

SECTION 3. PROFESSIONAL STANDARDS

Part 1 – General Requirements

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

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

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

Rule 3101. Certain Terms Used in Auditing and Related Professional Practice Standards

(a) The Board's auditing and related professional practice standards use certain terms set forth in this rule to describe the degree of responsibility that the standards impose on auditors.

(1) **Unconditional Responsibility:** The words "must," "shall," and "is required" indicate unconditional responsibilities. The auditor must fulfill responsibilities of this type in all cases in which the circumstances exist to which the requirement applies. Failure to discharge an unconditional responsibility is a violation of the relevant standard and Rule 3100.

(2) **Presumptively Mandatory Responsibility:** The word "should" indicates responsibilities that are presumptively mandatory. The auditor must comply with requirements of this type specified in the Board's standards unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard. Failure to discharge a presumptively mandatory responsibility is a violation of the relevant standard and Rule 3100 unless the auditor demonstrates that, in the circumstances, compliance with the specified responsibility was not necessary to achieve the objectives of the standard.

Note: In the rare circumstances in which the auditor believes the objectives of the standard can be met by alternative means, the auditor, as part of documenting the planning and performance of the work, must document the information that demonstrates that the objectives were achieved.

(3) **Responsibility To Consider:** The words "may," "might," "could," and other terms and phrases describe actions and procedures that auditors have a responsibility to consider. Matters described in this fashion require the auditor's attention and understanding. How and whether the auditor implements these matters in the audit will depend on the exercise of professional judgment in the circumstances consistent with the objectives of the standard.

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Note: If a Board standard provides that the auditor "should consider" an action or procedure, consideration of the action or procedure is presumptively mandatory, while the action or procedure is not.

(b) The terminology in paragraph (a) of this rule applies to the responsibilities imposed by the auditing and related professional practice standards, including the interim standards adopted in Rules 3200T, 3300T, 3400T, 3500T, and 3600T.

(c) The documentation requirement in paragraph (a)(2) is effective for audits of financial statements or other engagements with respect to fiscal years ending on or after November 15, 2004.

[Effective pursuant to SEC Release No. 34-50331, File No. PCAOB-2004-06 (September 8, 2004)]

Rule 3200T. Interim Auditing Standards.

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)), to the extent not superseded or amended by the Board.

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

[Effective pursuant to SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004) and SEC Release Nos 33-8233 & 34-47746 (April 25, 2003)]

Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file *Management's annual report on internal control over financial reporting* in reliance on SEC Release No. 34-50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1 (November 30, 2004), a registered public accounting firm and its associated persons need not:

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(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or

(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.

(b) This temporary rule will expire on July 15, 2005.

[Effective pursuant to SEC Release No. 34-50794, File No. PCAOB-2004-08 (December 3, 2004)]

Rule 3300T. Interim Attestation Standards.

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports for issuers, a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003, to the extent not superseded or amended by the Board.

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

[Effective pursuant to SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004) and SEC Release Nos 33-8233 & 34-47746 (April 25, 2003)]

Rule 3400T. Interim Quality Control Standards.

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

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20-40 (AICPA 2002)), to the extent not superseded or amended by the Board; and

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(b) the AICPA SEC Practice Section's Requirements of Membership (d), (f)(first sentence), (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), (f), (j), (m), (n)(1) and (o)), to the extent not superseded or amended by the Board.

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

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

[Effective pursuant to SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004) and SEC Release Nos 33-8233 & 34-47746 (April 25, 2003)]

Part 5 – Ethics

Rule 3500T. Interim Ethics Standards.

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board.

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

[Effective pursuant to SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004) and SEC Release Nos 33-8233 & 34-47746 (April 25, 2003)]

Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

(a)(i) Affiliate of the Accounting Firm

The term "affiliate of the accounting firm" (or "affiliate of the registered public accounting firm" or "affiliate of the firm") includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2-01 of the Commission's Regulation S-X, 17 C.F.R. § 210.2-01(f)(2).

(a)(ii) Affiliate of the Audit Client

The term "affiliate of the audit client" means –

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

(a)(iii) Audit and Professional Engagement Period

The term "audit and professional engagement period" includes both –

(1) The period covered by any financial statements being audited or reviewed (the "audit period"); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period") –

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

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(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the "audit and professional engagement period" does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

(a)(iv) Audit Client

The term "audit client" means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

(c)(i) Confidential Transaction

The term "confidential transaction" means –

(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not

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include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

(c)(ii) Contingent Fee

The term "contingent fee" means –

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a "contingent fee" if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

(f)(i) Financial Reporting Oversight Role

The term "financial reporting oversight role" means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

(i)(i) Immediate Family Member

The term "immediate family member" means a person's spouse, spousal equivalent, and dependents.

(i)(ii) Investment Company Complex

(1) The term "investment company complex" includes –

(i) An investment company and its investment adviser or sponsor;

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(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity –

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Rule 3502. Responsibility Not to Knowingly or Recklessly Contribute to Violations

A person associated with a registered public accounting firm shall not take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Subpart 1 – Independence

Rule 3520. Auditor Independence

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

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Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Commission or other applicable independence criteria.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Rule 3521. Contingent Fees

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Rule 3522. Tax Transactions

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction –

- (a) **Confidential Transactions** – that is a confidential transaction; or
- (b) **Aggressive Tax Position Transactions** – that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 C.F.R. § 1.6011-4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which

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the firm has a formal agreement or other arrangement related to the promotion of such transactions, recommends engaging in the transaction.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the professional engagement period provides any tax service to a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless –

(a) the person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited –

(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are –

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

Note: In an engagement for an audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006) and SEC Release No. 34-58415, File No. PCAOB-2008-03 (August 22, 2008)]

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Rule 3524. Audit Committee Pre-approval of Certain Tax Services

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall –

- (a) describe, in writing, to the audit committee of the issuer –
 - (1) the scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and
 - (2) any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;
- (b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and
- (c) document the substance of its discussion with the audit committee of the issuer.

[Effective pursuant to SEC Release No. 34-53677, File No. PCAOB-2006-01 (April 19, 2006)]

Rule 3525. Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting

In connection with seeking audit committee pre-approval to perform for an audit client any permissible non-audit service related to internal control over financial reporting, a registered public accounting firm shall –

- (a) describe, in writing, to the audit committee of the issuer the scope of the service;
- (b) discuss with the audit committee of the issuer the potential effects of the service on the independence of the firm; and

Note: Independence requirements provide that an auditor is not independent of his or her audit client if the auditor is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the auditor is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. Several

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principles guide the application of this general standard, including whether the auditor assumes a management role or audits his or her own work. Therefore, an auditor would not be independent if, for example, management had delegated its responsibility for internal control over financial reporting to the auditor or if the auditor had designed or implemented the audit client's internal control over financial reporting.

- (c) document the substance of its discussion with the audit committee of the issuer.

[Effective pursuant to SEC Release No. 34-56152, File No. PCAOB-2007-02 (July 27, 2007)]

Rule 3526. Communication with Audit Committees Concerning Independence

A registered public accounting firm must –

- (a) prior to accepting an initial engagement pursuant to the standards of the PCAOB –

- (1) describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the potential audit client or persons in financial reporting oversight roles at the potential audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

- (2) discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm, should it be appointed the issuer's auditor; and

- (3) document the substance of its discussion with the audit committee of the issuer.

- (b) at least annually with respect to each of its issuer audit clients –

- (1) describe, in writing, to the audit committee of the issuer, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

- (2) discuss with the audit committee of the issuer the potential effects of the relationships described in subsection (b)(1) on the independence of the registered public accounting firm;

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(3) affirm to the audit committee of the issuer, in writing, that, as of the date of the communication, the registered public accounting firm is independent in compliance with Rule 3520; and

(4) document the substance of its discussion with the audit committee of the issuer.

[Effective pursuant to SEC Release No. 34-58415, File No. PCAOB-2008-03 (August 22, 2008)]

Rule 3600T. Interim Independence Standards.

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

(a) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(b) Standards Nos. 1, 2, and 3, and Interpretations 99-1, 00-1, and 00-2, of the Independence Standards Board, to the extent not superseded or amended by the Board.

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

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

[Effective pursuant to SEC Release No. 34-49624, File No. PCAOB-2003-11 (April 28, 2004) and SEC Release Nos 33-8233 & 34-47746 (April 25, 2003)]

Part 7 – Establishment of Professional Standards

Rule 3700. Advisory Groups.

(a) Formation.

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

(b) Composition.

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

- (1) accounting;
- (2) auditing;
- (3) corporate finance;
- (4) corporate governance;
- (5) investing in public companies; and

(6) other areas that the Board deems to be relevant to one or more auditing or related professional practice standards.

(c) Selection of Members of Advisory Groups.

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

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

(d) Personal Membership.

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

(e) Ethical Duties of Advisory Group Members.

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

(f) Ad Hoc Task Forces.

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

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