained through service for the Board, for the private gain of any person;

- (2) giving preferential treatment to any person with respect to the Board member or employee's work for the Board;
- (3) losing independence or objectivity with respect to his or her work for the Board;
- (4) adversely affecting the public confidence in, or the integrity, independence or objectivity of the Board; or
- (5) otherwise hindering the interests or reputation of the Board.

EC4. Financial and Employment Interests

- (a) While employed by the Board, no Board member or professional staff shall –
 - (1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner, client, or publisher except –
 - (A) routine banking and other routine commercial relationships;
 - (B) securities and other investments permitted by this Code;
 - (C) benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;
 - (D) profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client;
 - (E) royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board; or
 - (F) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board; 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.

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.

(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.

EC6. Outside Activities

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

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

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

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

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

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

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

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

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

- (1) for travel that is in direct connection with the employee's participation in an educational forum; and

- (2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by –
- (A) a federal, state or local governmental body, or an association of such bodies,
- (B) an accredited institution of higher learning,
- (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.

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 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.

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).

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.

EC11. Ethics Officer

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

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

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

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

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

(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.

EC13. Waiver

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

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. PCAOB-2003-04)

[Date]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics Code

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on July 11, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rules described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 30, 2003, the Board adopted an Ethics Code ("Code" or "EC") to govern the conduct of its members, employees, and certain contractors and consultants. The proposed Code consists of 14 sections (EC 1 through 14). The text of the Ethics Code is as follows:

ETHICS CODE

EC1. Application of Code

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

- (a) present and former Board members and staff;

(b) the spouse, spousal equivalent, and dependents of Board members and staff; and

(c) designated contractors and consultants to the Board.

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

EC2. Definitions

(a) Reference to Rules of the Board

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

(b) Code

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

(c) 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.

(d) Designated Contractors and Consultants

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

- (2) with which the Board enters into contracts for services, including contracts that provide for both goods and services;
- (3) which the Board, or its designate, has determined should be subject to this Code, in whole or in part; and
- (4) 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.

(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."

(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
- (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.

(g) Professional Staff or Professional Staff of the Board

The terms "professional staff" or "professional staff of the Board" mean those persons who are employed by the Board and who are exempt, pursuant to

Section 13(a)(1) of the Fair Labor Standards Act (29 USC § 201 et sec.), from Sections 6 and 7 (minimum wage and overtime provisions) of that act.

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

(h) Staff or Staff of the Board

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

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

EC3. General Principles

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

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

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

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

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

- (1) using his or her official position with the Board, or confidential information obtained through service for the Board, for the private gain of any person;
- (2) giving preferential treatment to any person with respect to the Board member or employee's work for the Board;
- (3) losing independence or objectivity with respect to his or her work for the Board;

- (4) adversely affecting the public confidence in, or the integrity, independence or objectivity of the Board; or
- (5) otherwise hindering the interests or reputation of the Board.

EC4. Financial and Employment Interests

(a) While employed by the Board, no Board member or professional staff shall –

- (1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner, client, or publisher except –
 - (A) routine banking and other routine commercial relationships;
 - (B) securities and other investments permitted by this Code;
 - (C) benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;

- (D) profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client;
 - (E) royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board; or
 - (F) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board; 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.

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.

(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.

EC6. Outside Activities

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

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

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

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

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

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

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

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

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

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

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 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.

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).

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.

EC11. Ethics Officer

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

- (a) counsel Board members and staff regarding compliance with or potential violation of this Code;
- (b) issue advisory opinions, as deemed necessary, to Board members and staff regarding potential violations of this Code; and
- (c) make recommendations to the Board regarding waiver requests and potential violations of, or amendments to, this Code.

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

- (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.

EC13. Waiver

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

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.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed Code and discussed any comments it received on it. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Section 101(g)(3) of the Act requires the Board to establish ethics rules and standards of conduct for members and staff of the Board. Although the Act does not specify a deadline for the establishment of such rules and standards, the Board recognized that establishing a strict, enforceable Code early in the Board's development would send a strong message to the public that it takes its ethical obligations seriously in pursuing its mission to help restore confidence in issuer audits.

The Code consists of 14 sections (EC 1 through 14). Each section of the Code is discussed below.

EC1. Application of Code

EC1 provides that the provisions of the Ethics Code shall apply, according to their terms, to present and former Board members and staff, the spouses, spousal equivalents, and dependents of Board members and staff, and certain

contractors and consultants to the Board. A note to the rule cross-references Rule 3700(e), which provides that members of Board advisory groups are subject to certain provisions in the Ethics Code.

EC2. Definitions

EC2 contains definitions of terms used in the Board's Ethics Code.^{1/}

Reference to Rules of the Board

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

Dependent

EC2(c) defines "dependent" as any person who receives more than half of his or her support for the most recent calendar year from the Board member or staff. The Ethics Code, as proposed, did not contain a definition of "dependent," but had defined the term "immediate family." Two commenters recommended that the Board adopt a definition of "immediate family" that more closely resembles the Commission's definition of "immediate family member" in its auditor independence rules. The Commission's definition of "immediate family" covers an individual's "spouse, spousal equivalent, and dependents."^{2/}

The Board agreed, in principle, with this recommendation. To promote clarity, however, the Board eliminated its use of the defined term "immediate family" and added "spouse, spousal equivalent, and dependents" directly to

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

^{2/} See Rule 2-01(f)(13) of Regulation S-X, 17 C.F.R. 210.1-01(f)(13).

those provisions of the Ethics Code that previously used the defined term "immediate family." While the Board only included a definition, based on the Commission's interpretation of Regulation S-X, for "dependent," the Board will interpret each of these terms in a manner consistent with how they are used in the Commission's Regulation S-X definition.^{3/} Accordingly, "spouse" will mean husband or wife, whether by marriage or common law, and "spousal equivalent" will mean cohabitant occupying a relationship generally equivalent to that of a spouse.

While the definition of "dependent" applies equally to minor or adult dependents, depending on their receipt of support from the Board or staff member, there may be situations in which it might be appropriate for the Ethics Code to apply differently in the case of an adult dependent who does not reside with the Board or staff member. If appropriate and consistent with EC13, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates waiver authority with regard to staff will recommend a waiver in such situations.

Designated Contractors and Consultants

EC2(d) defines the term "designated contractors and consultants" as those persons or business organizations with whom the Board enters into contracts for services, whom the Board (or its designate) determines should be

^{3/} See Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919 (November 21, 2000) (describing these terms in the context of the rule's definition of "close family members").

subject to the Code, and for which the contract contains a provision expressly incorporating this Code (in whole or in part). The Board will develop and maintain a list of designated contractors and consultants, which will be available to the public and will reserve the right to contractually impose additional restrictions and limitations on any contractor or consultant.

Two commenters indicated that they believed the original definition was overly vague and could apply to all providers of goods and services to the Board. The proposing release provided a two-part test for designated contractors and consultants. It indicated that designated contractors and consultants are those persons with whom the Board entered into contracts for services and for which the contracts expressly incorporated the Code, in whole or in part. Based upon these concerns, the Board added a third criterion – a requirement that the Board determine, on a case by case basis, whether, and to what degree, each contractor or consultant should be subject to the Code.

Honoraria

EC2(e) defines "honoraria" as anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. EC2(e) further indicates that neither the waiver or conference fee, nor the acceptance of a modest speakers-only meal shall constitute honoraria. "Nominal value" will initially be interpreted to mean fair market value of \$50 or less.

Practice

EC2(f) defines "practice" as it relates to activities before the Board or Commission. Subparagraph (1) of the definition provides that practice means knowingly acting as an agent or attorney for, or otherwise representing any person (other than oneself) in any formal or informal appearance before the Board or Commission. Subparagraph (2) provides an alternative meaning, indicating that practice also means making any oral or written communication on behalf of any person (other than oneself) to, and with the intent to influence, the Board or Commission.

This definition, as incorporated in EC12(b), is intended to restrict affected persons from certain representational activities. However, this definition, as incorporated by EC12(b), is not intended to prevent affected persons from participating in the preparation of documents, communications, presentations or the like, provided the affected persons do not appear before, or speak to, the Board, and are not the signatory of any written correspondence or communication to the Board.

The Board added a note to this subsection that clarifies that participating in the financial reporting process as an officer or director of an issuer or participating in an audit or an issuer does not, by itself, constitute practice before the Board.

Professional Staff or Professional Staff of the Board

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

Staff or Staff of the Board

EC2(h) defines the terms "staff" or "staff of the Board" as those persons who are employed by the Board.

EC3. General Principles

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

EC3(a)(1) instructs Board members and staff to at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public confidence in the objectivity and deliberative process of the Board. EC3(a)(2) instructs Board members and staff to take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board. EC3(a)(3) further instructs Board members and staff to recognize that the

degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

EC3(b) prohibits Board members and staff from acting in a manner that creates or reasonably results in the appearance of certain situations described in subparagraphs (1) through (5),^{4/} regardless of whether specifically prohibited by this Code.

The Board, or its Ethics Officer, may issue interpretative guidance relating to these principles.

One commenter indicated that he did not believe the Board's general principles provided any meaningful guidance to the Board or its staff. Recognizing that the general principles are meant to be broad enough to guide the conduct of members and staff in those situations in which a specific provision of the Code does not apply, the Board concluded that its general principles are sufficient and has not changed them.

EC4. Financial and Employment Interests

EC4 limits Board members and/or professional staff from certain financial and employment interests. Subparagraph (a) prohibits Board members and professional staff from being owed or owing any financial or other obligation to a former employer, business partner, client or publisher, with limited exceptions. The Board extended this prohibition to a Board member or professional staff's publisher.

^{4/} The situations described in these subparagraphs are self-explanatory and are not discussed below.

EC4(a)(1) restricts Board members and professional staff from being owed any financial or other obligation, except those items contained in subparagraphs (A) through (F).^{5/}

One commenter requested that the Board define what it meant by "routine banking and other routine commercial relationships" as identified in EC4(a)(1)(A) and EC4(a)(2)(A). The Board will apply this exception to those arrangements that are akin to those generally available to the public at large through arms-length negotiations. The Board does not believe that the exception requires further refinement in the Code.

EC4(a)(1)(C) excepts from the general prohibition benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client. This rule does not prevent Board members or staff from receiving ongoing bona fide pension payments, even if the funding for those payments is tied to the profitability of the former employer. Board members and professional staff, however, remain subject to EC8. As discussed in more detail below, EC8(a) requires Board members and professional staff to disclose circumstances that would lead a reasonable person to believe that the Board or staff member may have a financial interest that might affect or reasonably create the appearance of affecting his or her independence or objectivity and to recuse himself or herself from participating in functions or activities involving or affecting the financial

^{5/} Certain excepted items under this subparagraph are self-explanatory and are not discussed below.

interest. If a Board or staff member were receiving pension payments, the funding for which is tied to the profitability of a former employer, that would constitute the type of financial interest requiring disclosure and recusal from matters involving that former employer pursuant to EC8(a).^{6/}

EC4(a)(1)(D) and (E) each excepts payments and the like for prior service. EC4(a)(1)(D) excepts profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client, while EC4(a)(1)(E) excepts royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board.

EC4(a)(2) restricts Board members and professional staff from owing any financial or other obligation, except those items contained in subparagraphs (A) through (D).^{7/}

EC4(b) reiterates the statutory constraints on Board members receiving profits of, or payments from, public accounting firms. As proposed, EC4(b) was limited to Board members only. Based on public comment, this subparagraph was extended to spouses, spousal equivalents, and dependents of Board members.

^{6/} EC8 also generally restricts Board members and staff from participating in making a decision which is reasonably likely to have a material effect on their former employer for one year after joining the Board.

^{7/} The items excepted under this subparagraph are self-explanatory and are not discussed below.

EC5. Investments

EC5 addresses the issue of investments by Board members and staff and their spouses, spousal equivalents, and dependents.

EC5(a) provides that there are no prohibited investments by Board members, staff and their spouses, spousal equivalents, and dependents, except that subparagraph (1) restricts Board members and professional staff from having any financial interest in a public accounting firm.^{8/}

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

EC5(c) instructs Board members and staff to at all times be mindful that, in the course and scope of their employment activities, they may obtain knowledge of confidential, non-public information which, if disclosed, might affect the value of particular securities or investments and places restrictions on the disclosure and use of non-public information. Subparagraph (1) prohibits the dissemination or disclosure of any confidential, non-public information obtained by virtue of their position with the Board, whether that information may be considered to be

^{8/} The Board revised EC5(a) to not cover Board members and professional staff's spouses, spousal equivalents and dependents. Under EC8(a), if a Board member or professional staff's spouse, spousal equivalent, or dependent had a financial interest in a public accounting firm, that interest would have to be disclosed and the Board or staff member would be recused from participating in any matter involving that public accounting firm. In addition, Board member spouses, spousal equivalents, and dependents are subject to the restrictions on payments from public accounting firms in EC4(b).

"material" under the securities laws or not and subparagraph (2) restricts the use of such information for the financial gain of themselves or others.

EC5(d) was added at the suggestion of several commenters and requires that Board members and professional staff annually disclose their holdings in securities of issuers, including exchange-traded options and futures. Disclosure statements must be filed with the Ethics Officer. In addition, Board members' disclosure statements will be made available to the public.

For initial disclosures, newly appointed members or newly hired professional staff have 60 days from the date of commencement of service with the Board to complete and file the necessary statements. Current Board members and professional staff have 60 days from the effective date of the Code to file the necessary statements.

For subsequent disclosures, Board members and professional staff shall file the necessary statements on May 1, commencing the first year following the initial disclosure.

The form and content of the disclosure shall be included in the Board's ethics manual and will require disclosure of investments based upon categories – such as individual operating company holdings, mutual fund holdings, index fund holdings, exchange-traded options holdings, stock futures holdings and other holdings the Board deems relevant.

It is currently contemplated that all values will be disclosed in ranges, and based on market value. For example, a Board member or professional staff

member would be required to identify whether their assets in mutual funds were between two fixed dollar values - \$0-\$50,000, \$50,000-\$100,000, etc.

It is further contemplated that broad based classes of investments, such as mutual fund holdings, could be disclosed in lump sum (i.e., all mutual fund holdings could be aggregated for convenience), while individual holdings (equities, options and futures) would be required to be specifically identified, along with the range of valuation for each issue.

EC6. Outside Activities

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

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

EC6(b) dictates that staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority. As with other delegations of Board functions, Section 101(g)(2) of the Act will define the parameters of the delegation.

While EC6(b) applies to all paid outside activities, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates approval authority will recommend approval on a case-by-case basis, or, where appropriate, a "blanket" basis for those activities unrelated to the Board's oversight and which would not otherwise impair staff independence or hinder the reputation of the Board.

EC6(c) prohibits any outside activities by Board members and staff, whether or not for compensation, that violate certain general principles that are specified in subparagraphs (1) through (3) of EC6(c).^{9/}

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

EC7 places restrictions on the receipt of gifts, honoraria, reimbursement for travel and other things of value by Board members and professional staff. EC7(a) provides that no Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, under the circumstances described in subparagraphs (1) and (2).^{10/}

EC7(b) describes the circumstances under which, and from whom, travel reimbursement may be paid. Subparagraph (1) limits such reimbursements for travel that is in direct connection with the employee's participation in an educational forum. Subparagraph (2) further limits reimbursement to educational forums that are principally sponsored by and the travel-related expenses are paid or reimbursed by a federal, state or local governmental body or an association of such bodies, an accredited institution of higher learning, 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 equivalent institutions outside the United States.

^{9/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

^{10/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

At the request of a commenter, the Board added association of governmental bodies to the list of organizations from which travel expenses may be reimbursed. The Board also added equivalent institutions outside the United States to make clear that this provision of its Ethics Code applies equally to non-U.S. entities.

EC8. Disqualification

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

As referenced above in EC4, EC8(a) provides that if a Board member or professional staff 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, and dependents) may have a financial interest or similar relationship which might affect (or reasonably create the appearance of affecting) his or her independence or objectivity, then he or she must, at the earliest possible date, take the actions described in subparagraphs (1) and (2). Subparagraph (1) requires disclosure of such circumstances and facts. Subparagraph (2) instructs the Board member or professional staff to recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.

At the suggestion of several commenters, the Board imposed a "reasonable person" standard to use to determine whether a financial relationship requires disclosure and disqualification.

The Board also added two clarifying notes following EC8(a). The first note clarifies that for the purposes of applying this provision to members of an advisory group, 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. The second note advises non-professional staff to seek the counsel of the Ethics Officer if they face circumstances concerning financial relationships that may affect their ability to perform their functions.

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

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

Several commenters requested that the Board clarify that broad policy decisions are not "indirect effects." In response to this suggestion the Board added language that indicates that 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. This is meant to cover matters of general applicability to a broad class of persons.

EC9. Non-Public Information

EC9 restricts Board members and staff from disseminating or disclosing certain information. Subparagraph (a) provides that unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly and subparagraph (b) provides that the restriction in EC9 shall continue in effect after the termination of employment or Board membership. As proposed, the restriction on disclosure of non-public information only applied for five years after the Board or professional staff member left the Board. Due to the importance of preserving confidential information, the Board decided to strengthen this provision by extending its application indefinitely.

EC10. Speaking for the Board

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

EC11. Ethics Officer

EC11 directs the Board to designate an Ethics Officer with the power and responsibilities identified in subparagraphs (a) through (c).^{11/}

EC12. Post-Employment Restrictions

EC12 imposes certain post-employment restrictions on Board members and professional staff. Subparagraph (a)(1) prohibits Board members and professional staff from negotiating prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

Subparagraph (a)(2) was added at the request of several commenters and defines "negotiating prospective employment" to mean 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." This additional language is consistent with Regulations Concerning Post Employment Conflicts of Interest (5 CFR § 2637.101 et seq.), to which federal government employees are subject.

Subparagraph (b) contains two restrictions on former Board members and professional staff. First, it restricts Board members and professional staff from

^{11/} The powers and responsibilities described in these subparagraphs are self-explanatory and are not discussed below.

practicing before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership. Second, the Board added EC 12(b)(2), which provides that 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 parties at the time of such participation. The Board based this restriction on the comparable restriction applicable to federal government employees in 18 U.S.C. 207(a). Since this rule is limited to particular matters, it would not cover matters of general applicability, such as rulemakings the person participated in while at the Board.

EC13. Waiver

EC13 establishes a mechanism for the Board to waive any provision of the Ethics Code, provided the granting of the waiver would not otherwise be prohibited by law. EC13 provides that waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer and that the Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Subject to Section 101(g)(2) of the Act, the Board may delegate approval authority as to staff requests.

Several commenters suggested that the Board disclose waivers of its Ethics Code. In response to these comments, the Board decided to make

waivers available to the public, subject to withholding information that would constitute a clearly unwarranted invasion of personal privacy.^{12/} The Board believes that this approach provides for transparency of the Board's administration of its Ethics Code, while still protecting individuals' privacy interests.

EC14. Certification

EC14 provides that Board members, staff, and designated contractors and consultants agree to comply with this Code at the commencement of their service with the Board and shall annually certify in writing their continuing compliance with it. The Board modified this provision to also apply to designated contractors and consultants after careful consideration of recommendations by commenters.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rules Received from Members, Participants or Others

The Board released its proposed Code for public comment on April 18, 2003. See PCAOB Release No. 2003-004 (April 18, 2003). The Board received eight written comment letters on its proposal. A copy of PCAOB Release No.

^{12/} This standard is based on, and consistent with, one of the exemptions to the Freedom of Information Act. See 5 U.S.C. 552(b)(6).

2003-004 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's website at www.pcaobus.org.

The Board has carefully considered all comments it has received. In response to the written comments received, the Board clarified and modified certain aspects of its proposed Code. Specifically, the Board made 12 principal changes to its proposal. First, the Board revised its proposal to clarify that the Code's application to "designated contractors and consultants" will require a three step process: first, there must be a contract for services; second, the Board (or its designate) must determine that the Code should be applied to the contractor, in whole or in part; and last, the contract must contain specific provisions incorporating those portions of this Code applicable to the contractor. Second, the Board eliminated the definition of "immediate family" and clarified which provisions of the Ethics Code apply to a Board or staff member's spouse, spousal equivalent, and dependents. Third, the Board decided to impose the obligation upon Board members and professional staff to disclose their personal investments, and those of their spouses, spousal equivalents and dependents, in the securities of issuers.

Fourth, the Board decided to expand the narrow list of sponsors who are permitted to pay for Board-related travel to include associations of governmental (federal, state or local) bodies and non-U.S. institutions equivalent to the permissible domestic sponsors. Fifth, the Board created a "reasonable person" standard for Board members and professional staff to use to determine whether a financial relationship requires disclosure and disqualification. Sixth, the Board

clarified that, in the context of members of an advisory group,^{13/} independence and objectivity are not *per se* impaired because the group member's employer, business client or partner is subject to the Board's direct or indirect oversight.

Seventh, the revised Code clarifies that Board members and professional staff are not required to disqualify themselves from participating in making or developing broad policies or procedures which may have some effect on a former employer, business partner or client, so long as the policy or procedure effects all similarly situated people and organizations to the same degree. Eighth, the Board chose to define those circumstances which trigger (and do not trigger) the requirement for Board members and professional staff to internally disclose when they are "negotiating prospective employment" with a public accounting firm or issue.^{14/} Ninth, the Board required designated contractors and consultants to certify compliance with the Code (as applied to them) to the same extent as Board members and staff.

Tenth, the Board added a restriction on former Board members and professional staff participating in a matter they personally and substantially participated in while at the Board. Eleventh, the Board extended indefinitely the restriction on former Board members and professional staff from disclosing non-public Board information. Twelfth, and finally, the Board chose to make publicly

^{13/} See PCAOB Release No. 2003-009, and PCAOB Rule 3700 (regarding advisory groups).

^{14/} When this disclosure is triggered, Board members and professional staff must also disqualify themselves from participating in decisions directly affecting the prospective employer.

available information on waivers of the Ethics Code. Additional discussion of the Board's response to these and other comments it received is included in Section II(a)(A) above.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

- (a) by order approve such proposed rules; or
- (b) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with

the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2003-04 and should be submitted within [] days.

By the Commission.

Secretary



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www.pcaobus.org

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

Public Comment: Interested persons may submit written comments to the Board. Such comments should be sent to Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to comments@pcaobus.org or through the Board’s website at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 003 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on May 9, 2003.



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Board

Contacts: Gordon Seymour, Acting General Counsel (202/207-9034; seymourg@pcaobus.org) or Donald Marlais, Special Counsel to Board Member Gillan (202/207-9063; marlaisd@pcaobus.org).

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

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

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

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



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

1. Whose conduct is affected by the Code?

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

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

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

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

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

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

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



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

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

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

3. Are continuing financial relationships with former employers permitted?

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

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

^{9/} EC3.



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

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

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

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

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

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

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

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



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

4. Are personal investments restricted?

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

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

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

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

^{14/} EC5(b).

^{15/} EC5(c).

^{16/} EC6(a).



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

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

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

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

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

^{17/} EC6(b).

^{18/} EC6(c).

^{19/} EC7(a).

^{20/} EC7(b).

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



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

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

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

8. Are there "look-back" restrictions?

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

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

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

^{22/} EC8(a).

^{23/} EC8(c).



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

10. Who may speak for the Board?

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

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

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

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

^{24/} EC9.

^{25/} EC10.

^{26/} EC12.

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



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

13. How will the Board enforce the Code?

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

B. Request for Public Comment

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

* * *

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

^{28/} EC13.

^{29/} EC13.

^{30/} EC14.



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ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Acting Secretary

April 16, 2003

APPENDICES:

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

ETHICS CODE

EC1. Application of Code

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

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

EC2. Definitions

(a) Reference to Rules of the Board

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

(b) Code

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

(c) Designated Contractors and Consultants

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

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

(d) Honoraria

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

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



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(e) Immediate Family

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

(f) Practice

The term “practice” means:

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

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

(g) Professional Staff or Professional Staff of the Board

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

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



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(h) Staff or Staff of the Board

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

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

EC3. General Principles

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

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

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



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

EC4. Financial and Employment Interests

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



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

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

EC5. Investments

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

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

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

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



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

EC6. Outside Activities

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

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

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

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

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

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

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

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



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

EC8. Disqualification

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

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

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

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

EC9. Non-Public Information



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

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

EC10. Speaking for the Board

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

EC11. Ethics Officer

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

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

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

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

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

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

(c) Prohibition on Practice Before the Board or Commission



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

EC13. Waiver

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

EC14. Certification

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

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

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

EC1. Application of Code

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

EC2. Definitions

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

Reference to Rules of the Board

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

Designated Contractors and Consultants

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

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



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Honoraria

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

Immediate Family

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

Practice

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



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

Professional Staff or Professional Staff of the Board

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

Staff or Staff of the Board

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

EC3. General Principles

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

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



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

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

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

EC4. Financial and Employment Interests

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

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



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

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

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

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

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



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

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

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

EC5. Investments

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

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

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



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

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

EC6. Outside Activities

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

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



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

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

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

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

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

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

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



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

EC8. Disqualification

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

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

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



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

EC9. Non-Public Information

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

EC10. Speaking for the Board

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



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

EC11. Ethics Officer

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

EC12. Post-Employment Restrictions

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

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

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



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EC13. Waiver

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

EC14. Certification

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

**Exhibit 2(a)2**

Tab Number	Comment Source
1	Angela Davis, CPA, May 7, 2003
2	Deloitte & Touche, May 12, 2003
3	Grant Thornton LLP, May 12, 2003
4	KPMG International, May 9, 2003
5	National Association of State Boards of Accountancy, April 28, 2003
6	Shillam Consulting Group, Inc., May 11, 2003
7	Ernie Skyrme, May
8	Curtis C. Verschoor, May 9, 2003

From: Angela Davis [am_davis1@yahoo.com]
Sent: Wednesday, May 07, 2003 5:46 PM
To: Comments
Cc: K Hawkins; am_davis1@yahoo.com
Subject: Re: Docket # 03

To whom it may concern:

I have reviewed the docket proposing a code of ethics for PCAO Board members, staff, contractors and consultants and would like to express a few thoughts regarding this issue. The recent, widely publicized financial scandals of a few large companies have done much to tarnish the reputation of the accounting profession. As a newly licensed CPA, this developing trend greatly disturbed me. However, I was encouraged by the fact that our industry rapidly took measures to repair and prevent problems of this nature from occurring in the future.

I believe that the PCAOB will be able to make many improvements to the existing professional standards and practices in the years to come. This will be especially true given the fact that the PCAOB is proposing to have a code of ethics which governs their own practices. It is often the case that a code of ethics exists for a professional oversight organization, but is not enforced or treated with any regard. After reviewing the proposal, I believe that the PCAOB is serious about holding itself to a high standard in operation, not just theory. I particularly like the appointment of an Ethics Officer to ensure constant review of ethics issues.

I appreciate the opportunity to submit my opinions to the Board.

Regards,

Angela Davis, CPA

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May 12, 2003

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 003
Proposal of Ethics Code For Board Members, Staff and Designated Contractors and
Consultants

Deloitte & Touche LLP is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on its *Proposal of Ethics Code for Board Members, Staff and Designated Contractors and Consultants*, PCAOB Rulemaking Docket Matter No. 003 (April 18, 2003). We commend the Board for developing a Code of Ethics under which the members of the Board, its staff, designated contractors and consultants will be required to serve the Board.

Our comments below relate to the areas of the proposed Code of Ethics that we believe could have an impact on the accounting profession either through participation on the Board's advisory group or through post-employment restrictions. Additionally, included as an Appendix to this letter are some additional observations that the Board may wish to consider in order to strengthen its proposed Code of Ethics.

Application of the Disqualification Provisions to the Advisory Group

Section EC8(a) of the proposed Code of Ethics requires that “if a Board member or professional staff believes that he or she, or a member of his or her immediate family, may have a financial interest or other similar relationship *which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to Board’s function or activities*, then he or she shall, at the earliest possible date (1) disclose such circumstances and facts...; and (2) recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.”¹ This provision of the Code also applies to the Board’s advisory group under the Board’s proposed *Statement Regarding the Establishment of Auditing and Other Professional Standards*, PCAOB Rulemaking Docket Matter No. 004 (April 18, 2003).

Based on the discussion in the Board’s proposed release *Statement Regarding the Establishment of Auditing and Other Professional Standards*, it is the intention of the Board to include practicing auditors among the constituencies in its advisory group. We believe that participation on the advisory group by active members of the profession is essential to the development of meaningful standards. We also agree that the members of the advisory group should be required to adhere to an appropriate code of ethics in carrying out their advisory activities for the Board. While we do not believe adhering to the provisions of EC8(a) would be problematic for members of the accounting profession serving on the advisory group, we are concerned that the language in EC8(a) could be used to criticize the Board for placing practicing auditors on the advisory group, simply because they are subject to the Board’s oversight, and, on

¹ PCAOB Release No. 2003-004, at A1-vii (emphasis added).

that basis alone, do not have the necessary “appearance of independence and objectivity with respect to the Board’s function or activities.”² Therefore, we recommend that the Board revise the language in EC8(a) so that it is clear that those who practice in a registered public accounting firm and serve on the advisory group would not be considered to lack the “appearance of independence and objectivity” merely because they are subject to the oversight of the Board.

Post-Employment Restrictions and Negotiating Prospective Employment

Section EC12(a) of the proposed Code of Ethics would require that “Board members and professional staff may not negotiate prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.”³ We are concerned that this provision of the Code is only triggered once “negotiations” begin. A significant amount of employment discussions, including receiving an offer, could occur well before any negotiations begin. In fact, some job acceptances occur without any substantive negotiations. Additionally, it is not clear what would happen if negotiations take place and a job is not accepted. We believe these aspects of the proposed Code of Ethics should be clarified and suggest that the Code include relevant provisions of Independence Standard No. 3 *Employment with Audit Clients* (ISB No. 3), which has been adopted as part of the Board’s interim independence standards to be followed by registered public accounting firms. ISB No. 3 includes “pre-change in employment” safeguards that are initiated at the point conversations with a prospective employer take place rather than waiting for

² *Ibid.*

³ PCAOB Release No. 2003-004, at A1-viii.

negotiations to begin. Also under ISB No. 3, once negotiations begin with the prospective employer, not only is the professional removed from work associated with the prospective employer, but also, upon such removal, the professional's work is reviewed. The Board should also consider more restrictive requirements when the professional is in a policy making position and has the ability to directly impact the prospective employer and the accounting profession in general based on decisions made regarding matters of policy.

Conclusion

We believe the recommendations included herein as well as the additional observations in the Appendix would enhance the Board's proposed Code of Ethics. We appreciate the opportunity to comment. If you have any questions or would like to discuss these issues further, please contact Robert J. Kueppers at (203) 761-3579.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Charles Niemeier, Acting Chairman of the PCAOB
Kayla Gillan, Member
Daniel Goelzer, Member
Willis D. Gradison, Jr., Member

Appendix

The following summarizes our additional observations with respect to the Board's proposed Code of Ethics.

Clarification of Applicability of the Code

Section EC1 states that the Code applies to (1) Board members and staff, (2) the immediate family of Board members and staff, and (3) designated contractors and consultants to the Board. However, sections EC3 to EC14 of the proposed Code generally refer only to Board members and staff. Only Sections EC5(a) and EC8 refer to the immediate family of Board members and staff. There are no references to designated contractors and consultants within the Code. The Board should clarify which sections of the proposed Code apply to each of these three groups of individuals. Additionally, we believe that senior staff should be required to meet the same ethics standards as Board members due to their ability to make significant decisions and impact policy.

Definition of Designated Contractors and Consultants

Section EC2(c) defines "designated contractors and consultants" as those persons or business organizations with whom the Board enters into contracts for services, including contracts that provide for both goods and services. The Board may want to consider whether this definition is too broad. As currently written, if one person in a large organization provided services to the Board, the entire organization may be required to comply with the Code. To illustrate, it could be read that the Board's cleaning contractors be required to comply with the Code.

Definition of Immediate Family

Section EC2(e) defines immediate family to include a spouse, all dependent children, and any other person whom the Board member or staff has enrolled in any of the Board's employee benefit plans, excluding life insurance, whose financial interests and investments (as specified in the Code) are known, or in the exercise of reasonable care, should have been known, by the Board member or staff.

We believe the definition of immediate family should be modified so that it is consistent with the independence standards that auditors are required to follow. We believe it is appropriate that the Board be subject to similar standards as those that are subject to Board oversight. As drafted, the definition excludes spousal equivalents as well as other persons who might be deemed a dependent (e.g., a parent, grandparent, or other person) based on their circumstances. Additionally, the Board should clarify what constitutes an exercise of reasonable care. As proposed, the reasonable care standard appears to provide the ability to exclude certain people (e.g., even a spouse) from being considered immediate family. For example, the Board should consider whether it would be in the public interest for a spouse's use of a blind trust for investments to be a valid basis for excluding him or her from being immediate family.

Restrictions on Financial and Employment Interests

Section EC4 proposes restrictions on financial and employment interests that apply only to Board members and professional staff. We believe the Board should apply restrictions on financial and employment interests to immediate family. For example, should it be acceptable for a Board member's spouse to be a partner in a registered public accounting firm?

Definition of Routine Banking and Other Commercial Relationships

Section EC4(a)(1)(A) proposes that Board members and staff are permitted to have “routine” banking and other commercial relationships. The Board should provide guidance on what is deemed routine. For example, are relationships routine if they are fully insured under FDIC or SIPC insurance, the transactions are part of the entity’s normal business operations with the general public, and the transactions are made on normal procedures, terms, and requirements?

Outside Activities of the Board

Section EC6 proposes that no Board member or staff of the Board shall engage in any outside activity, whether or not for compensation, which affects or reasonably creates the appearance of affecting his or her independence or objectivity. As currently proposed, it is not clear who makes the determination regarding the appearance of affecting independence or objectivity. The Board should clarify who decides whether this perception question has been considered and mitigated.

Disclosure of Waivers, Monitoring of the Code, and Discipline for Violations

Section EC13 proposes procedures for requests for waivers. Consistent with Section 406 of the Act which requires issuers to disclose waivers of code of ethics, the Board should disclose to the public all waivers granted with respect to provisions of the Board’s Code. Issuers are also required under Item 10 of the instructions to Form 8-K to describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver. We believe the Board should consider making similar disclosures. We also believe, to ensure accountability to the Code, that the Board should establish procedures for monitoring compliance with the Code and institute disciplinary practices for violations of the Code.

Grant Thornton LLP
The US Member Firm of
Grant Thornton International

175 West Jackson
Chicago, IL 60604
312 602-8000



May 12, 2003

Public Company Accounting Oversight Board
Attention: Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

PCAOB Rulemaking Docket Matter No. 003, *Proposal of Ethics Code For Board Members, Staff and Designated Contractors and Consultants*

Dear Board Members and Staff:

Grant Thornton LLP appreciates the opportunity to comment on the proposals of the Public Company Accounting Oversight Board (the Board). We are pleased to submit our comments on PCAOB Rulemaking Docket Matter No. 003, *Proposal of Ethics Code for Board Members, Staff and Designated Contractors and Consultants*. We commend the Board for its commitment to the development of high ethical standards for its board members, staff, and outside consultants and contractors. We believe that such an ethics code is absolutely essential to ensure that the Board's missions and objectives are fulfilled and is essential for the restoration of public confidence in the financial markets, the issuers, and the registered accounting firms.

Therefore, we strongly endorse a conceptual ethical framework that would apply the same ethics code to the Board's members and staff. Specifically, the following ethics provisions should apply to all Board members, staff, and designated contractors and consultants:

- **Investments** (Ethics Code Section 5) – In order to restore public confidence, we believe that it is absolutely essential that Ethics Code Section 5 apply to both the Board members and the professional staff, including any outside contractors or consultants. Consistent with the restrictions on employment outlined in the Securities and Exchange Commission's Regulation S-X, we believe that no Board member or professional staff should be in a position to influence an issuer's or an accounting firm's operations or financial policies, have capital balances in an accounting firm, financial interests in an issuer except in a blind trust, or have any financial arrangement with an accounting firm other than fixed continuing payments under a fully funded retirement plan or rabbi trust. The Board's independence rules should mirror those rules already established by the U.S. Securities and Exchange Commission (the Commission) to govern relationships between former partners and employees of an accounting firm and issuers.
- **Outside Activities** (Ethics Code Section 6) – Consistent with the Commission's recent independence rules for registered accounting firms, we believe that no member of the Board or professional staff should undertake any employment or other activity for compensation outside of service to the Board. We believe that subsection (b) should apply only to non-professional staff and to outside contractors and consultants that do not have a conflict of interests in their

service to the Board. Any outside activities, such as outside consulting arrangements, expert services, or legal services, should cease upon a Board member or professional staff's joining the Board. In addition, we would encourage the Board to adopt a policy requiring that all non-professional staff and outside contractors and consultants fully disclose all potential conflicts of interests related to their outside activities, so that the members of the Board may determine the appropriateness of any assignments.

- **Disqualification** (Ethics Code Section 8) – We believe that any member of the Board or professional staff, including outside contractors or consultants, should recuse himself or herself of action or decisions related to an issuer or a registered accounting firm if during the 12 months prior to the individual's joining the Board as a Board member or professional staff, he or she was associated with the issuer or the accounting firm through employment, membership, or partnership. In addition, the individual should recuse himself or herself if he or she performed any accounting or consulting services, including serving as an expert witness or providing legal services, either for or against an issuer or registered public accounting firm, other than through direct performance of a Board function or activity. We believe that the extension of this provision to all professional staff is essential to ensure that decisions made by the professional staff involve the utmost degree of integrity and impartiality. To restore public confidence, the Board must insure that its decisions and the decisions of its staff are not unduly biased toward any issuer or registered accounting firm due to opinions that may have been formed through past dealings, either positive or negative, with an issuer or an accounting firm regulated by the Board.

The proposed ethical standards permit Board members to waive its provisions. We believe that any waiver, including an "implicit" waiver, of any provision of the ethics code should be publicly disclosed, including a description of the waiver and the reasons why the members of the Board believe that such a waiver is in the public interest. Similarly to the Commission's requirements outlined in SEC Release 33-8177, *Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002*, the required disclosure of a waiver or implicit waiver should be made public within 5 business days of the Board's decision through posting to the Board's Internet site in a specified, readily identifiable location. We believe that this addition to the Board's Ethics Code will ensure that the Board and its staff always maintain the public's confidence that the Board is acting, both in fact and appearance, with independence, objectivity, and integrity.

We would be pleased to discuss any of our comments with the Board or its staff. Please direct any inquiries to Karin French, National Partner in Charge of SEC Regulations, at 703-847-7533.

Very truly yours,

Grant Thornton LLP



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May 9, 2003

Dear Mr. Secretary:

PCAOB Rulemaking Docket Matter No. 003

KPMG appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (Board) proposed rule, *Proposal of Ethics Code for Board Members, Staff and Designated Contractors and Consultants* (Proposed Rule), which was released April 18, 2003 pursuant to Section 101(g)(3) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).

Our comments focus on enhancing the Board's ability to attract professional staff and future Board members.

EC 12. Post-Employment Restrictions and EC 2 (f). Definitions—Immediate Family

The prohibition on a former staff member's "practice" before the Board or the Securities and Exchange Commission (Commission) in section EC 12(c), may restrict the ability of the Board to attract qualified candidates. As proposed, the defined term "practice" includes "...representing... any other person in any formal or informal appearance before the Board or the Commission" and "making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission."

While we do not believe it was intended, one could interpret the restrictions from practice in section EC 12(c) to effectively disqualify a former staff member from engaging in any activities, directly or indirectly, related to Board matters, for one year. For example, this might include the inability of the former staff member from participating in the development of comment letters on the Board's proposed rulemakings. We believe that such broad post-employment restrictions may limit the number of qualified candidates interested in professional staff positions.

We believe that the Board should consider a policy similar to the one used by the Commission for its Professional Accounting Fellow (PAF) program. We believe this policy has met the Commission's objectives of appropriately limiting certain post-employment activities for a specified period, while at the same time maintaining the





attractiveness of a PAF position to qualified candidates. Under Commission policy, former PAFs are allowed to work with public accounting firm clients in matters before the Commission, including discussions with the Commission staff, provided they had not substantially participated in the client's matter nor had official responsibility for the matter while employed by the Commission. A notification is filed by the former PAF in advance of communications with, or appearances before, the Commission or its staff. We believe the Board should consider a similar policy and notification process in adopting its final rules.

Finally, we recommend that the text of the definition for "practice" be clarified with the language included in Appendix 2, section EC 12. In that section, the Board clarifies that practice before the Commission is "with respect to Board-related matters". We have interpreted the Proposed Rule not to prohibit practice before the Commission unrelated to Board-related activities for any period, and such clarification in the actual definition based on the language in Appendix 2 will enhance consistent application of the Code. The proposed definition is as follows:

(f) Practice

The term "practice" means:

- (1) knowingly acting as an agent or attorney for, or otherwise representing himself or herself or any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or
- (2) making any oral or written communication on behalf of himself or herself or any other person to, and with the intent to influence, the Board or Commission 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 does not, in and of itself, constitute practice before the Board or Commission with respect to Board-related matters.

Additionally, we recommend that the Board provide additional clarification, and possibly examples, in the "Section-by-Section Analysis of the Ethics Code" relative to the types of restricted post-employment activities meant to be covered by the final Code.

EC 2(e). Definitions – Immediate Family

We believe the Commission's definition of "Immediate Family Member" as used in the independence rules (Regulation S-X rule 2-01(f)(13)) is clearer than the proposed definition of "Immediate Family". The SEC definition is "immediate family members mean a person's spouse, spousal equivalent, and dependents."

* * * * *



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If you have questions regarding any of the information included in this letter, then please call or write to Michael A. Conway, (212) 909-5555, mconway@kpmg.com or Neil Lerner + (44) 207 311 8620, neil.lerner@kpmg.co.uk.

Yours sincerely,

KPMG



National Association of State Boards of Accountancy

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David A. Costello, CPA
President & CEO

April 28, 2003

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

Comments@pcaobus.org

RE: PCAOB Rulemaking Docket Matter No. 003

Dear Board Members:

Once again, we have to state that we appreciate the opportunity to comment on the proposals of the Public Company Accounting Oversight Board. NASBA, the National Association of State Boards of Accountancy, is a forum of the 54 state boards of accountancy, and these boards are all interested in the proposals, deliberations and final determinations of the PCAOB. Although all our boards may not be sitting in at your meetings, we know that your Web casts are being listened to and exposure drafts being reviewed by board members across the country. State regulators are benefiting from the discussions being held by both the SEC and PCAOB.

It is because of the benefit that state regulators receive from your insights that we would ask you to review "EC7. Gifts, Reimbursements, Honoraria and Other Things of Value" of the proposed code. While section (b)(2)(iii) permits travel-related expenses to be reimbursed by organizations exempt from taxation under 501(c)(3) of the Internal Revenue Code, NASBA is exempt under 501(c)(6). We anticipate that state board members will be eager to have speakers from the PCAOB address our association's meetings. Because we are a national association, we try not to favor any one area of the country as a meeting location; consequently, our annual and regional meetings are held throughout the United States, usually not in the DC area. We would not want to have PCAOB speakers unable to add to our meetings because of travel budget restrictions.

NASBA is funded by neither public accounting firms nor issuers and thus would not be precluded from being exempt on that basis. But we could not fall under the exemptions of sections (i) or (ii) because we are not a federal, state or local governmental body, or an accredited institution of higher learning.


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We trust the PCAOB will consider making an alteration in the language of EC7, such as: “a federal, state or local governmental body or an association of such bodies...”, that will enable us to look forward to speakers with firsthand knowledge of the Board’s activities at our future meetings. Better communication among the state accountancy boards and the PCAOB for the public’s benefit is a goal we all share.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Michael Conaway". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail.

K. Michael Conaway, CPA
NASBA Chair

A handwritten signature in black ink, appearing to read "David A. Costello". The signature is cursive and somewhat stylized, with a clear "D" and "C".

David A. Costello, CPA
NASBA President & CEO

From: PLShillam@cs.com
Sent: Sunday, May 11, 2003 1:40 PM
To: Comments
Subject: PCAOB Rulemaking Docket Matter No. 3

Late Comment

I am concerned that the PCAOB may be repeating the problems of self-regulation with respect to ethics enforcement. I would suggest that the GAO (General Accounting Office) may be a better organization to oversee the ethical conduct of the PCAOB.

Paul L. Shillam, CPA, CMA
Shillam Consulting Group, Inc.
425.379.7857
425.379.7857 fax

From: Ernie Skyrme [eskyrme1@hotmail.com]
Sent: Thursday, May 08, 2003 12:26 AM
To: Comments
Subject: Docket No. 003

To Whom It May Concern:

Due to recent developments in the accounting industry, the public has lost a lot of confidence in accountants and financial markets. I work for a larger accounting firm, and I am always asked a lot of questions from outsiders about the industry. I like the fact that this proposed rule will help regain some confidence in the accounting industry and financial markets. Obviously, some of the employees from the private sector will still have relationships with former employers and employees. However, I appreciate the Board making an attempt to disclose these relationships and keep these relationships from being conflicts of interest.

The Board is leading the way for the accounting firms by adding the Ethics Code. With the Board tackling issues such as confidentiality, conflicts of interest and favoritism, the firms will have a model to improve its operations. I am in favor of any motion that will increase public confidence in these economically hard times, which this rule does. Thanks for allowing me to comment on the ruling.

Ernie Skyrme

MSN 8 with [e-mail virus protection service](#): 2 months FREE*

CURTIS C. VERSCHOOR

231 WYNGATE DRIVE
BARRINGTON, IL 60010
cverscho@condor.depaul.edu

The following comments are submitted regarding
PCAOB Rulemaking Docket Matter No. 003

Ethics Code

Introduction

The goal set forth in the introductory remarks – that “The Board must ensure that its own business integrity, values and principles are above reproach” is worthy and necessary in the circumstances. It should be a model for adoption by registered firms. As noted below, the proposed ethics code is not sufficient in many respects to assure this goal’s achievement.

General comments

In spite of the introductory statement lauding the importance of values, the Code does not set forth any values that should be followed by those subject to it. Several of the values set forth in the AICPA Code of Professional Conduct represent a minimum that should be set forth in the Code. These include Integrity, Priority of the Public Interest, Objectivity and Independence, and Due Care. Other values that should be considered include Competence and Confidentiality.

The Code is also deficient in failing to sufficiently describe the measures needed for its successful administration. The Defense Industry Initiative rules and US Sentencing Guidelines’ description of mitigating circumstances should be set forth as a minimum. The administrative steps should describe the functions of training in the Code, monitoring its use, a confidential reporting or help-line, and other steps to make sure the Code is understood and used by all and not just a closeted unimportant document. The public will not have confidence in the activities of a Board that realizes it should have exemplary governance including ‘best practice’ ethics, but which in fact does not measure up.

Specific comments

EC3. The General Principles should discuss in more depth but still general terms how the values underlying the Code’s provisions are to be applied. The language in the current draft is too unspecific to be very helpful in guiding the behavior of those subject to the Code. Best Practice ethics systems require a values approach, as hinted in the Board’s introduction, rather than legalistic provisions that are unlikely to motivate ethical behavior.

The analysis of EC3(b) discusses “the appearance of certain situations” that may not be “specifically prohibited by the Code.” This language is unlikely to be helpful in guiding behavior and illustrates the need for a values-based approach to motivating ethical behavior rather than a legalistic approach that presumes any behavior not specifically prohibited must be acceptable.

EC4 is titled Financial and Employment Interests, yet covers only financial but not employment matters. It should specifically state that no Board member or professional staff should enter into any outside employment except as provided in EC6. Particularly avoided should be any relationships with public accounting firms or issuers. The appearance of potential conflicts of interest will not permit the Board or staff to play a variety of different roles while still appearing to be objective in dealing with public accounting firms or issuers.

EC5 contains a prohibition on disclosing confidential information within the context of investments. As noted above, Confidentiality should be a keystone value of the Board and its staff and for emphasis should be discussed in a general context, not just as it relates to investments.

EC6(b) should provide for prompt public disclosure of any waivers of the Code granted under this section to be consistent with the Sarbanes Oxley Section 406 requirement for issuers. As noted below, it is not obvious what benefit there is to the public interest or the Board's mission of helping to restore and then maintain confidence in the integrity of the securities markets for the Board or staff to be involved with outside employment. If this section contemplates allowing an activity like writing a book that would guide firms and issuers, such an example should be set forth as guidance.

EC6(c)(3) uses the terms independence and objectivity as terms of art, yet these terms are not set forth in the Code as underlying values nor described as general principles (see above). At least they should be defined for use in this context. This comment also applies to EC8(a).

The analysis of EC6(c)(3) is incorrect in stating that the three concepts describing precluded outside activities are "self-explanatory." Rather, they do require explanation as they include terms used ambiguously in varying contexts. Further, examples of activities that are acceptable, if any, should be set forth for the continuing guidance of the Board and staff.

EC6(c)(3) should also make it clear that any relationships involving public accounting firms or issuers should be avoided. As noted above, it is not obvious what benefit there is to the public interest for the Board or staff to be involved with any activities other than their principal employment that is directed toward the Board's mission of helping to restore and then maintain confidence in the integrity of the securities markets.

EC9 would be strengthened by inclusion of Confidentiality as an underlying value and General Principle (see above).

EC11 does not describe current best practice for Ethics Officers. An Ethics Officer should report directly to the Board and have responsibilities for administering the ethics system. At its website: www.eoa.org/Whatis.asp, The Ethics Officer Association describes responsibilities of ethics officers in terms of a senior executive that administers the ethics system in an organization. Specific responsibilities can include:

- Global accountability for developing and directing an organization's ethics, compliance, and business conduct function for the total organization.
- Accountability for the organization-wide confidential reporting program

- Setting the strategy for and administering the organization's annual or periodic ethics and compliance training, and regular communications around ethics, compliance and business conduct issues
- Conducting investigations into alleged violations of company ethics, compliance or business conduct practices and making recommendations for resolution of misconduct
- Providing leadership, oversight, and expert advice to ensure appropriate development, interpretation, and implementation of ethics and compliance strategies, policies and programs

EC13. The Code should state what circumstances, if any, that would benefit the Board's mission by granting any waivers of the Code. Waivers, if any, should not be left to the total discretion of an individual and allowed for a wide spectrum of reasons. It is not obvious what benefit there is to the public interest for the Board or staff request a waiver of the Code. The Code should enhance the public image of the Board and staff and motivate them to direct their full energies toward the Board's principal mission of helping to restore confidence in the securities markets.

EC13. The Board should also not delegate responsibility for granting waivers of the applicability of the Code. Waivers for the Board or staff should be few, if any, because the practice of granting a waiver sends the signal that an ethics code need apply only when convenient. This was the message the Enron Board ethics waiver sent to its staff with devastating results. Also, any waivers granted should be promptly made public to conform the Board's and public accounting firm practices with those required by Sarbanes-Oxley for issuers.

EC 13 should either be deleted or its language revised to state that waivers will only be granted to further the interests or reputation of the Board, NOT that any cause not demonstrably harmful should be acceptable.

EC14. As mentioned previously, mere annual rote certification of compliance is insufficient as the only administrative function designed to ensure compliance with the spirit of the Code. Regular training, emphasis as an element of staff performance evaluation, and a system of confidential communication or help-line should be added to this section.

Respectfully submitted,

Dr. Curtis C. Verschoor, CPA, CMA, CIA, CFE
L & Q Research Professor
School of Accountancy and MIS
DePaul University
And
Research Scholar
Center for Business Ethics
Bentley College



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ETHICS CODE FOR BOARD MEMBERS,)	PCAOB Release No. 2003-008
STAFF AND DESIGNATED CONTRACTORS)	June 30, 2003
AND CONSULTANTS)	
)	PCAOB Rulemaking Docket
)	Matter No. 003
)	
)	
)	

Summary: On June 30, 2003, and after public comment, the Public Company Accounting Oversight Board ("Board" or "PCAOB") pursuant to the direction contained in Section 101(g)(3) of the Sarbanes-Oxley Act of 2002 ("Act"), adopted an Ethics Code ("Code" or "EC") to govern the conduct of its members, employees, and certain contractors and consultants. The Code consists of 14 sections (EC 1 through 14). The Board will submit its final rules to the Securities and Exchange Commission ("Commission") for approval pursuant to Section 107 of the Act. The Board's Ethics Code does not take effect until approved by the Commission.

Board
Contacts: Gordon Seymour, Acting General Counsel (202/207-9034; seymourg@pcaobus.org) or Donald Marlais, Special Counsel to Board Member Gillan (202/207-9063; marlaisd@pcaobus.org).

* * * * *

Section 101(g)(3) of the Act requires the Board to establish ethics rules and standards of conduct for members and staff of the Board. This requirement is one of several provisions of the Act that address issues relating to ethics, not only with regard to PCAOB governance but also to a broad range of market participants (e.g., the accounting profession, certain public company officers, attorneys, securities professionals, securities analysts). One of the key purposes of the Act was to address conflicts of interest, both actual and perceived, in an effort to restore public confidence



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 June 30, 2003
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in the integrity of the equity securities market.^{1/} The Board – as the body charged with the responsibility to establish, among other things, standards of ethics and independence for public accounting firms^{2/} – must ensure that its own business integrity, values and principles are above reproach. It is with this goal that the Board has adopted its Ethics Code.

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

1. Whose conduct is affected by the Code?

The Code establishes ethics rules and standards of conduct for the Board's members and staff,^{3/} as well as to designated contractors and consultants.^{4/} In some circumstances, Board members' or staff's spouse, spousal equivalent, and dependents^{5/}

^{1/} President George W. Bush, Remarks at the Signing of H.R. 3763 (July 30, 2002) (available at <http://www.whitehouse.gov/news/release/2002/07/20020730-1.html>).

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

^{3/} Certain restrictions only apply to "professional" staff (i.e., those who are exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (29 USC § 201 et seq.)). These include restrictions on financial interests, acceptance of gifts or honoraria, speaking engagements, and post-employment activities, as well as provisions requiring recusal.

^{4/} EC1(a)&(c). The term "designated contractors and consultants" is defined in EC2(d). As noted in Appendix 2, the board refined this definition after careful consideration of several comments.

^{5/} The term "dependent" is defined in EC2(c). As noted in Appendix 2, the Board eliminated its definition of "immediate family" and slightly altered the application of the Ethics Code to Board members' and staff's family members after careful consideration of several comments.



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are either subject to the Code,^{6/} or impact the obligation of the Board member or staff under the Code.^{7/}

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

Even if not specifically proscribed in the Code, certain overarching principles must be observed.^{8/} These include –

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

3. Are continuing financial relationships with former employers permitted?

In establishing its organizational structure, the Board is aware of two potentially conflicting realities. First, to fulfill its responsibilities under the Act, the Board will need to hire people with expertise in, among other areas, public company audits, financial structures and reporting responsibilities. Second, it was the public's eroding confidence in these fields that was largely responsible for the passage of the Act, and for the creation of the Board. Thus, the Board must hire many people who come from the

^{6/} EC1(b).

^{7/} See, e.g., EC8(a) disqualifying Board members or staff from Board functions or activities if the financial or similar interest of their spouse, spousal equivalent, or dependents might affect, or might reasonably create the appearance of affecting, the Board's independence or objectivity.

^{8/} EC3.



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private sector areas that will most directly be affected by the Board's work, but must do so with sufficient protections in place to ensure that all prior interests are wholly subsumed by the employee's new responsibilities to the PCAOB.

The Ethics Code seeks to strike the necessary balance between these two realities. It does so by prohibiting all financial obligations, running to or from a former employer, business partner or client, except in narrowly defined circumstances. Obligations *from* the former employer, business partner, client, or publisher are only permitted if part of – ^{9/}

- routine banking and other routine commercial relationships;
- investments that are otherwise permitted under the Code (see Question 4, below); or
- payments that can legitimately be viewed as deferred compensation for services completed *before* joining the PCAOB; these include –
 - ♦ benefits under bona fide pension, retirement, health and similar employee welfare or benefit plans, *provided* these benefits are related to the Board member's or staff's *prior service*;
 - ♦ profit-sharing, stock bonus and similar payments, again *provided* that the payments are related to *prior service*; ^{10/} and
 - ♦ royalties and like payments, again *only* for writings or recordings completed *before* joining the Board.

Obligations *to* a former employer, business partner, client, or publisher are only permitted if part of – ^{11/}

^{9/} EC4(a)(1).

^{10/} This provision would permit a Board member or staff to receive the proceeds from the liquidation of any capital accounts he or she may have with a public accounting firm at the time of his or her appointment or employment with the Board.

^{11/} EC4(a)(2).



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- routine banking and other routine commercial relationships;
- covenants not to compete; or
- non-disclosure agreements.

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

Lastly, Board members and their spouses, spousal equivalents, and dependents are expressly prohibited from sharing in any of the profits of – or receiving payments from – a public accounting firm, except for fixed continuing payments under standard accounting firm retirement packages (e.g., a pension allowance). This prohibition on Board members is taken from the express restriction in Section 101(e)(3) of the Act. Per the Act, the Commission may impose additional conditions on the receipt of such payments.

4. Are personal investments restricted?

Unlike the Commission, the Board is not charged with regulating the securities markets. The Board is charged with oversight only of public accounting firms. Thus, the Code's specific restrictions as to personal investments are confined to this industry.^{12/} However, the Code also contains general direction to avoid any private financial activity which might affect, or reasonably create the appearance of affecting, independence or objectivity.^{13/} In addition, Board members and staff are prohibited from disclosing or using for the financial gain of any person, any non-public information which might affect the value of particular securities or investments.^{14/}

^{12/} EC5(a). This section also applies to the spouse, spousal equivalent, and dependents of Board members and staff.

^{13/} EC5(b).

^{14/} EC5(c).



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Additionally, after careful consideration of recommendations by several commenters, the Board added to the Code a requirement that certain investments by Board members and professional staff be disclosed. Specifically, Board members and professional staff are required to annually disclose their holdings, and the holdings of their spouses, spousal equivalents and dependents, in publicly traded securities, including options and futures.^{15/}

The disclosure statements must be filed with the Board's Ethics Officer.^{16/} In addition, Board member investment disclosure statements will be made available to the public.

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

Consistent with Section 101(e)(3) of the Act, no Board member may engage in any employment or other activity for compensation, outside of service to the Board.^{17/} Staff may only undertake outside employment with the consent of the Board (or a person to whom the Board may delegate this responsibility).^{18/} Additionally, neither Board members nor staff may undertake any outside activity, whether for compensation or not, that would affect the person's independence or objectivity, or otherwise hinder the Board's interests.^{19/}

^{15/} EC5(d).

^{16/} Newly appointed Board members or newly hired professional staff will have 60 days from the date of commencement of their Board service to file the necessary disclosure. Current Board members and professional staff will have 60 days from the effective date of the Code.

^{17/} EC6(a).

^{18/} EC6(b).

^{19/} EC6(c).



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

Solicitation or acceptance of anything of value, from any source, which might reasonably be perceived as interfering with independence or objectivity, is prohibited.^{20/} This prohibition includes honoraria.

Acceptance of payment for or reimbursement of official travel-related expenses is only permitted when two conditions are met.^{21/} First, the travel must be related to the Board member's or staff member's participation in an educational forum. This includes speeches or panel presentations at conferences, but would not include travel in connection with, for example, general business meetings. Second, the travel expenses may only be paid by –

- a federal, state or local governmental entity or an association of government bodies,
- an accredited institution of higher learning,
- a tax-exempt entity,^{22/} *except* one which is principally funded by one or more public accounting firms or issuers, or
- equivalent institutions outside the United States.

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

^{20/} EC7(a).

^{21/} EC7(b).

^{22/} The tax-exemption must also be based on Section 501(c)(3) of the Internal Revenue Code. (EC7(b)(2)(C).)



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

The Board recognizes that not all potential conflicts of interest can be identified and appropriately addressed at the time of hire or appointment, and that new issues during the course of one's service to the Board may arise (e.g., a spouse may take a new job). If such a financial conflict of interest should arise, Board members and staff must (a) disclose, and (b) disqualify themselves from Board functions or activities involving or affecting the financial interest.^{23/}

8. Are there "look-back" restrictions?

Under the Code, Board members and staff may not – for one year after appointment or hire – participate in any decision-making process which is reasonably likely to have a material effect on a former employer, business partner or client, when the prior relationship terminated within the previous five years.^{24/} In establishing this "look back" period, the Board concluded that the combination of one year from PCAOB employment and five years from prior employment represented a reasonable time beyond which conflicting loyalties (not affected by financial relationships, which are addressed above) are unlikely to continue.

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

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

Board members and *all* staff (including administrative personnel) are required to maintain the confidentiality of all non-public information obtained through service to the

^{23/} EC8(a).

^{24/} EC8(c).



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Board.^{25/} Former Board members and staff must maintain the confidentiality of such information after leaving the Board.

10. Who may speak for the Board?

The Ethics Code prohibits any individual Board member or staff from speaking for the Board, without Board authorization.^{26/} Further, when a Board member or staff is making a statement (either orally or in writing) without such authorization, he or she must explicitly acknowledge this restriction.

11. What are the "revolving-door" restrictions?

Three restrictions impact post-employment considerations.^{27/} First, if a Board member or staff is negotiating with a public accounting firm or issuer for prospective employment, the disclosure/disqualification rules of EC8 (see Question 8, above) apply.^{28/} Second, for one year after leaving Board service, no former Board member or staff may practice^{29/} before the Board or the Commission (with respect to Board related matters). This second restriction is also mandated for Board members by Section 101(g)(3) of the Act. Third, former Board members and professional staff may not "switch sides" and work on a particular matter after leaving the Board that they personally and substantially participated in while at the Board.

^{25/} EC9.

^{26/} EC10.

^{27/} EC12.

^{28/} 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. (See EC12(a)(2).)

^{29/} The term "practice" is defined in EC2(f).



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

The Board may waive any provision of the Code, so long as the provision is not otherwise required by law (including the Act).^{30/} Waivers must be requested in writing and evaluated by the Board's Ethics Officer. The Board will only grant a waiver after finding that the waiver would not otherwise hinder the interest or reputation of the Board. Waivers will be made available to the public, subject to the withholding of information that would constitute a clearly unwarranted invasion of personal privacy.

13. How will the Board enforce the Code?

The Board intends to enforce the Code primarily in three ways. First, an Ethics Officer will be designated and empowered to counsel Board members and staff regarding compliance and violations (including issuing advisory opinions), and to make recommendations to the Board regarding waivers and potential violations.^{31/} Second, compliance with the Ethics Code represents a condition of employment, or continued contracting, with the Board; violations of the Code can result in disciplinary action, including termination. Third, each Board member, staff and designated contractor or consultant will be required to annually certify that he or she is in compliance with the Code.^{32/} In addition, the Ethics Code will be included in periodic ethics training that will be provided to Board members and staff.

B. Public Comment Process and Board Responses

A Proposed Ethics Code was released for public comment on April 18, 2003. The Board received eight written comment letters.^{33/} In response to these comments, the Board's final Code both clarifies and modifies certain aspects of the initial proposal. Most importantly, the revisions to the original proposal –

^{30/} EC13.

^{31/} EC11.

^{32/} EC14.

^{33/} The comments will be summarized and attached to the Board's Form 19b-4, to be filed with the Commission.



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- clarify that the Code's application to "designated contractors and consultants" will require a three step process: first, there must be a contract for services; second, the Board (or its designate) must determine that the Code should be applied to the contractor, in whole or in part; and last, the contract must contain specific provisions incorporating those portions of this Code applicable to the contractor;
- eliminate the definition of "immediate family" and clarify which provisions of the Ethics Code apply to a Board or staff member's spouse, spousal equivalent, and dependents;
- impose the obligation upon Board members and professional staff to disclose their personal investments, and those of their spouses, spousal equivalents and dependents, in the securities of issuers;
- expand the narrow list of sponsors who are permitted to pay for Board-related travel to include associations of governmental (federal, state or local) bodies and non-U.S. institutions equivalent to the permissible domestic sponsors;
- create a "reasonable person" standard for Board members and professional staff to use to determine whether a financial relationship requires disclosure and disqualification;
- clarify that, in the context of members of an advisory group,^{34/} independence and objectivity are not *per se* impaired because the group member's employer, business client or partner is subject to the Board's direct or indirect oversight;
- clarify that Board members and professional staff are not required to disqualify themselves from participating in making or developing broad policies or procedures which may have some effect on a former employer, business partner or client, so long as the policy or procedure effects all similarly situated people and organizations to the same degree;

^{34/} See PCAOB Release No. 2003-009, and PCAOB Rule 3700 (regarding advisory groups).



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- define those circumstances which trigger (and do not trigger) the requirement for Board members and professional staff to internally disclose when they are "negotiating prospective employment" with a public accounting firm or issue;^{35/}
- require designated contractors and consultants to certify compliance with the Code (as applied to them) to the same extent as Board members and staff;
- add a restriction on former Board members and professional staff participating in a matter they personally and substantially participated in while at the Board;
- extend indefinitely the restriction on former Board members and professional staff from disclosing non-public Board information; and
- make publicly available information on waivers of the Ethics Code.

* * *

On the 30th day of June, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Acting Secretary

June 30, 2003

^{35/} When this disclosure is triggered, Board members and professional staff must also disqualify themselves from participating in decisions directly affecting the prospective employer.



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APPENDICES –

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

Appendix 1 – Ethics Code

EC1. Application of Code

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

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

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

EC2. Definitions

(a) Reference to Rules of the Board

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

(b) Code

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

(c) 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.

(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



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- (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.

(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."

(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
- (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.



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(g) Professional Staff or Professional Staff of the Board

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

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

(h) Staff or Staff of the Board

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

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

EC3. General Principles

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

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



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- (3) Board members and staff should recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

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

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

EC4. Financial and Employment Interests

- (a) While employed by the Board, no Board member or professional staff shall –
 - (1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner, client, or publisher except –
 - (A) routine banking and other routine commercial relationships;
 - (B) securities and other investments permitted by this Code;
 - (C) benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;



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- (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.

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.

(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.



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(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.

EC6. Outside Activities

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



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

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

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

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

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

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

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

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

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



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

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 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



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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.

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).

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.

EC11. Ethics Officer

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

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

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

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



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EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

- (1) Board members and professional staff may not negotiate prospective employment with a public accounting firm 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.

EC13. Waiver

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



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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.

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.

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

The Ethics Code consists of 14 rules (PCAOB Rules EC1 through EC14). Each of the rules is discussed below.

EC1. Application of Code

EC1 provides that the provisions of the Ethics Code shall apply, according to their terms, to present and former Board members and staff, the spouses, spousal equivalents, and dependents of Board members and staff, and certain contractors and consultants to the Board. A note to the rule cross-references Rule 3700(e), which provides that members of Board advisory groups are subject to certain provisions in the Ethics Code.

EC2. Definitions

EC2 contains definitions of terms used in the Board's Ethics Code.^{1/}

Reference to Rules of the Board

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

Dependent

EC2(c) defines "dependent" as any person who receives more than half of his or her support for the most recent calendar year from the Board member or staff. The Ethics Code, as proposed, did not contain a definition of "dependent," but had defined the term "immediate family." Two commenters recommended that the Board adopt a

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



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definition of "immediate family" that more closely resembles the Commission's definition of "immediate family member" in its auditor independence rules. The Commission's definition of "immediate family" covers an individual's "spouse, spousal equivalent, and dependents."^{2/}

The Board agreed, in principle, with this recommendation. To promote clarity, however, the Board has eliminated its use of the defined term "immediate family" and added "spouse, spousal equivalent, and dependents" directly to those provisions of the Ethics Code that previously used the defined term "immediate family." While the Board has only included a definition, based on the Commission's interpretation of Regulation S-X, for "dependent," the Board will interpret each of these terms in a manner consistent with how they are used in the Commission's Regulation S-X definition.^{3/} Accordingly, "spouse" will mean husband or wife, whether by marriage or common law, and "spousal equivalent" will mean cohabitant occupying a relationship generally equivalent to that of a spouse.

While the definition of "dependent" applies equally to minor or adult dependents, depending on their receipt of support from the Board or staff member, there may be situations in which it might be appropriate for the Ethics Code to apply differently in the

^{2/} See Rule 2-01(f)(13) of Regulation S-X, 17 C.F.R. 210.1-01(f)(13).

^{3/} See Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919 (November 21, 2000) (describing these terms in the context of the rule's definition of "close family members").



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case of an adult dependent who does not reside with the Board or staff member. If appropriate and consistent with EC13, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates waiver authority with regard to staff will recommend a waiver in such situations.

Designated Contractors and Consultants

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

Two commenters indicated that they believed the original definition was overly vague and could apply to all providers of goods and services to the Board. The proposing release provided a two-part test for designated contractors and consultants. It indicated that designated contractors and consultants are those persons with whom the Board entered into contracts for services and for which the contracts expressly incorporated the Code, in whole or in part. Based upon these concerns, the Board has added a third criterion – a requirement that the Board determine, on a case by case



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basis, whether, and to what degree, each contractor or consultant should be subject to the Code.

Honoraria

EC2(e) defines "honoraria" as anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. EC2(e) further indicates that neither the waiver or conference fee, nor the acceptance of a modest speakers-only meal shall constitute honoraria. "Nominal value" will initially be interpreted to mean fair market value of \$50 or less.

Practice

EC2(f) defines "practice" as it relates to activities before the Board or Commission. Subparagraph (1) of the definition provides that practice means knowingly acting as an agent or attorney for, or otherwise representing any person (other than oneself) in any formal or informal appearance before the Board or Commission. Subparagraph (2) provides an alternative meaning, indicating that practice also means making any oral or written communication on behalf of any person (other than oneself) to, and with the intent to influence, the Board or Commission.

This definition, as incorporated in EC12(b), is intended to restrict affected persons from certain representational activities. However, this definition, as incorporated by EC12(b), is not intended to prevent affected persons from participating



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in the preparation of documents, communications, presentations or the like, provided the affected persons do not appear before, or speak to, the Board, and are not the signatory of any written correspondence or communication to the Board.

The Board has added a note to this subsection that clarifies that participating in the financial reporting process as an officer or director of an issuer or participating in an audit or an issuer does not, by itself, constitute practice before the Board.

Professional Staff or Professional Staff of the Board

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

Staff or Staff of the Board

EC2(h) defines the terms "staff" or "staff of the Board" as those persons who are employed by the Board.

EC3. General Principles

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



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EC3(a)(1) instructs Board members and staff to at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public confidence in the objectivity and deliberative process of the Board. EC3(a)(2) instructs Board members and staff to take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board. EC3(a)(3) further instructs Board members and staff to recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

EC3(b) prohibits Board members and staff from acting in a manner that creates or reasonably results in the appearance of certain situations described in subparagraphs (1) through (5),^{4/} regardless of whether specifically prohibited by this Code.

The Board, or its Ethics Officer, may issue interpretative guidance relating to these principles.

One commenter indicated that he did not believe the Board's general principles provided any meaningful guidance to the Board or its staff. Recognizing that the general principles are meant to be broad enough to guide the conduct of members and

^{4/} The situations described in these subparagraphs are self-explanatory and are not discussed below.



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staff in those situations in which a specific provision of the Code does not apply, the Board has concluded that its general principles are sufficient and has not changed them.

EC4. Financial and Employment Interests

EC4 limits Board members and/or professional staff from certain financial and employment interests. Subparagraph (a) prohibits Board members and professional staff from being owed or owing any financial or other obligation to a former employer, business partner, client or publisher, with limited exceptions. The Board extended this prohibition to a Board member or professional staff's publisher.

EC4(a)(1) restricts Board members and professional staff from being owed any financial or other obligation, except those items contained in subparagraphs (A) through (F).^{5/}

One commenter requested that the Board define what it meant by "routine banking and other routine commercial relationships" as identified in EC4(a)(1)(A) and EC4(a)(2)(A). The Board will apply this exception to those arrangements that are akin to those generally available to the public at large through arms-length negotiations. The Board does not believe that the exception requires further refinement in the Code.

EC4(a)(1)(C) excepts from the general prohibition benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare

^{5/} Certain excepted items under this subparagraph are self-explanatory and are not discussed below.



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or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client. This rule does not prevent Board members or staff from receiving ongoing bona fide pension payments, even if the funding for those payments is tied to the profitability of the former employer. Board members and professional staff, however, remain subject to EC8. As discussed in more detail below, EC8(a) requires Board members and professional staff to disclose circumstances that would lead a reasonable person to believe that the Board or staff member may have a financial interest that might affect or reasonably create the appearance of affecting his or her independence or objectivity and to recuse himself or herself from participating in functions or activities involving or affecting the financial interest. If a Board or staff member were receiving pension payments, the funding for which is tied to the profitability of a former employer, that would constitute the type of financial interest requiring disclosure and recusal from matters involving that former employer pursuant to EC8(a).^{6/}

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

^{6/} EC8 also generally restricts Board members and staff from participating in making a decision which is reasonably likely to have a material effect on their former employer for one year after joining the Board.



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

EC4(a)(2) restricts Board members and professional staff from owing any financial or other obligation, except those items contained in subparagraphs (A) through (D).^{7/}

EC4(b) reiterates the statutory constraints on Board members receiving profits of, or payments from, public accounting firms. As proposed, EC4(b) was limited to Board members only. Based on public comment, this subparagraph was extended to spouses, spousal equivalents, and dependents of Board members.

EC5. Investments

EC5 addresses the issue of investments by Board members and staff and their spouses, spousal equivalents, and dependents.

EC5(a) provides that there are no prohibited investments by Board members, staff and their spouses, spousal equivalents, and dependents, except that subparagraph (1) restricts Board members and professional staff from having any financial interest in a public accounting firm.^{8/}

^{7/} The items excepted under this subparagraph are self-explanatory and are not discussed below.

^{8/} The Board revised EC5(a) to not cover Board members and professional staff's spouses, spousal equivalents and dependents. Under EC8(a), if a Board member or professional staff's spouse, spousal equivalent, or dependent had a financial interest in a public accounting firm, that interest would have to be disclosed and the



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

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

EC5(d) has been added at the suggestion of several commenters and requires that Board members and professional staff annually disclose their holdings in securities of issuers, including exchange-traded options and futures. Disclosure statements must be filed with the Ethics Officer. In addition, Board members' disclosure statements will be made available to the public.

Board or staff member would be recused from participating in any matter involving that public accounting firm. In addition, Board member spouses, spousal equivalents, and dependents are subject to the restrictions on payments from public accounting firms in EC4(b).



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For initial disclosures, newly appointed members or newly hired professional staff have 60 days from the date of commencement of service with the Board to complete and file the necessary statements. Current Board members and professional staff have 60 days from the effective date of the Code to file the necessary statements.

For subsequent disclosures, Board members and professional staff shall file the necessary statements on May 1, commencing the first year following the initial disclosure.

The form and content of the disclosure shall be included in the Board's ethics manual and will require disclosure of investments based upon categories – such as individual operating company holdings, mutual fund holdings, index fund holdings, exchange-traded options holdings, stock futures holdings and other holdings the Board deems relevant.

It is currently contemplated that all values will be disclosed in ranges, and based on market value. For example, a Board member or professional staff member would be required to identify whether their assets in mutual funds were between two fixed dollar values - \$0-\$50,000, \$50,000-\$100,000, etc.

It is further contemplated that broad based classes of investments, such as mutual fund holdings, could be disclosed in lump sum (i.e., all mutual fund holdings could be aggregated for convenience), while individual holdings (equities, options and



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futures) would be required to be specifically identified, along with the range of valuation for each issue.

EC6. Outside Activities

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

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

EC6(b) dictates that staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority. As with other delegations of Board functions, Section 101(g)(2) of the Act will define the parameters of the delegation.

While EC6(b) applies to all paid outside activities, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates approval authority will recommend approval on a case-by-case basis, or, where appropriate, a "blanket" basis for those activities unrelated to the Board's oversight and which would not otherwise impair staff independence or hinder the reputation of the Board.



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EC6(c) prohibits any outside activities by Board members and staff, whether or not for compensation, that violate certain general principles that are specified in subparagraphs (1) through (3) of EC6(c).^{9/}

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

EC7 places restrictions on the receipt of gifts, honoraria, reimbursement for travel and other things of value by Board members and professional staff. EC7(a) provides that no Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, under the circumstances described in subparagraphs (1) and (2).^{10/}

EC7(b) describes the circumstances under which, and from whom, travel reimbursement may be paid. Subparagraph (1) limits such reimbursements for travel that is in direct connection with the employee's participation in an educational forum. Subparagraph (2) further limits reimbursement to educational forums that are principally sponsored by and the travel-related expenses are paid or reimbursed by a federal, state or local governmental body or an association of such bodies, an accredited institution of higher learning, an organization exempt from taxation under 501(c)(3) of the Internal

^{9/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

^{10/} The circumstances described in these subparagraphs are self-explanatory and are not discussed below.



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Revenue Code (provided such organization is not principally funded from one or more public accounting firms or issuers), or equivalent institutions outside the United States.

At the request of a commenter, the Board has added association of governmental bodies to the list of organizations from which travel expenses may be reimbursed. The Board has also added equivalent institutions outside the United States to make clear that this provision of its Ethics Code applies equally to non-U.S. entities.

EC8. Disqualification

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

As referenced above in EC4, EC8(a) provides that if a Board member or professional staff 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, and dependents) may have a financial interest or similar relationship which might affect (or reasonably create the appearance of affecting) his or her independence or objectivity, then he or she must, at the earliest possible date, take the actions described in subparagraphs (1) and (2). Subparagraph (1) requires disclosure of such circumstances and facts. Subparagraph (2) instructs the Board member or professional staff to recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.



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At the suggestion of several commenters, the Board has imposed a "reasonable person" standard to use to determine whether a financial relationship requires disclosure and disqualification.

The Board has also added two clarifying notes following EC8(a). The first note clarifies that for the purposes of applying this provision to members of an advisory group, 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. The second note advises non-professional staff to seek the counsel of the Ethics Officer if they face circumstances concerning financial relationships that may affect their ability to perform their functions.

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

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



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prior employment terminated within five years from the date of appointment or employment with the Board.

Several commenters requested that the Board clarify that broad policy decisions are not "indirect effects." In response to this suggestion the Board has added language that indicates that 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. This is meant to cover matters of general applicability to a broad class of persons.

EC9. Non-Public Information

EC9 restricts Board members and staff from disseminating or disclosing certain information. Subparagraph (a) provides that unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly and subparagraph (b) provides that the restriction in EC9 shall continue in effect after the termination of employment or Board membership. As proposed, the restriction on disclosure of non-public information only applied for five years after the Board or professional staff member left the Board. Due to the importance of preserving confidential information, the Board has decided to strengthen this provision by extending its application indefinitely.



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EC10. Speaking for the Board

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

EC11. Ethics Officer

EC11 directs the Board to designate an Ethics Officer with the power and responsibilities identified in subparagraphs (a) through (c).^{11/}

EC12. Post-Employment Restrictions

EC12 imposes certain post-employment restrictions on Board members and professional staff. Subparagraph (a)(1) prohibits Board members and professional staff from negotiating prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

Subparagraph (a)(2) has been added at the request of several commenters and defines "negotiating prospective employment" to mean participating in an employment

^{11/} The powers and responsibilities described in these subparagraphs are self-explanatory and are not discussed below.



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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." This additional language is consistent with Regulations Concerning Post Employment Conflicts of Interest (5 CFR § 2637.101 et seq.), to which federal government employees are subject.

Subparagraph (b) contains two restrictions on former Board members and professional staff. First, it restricts Board members and professional staff from practicing before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership. Second, the Board has added EC 12(b)(2), which provides that 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 parties at the time of such participation. The Board based this restriction on the comparable restriction applicable to federal government employees in 18 U.S.C. 207(a). Since this rule is limited to particular matters, it would not cover matters of general applicability, such as rulemakings the person participated in while at the Board.



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EC13. Waiver

EC13 establishes a mechanism for the Board to waive any provision of the Ethics Code, provided the granting of the waiver would not otherwise be prohibited by law. EC13 provides that waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer and that the Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Subject to Section 101(g)(2) of the Act, the Board may delegate approval authority as to staff requests.

Several commenters suggested that the Board disclose waivers of its Ethics Code. In response to these comments, the Board has decided to make waivers available to the public, subject to withholding information that would constitute a clearly unwarranted invasion of personal privacy.^{12/} The Board believes that this approach provides for transparency of the Board's administration of its Ethics Code, while still protecting individuals' privacy interests.

EC14. Certification

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

^{12/} This standard is based on, and consistent with, one of the exemptions to the Freedom of Information Act. See 5 U.S.C. 552(b)(6).



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Board modified this provision to also apply to designated contractors and consultants after careful consideration of recommendations by commenters.