

## Rule 1001—Definitions of Terms Employed in Rules

Rule 1001 contains definitions of terms used in the Board's rules. Certain of the definitions are taken, or closely track, those found in section 2 of the Act.<sup>2</sup> Other definitions are based on those used in the Commission's rules.

### Accountant

Although used in the Act, the term "accountant" is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.<sup>3</sup> This concept of "accountant" is different from the Commission's definition of accountant under Regulation S-X, which includes legal entities, such as a registered public accounting firm.<sup>4</sup> Therefore, to reflect the context in which the term "accountant" is used in the Act, and to distinguish the Board's definition from that in Regulation S-X, the Board is adopting a definition of "accountant" in Rule 1001(a)(ii) that is limited to natural persons.<sup>5</sup>

The definition covers three types of natural persons: (i) Those who are certified public accountants, (ii) those who hold a college, university, or higher professional degree in accounting, or a license or certification authorizing him or her to engage in the business of auditing or accounting, and (iii) those who hold a college, university, or higher professional degree in a field, other than accounting, and who participate in audits. The definition also specifies that the term does not include persons engaged only in ministerial or clerical tasks.

The Board's definition is intended to include all natural persons, who have

the requisite licensing, certification, training, and/or experience, whether obtained in the U.S. or a non-U.S. jurisdiction, to be considered an accountant. In its proposing release, the Board put forth a similar definition. Commenters raised several concerns with the proposed definition. First, several commenters suggested that the proposed definition was overbroad and asked the Board to limit its application to only certified public accountants, or, at least, to clarify that it does not apply to persons with college degrees that perform only clerical or ministerial tasks on an audit. After considering these comments, the Board decided to revise the definition to clarify that the term does not capture persons engaged only in clerical or ministerial tasks. The Board did not, however, adopt the suggestions to limit the definition to only certified public accountants because such a definition would be significantly narrower than the common meaning of the term and because the Board understands that accountants who are not certified public accountants often participate in the preparation or issuance of audit reports. In addition, at least one non-U.S. commenter suggested that the proposed definition's use of the term "undergraduate degree" would not be meaningful as applied to non-U.S. accountants. Accordingly, at this commenter's suggestion, the Board has decided to change this part of the definition to refer to a "college, university, or higher professional degree."

### Associated Entity

Rule 1001(a)(iv) defines "associated entity," as "with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any "associated entity," as used in Rule 2-01(f)(2) of Regulation S-X, 17 CFR 210.2-10(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules." This definition of "associated entity" is meant to give the term the same meaning as in the Commission's auditor independence rules.<sup>6</sup>

A few commenters suggested that the Board create its own definition of this term, rather than relying on the meaning of the term in the Commission's rules. One of these commenters suggested that

the Board define the term as those firms with which the applicant "holds itself out as being associated." The Board has decided not to adopt this suggestion because the suggested definition is narrower than the Commission's interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

### Audit

In general, Rule 1001(a)(v) defines "audit" as an examination of an issuer's financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board's applicable rules under section 103 of the Act, however, the term covers an examination of an issuer's financial statements by an independent public accounting firm in accordance with generally accepted auditing standards ("GAAS").<sup>7</sup> The Board has adopted the same meaning for "audit" as used in section 2(a)(2) of the Act.

### Audit Report

Rule 1001(a)(vi) defines "audit report" to mean "a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be expressed." The Board has adopted the same meaning for audit as used in section 2(a)(4) of the Act.

Two commenters suggested that the term could be confusing to applicants and, if applied in certain contexts, could be overbroad. The Board has decided not to change the definition of this term since the term is defined in the Act. If specific issues arise in administering the definition in the context of the Board's registration rules or otherwise, the Board will consider issuing guidance on the definition.

### Audit Services

Rule 1001(a)(vii)(1) defines "audit services" as "professional services

<sup>7</sup> Because GAAS and Commission rules require interim reviews of issuers' financial statements by independent public accountants, the term audit includes work performed in the context of such reviews. See American Institute of Certified Public Accountants ("AICPA") Statement on Auditing Standards ("SAS") 100 and Rule 10-01 of Regulation S-X, 17 CFR 210.10-01; see also section 2(a)(8) of the Act (implicitly stating that these reviews are audit services, by excluding from the definition of "non-audit services" services provided to an issuer "in connection with an audit or review of the financial statements of an issuer").

<sup>2</sup> Certain definitions in the Board's rules that are taken verbatim from the statute or that are self-evident are not discussed below.

<sup>3</sup> For example, section 102(b)(2)(E) of the Act requires disclosure of a list of "all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person \* \* \*."

<sup>4</sup> Under Rule 2-01(f)(1) of Regulation S-X, accountant means a "registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required." Rule 2-01(f)(1) provides further that "references to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated." See Rule 2-01(f)(1) of Regulation S-X, 17 CFR 210.2-01(f)(1).

<sup>5</sup> The definitions in proposed Rule 1001 are marked with a letter and a Roman numeral. The letter matches the first letter of the word or phrase being defined and the Roman numeral serves to distinguish the definition from other defined words or phrases beginning with the same letter. This system has been adopted so that the definitions within Rule 1001 will remain in rough alphabetical order.

<sup>6</sup> See Rule 2-01(f)(2) of Regulation S-X, 17 CFR 210.2-01(f)(2); see also Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919, at notes 490 and 491 (November 21, 2000).