

necessary to avoid even the appearance of a conflict of interest.¹¹

(6) Meetings and Board Relations.

The Board has determined that the first Chair of the SAG will be the Board's Chief Auditor and Director of Professional Standards who will be a non-voting member of the SAG. The Board will approve the agenda for all annual, semi-annual or quarterly SAG meetings as set forth below. Agenda items may also be added where the Board determines that the assistance of the SAG is required in response to emerging issues or problems. The Chair will be responsible for preparing the meeting agenda, organizing and overseeing meetings, conference calls and related activities, acting as the general liaison to the Board and finalizing all submissions to the Board based on the SAG recommendations.

The SAG will hold an annual meeting to discuss the agenda presented to the SAG on the annual standards-setting process and related matters. The SAG will also hold a semi-annual meeting. Both the annual and the semi-annual meetings will be open to the public. Meetings of the SAG may also be held, at the direction of the Board or the Chair, during the intervening quarters. In addition, at the direction of the Chair, monthly meetings of the SAG may be held, by video or teleconference, for the Board's staff to report on new issues raised by the Board for the SAG's consideration and to discuss the status of pending issues. Final decisions on recommendations to the Board and related activities will be conducted at the annual, semi-annual, or other open meeting of the SAG.¹² The meetings held in the quarters between the annual and semi-annual meeting, if any, and the monthly meetings will not generally be open to the public.

If so directed by the Chair of the SAG, the SAG may convene hearings, roundtable discussions or other fact-finding activities designed to assist the SAG in the development of recommendations on new or amended

Standards or other recommendations to the Board.

Decisions on whether a recommendation should be made to the Board will be by a majority of the SAG members present in person or by video or teleconference. Recommendations from the SAG will be presented to the Board at an open meeting of the Board. Such recommendations will be provided in writing, including dissenting opinions, if any, by SAG members. The Board retains the exclusive authority to adopt, modify, or reject any SAG recommendation, in its sole discretion, in order to protect investors by improving the fairness and reliability of corporate disclosures as set forth in the Act.

(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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rule concerning compliance with standards, all registered public accounting firms and their associated persons must comply with all applicable auditing and related professional practice standards. The functional equivalent of this requirement is found in the Act, which provides for the Board to impose sanctions on registered firms or associated persons who violate such standards, and the codification of that requirement in the Board's rules does not add to the burden already imposed by the Act. The rules relating to advisory groups do not impose any burden on competition but, rather, provide for public participation, on a voluntary basis, in the process of advising the Board on the establishment of standards.

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

The Board released the proposed rules for public comment in PCAOB Release No. 2003-005 (April 18, 2003). A copy of PCAOB Release No. 2003-005 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at <http://www.pcaobus.org>. The Board received 22 written comments. The Board has clarified and modified certain aspects of the proposed rules in response to comments it received, as discussed below.

The Board had proposed to use "professional auditing standards" as the term defined in Rule 1001(a)(viii). Several commenters expressed concern that characterizing attestation, quality control, ethical, and independence standards as "professional auditing standards" would confuse people as to the defined term's meaning. To address these concerns, the Board has chosen to use the term "auditing and related professional practice standards" as the defined term for the standards established or adopted by the Board under section 103 of the Act. The Board has used the longer term "auditing and related professional practice standards," rather than the shorter "professional standards," because the term "professional standards" is defined otherwise in section 2(a)(10) of the Act. The term "auditing and related professional practice standards" is similar to that portion of the definition of the term "professional standards" that appears in section 2(a)(10)(B) of the Act. (Hereafter in this section C., the term "Standards" shall be used to refer to the standards encompassed by the defined term "auditing and related professional practice standards.")

In addition, the Board's proposed definition was based on a portion of the definition of "professional standards" in section 2(a)(10)(B) of the Act. For purposes of clarity, the Board has modified this definition slightly to track more closely the description of the standards the Board will set in section 103(a)(1) of the Act. The definition still includes any other type of standard provided for in the definition of "professional standards" in section 2(a)(10)(B) of the Act that the Board establishes or adopts under section 103 of the Act. Accordingly, the definition, as revised, covers the same scope of standards as the Board's proposed rule.

A number of commenters suggested that proposed Rule 3100 was either beyond the Board's authority or would create the impression that the Rule applied to areas outside the Board's authority. To address these concerns, commenters suggested adding language about the scope of the Board's authority to Rule 3100. After considering these comments, the Board decided to adopt the Rule as proposed. Rule 3100 requires registered public accounting firms and their associated persons to comply with all *applicable* Standards. Accordingly, if the Board's Standards do not apply to an engagement or other activity of the firm, Rule 3100, by its

¹¹ The Commission understands that paragraphs (f) and (g) of the conditions of membership are intended to implement particular aspects of Rule 3700(e). In addition, the Commission understands that paragraph (j) is intended to address other individual conflict of interest situations of advisory group members that may arise, as distinct from rules of general applicability that would be subject to Commission approval.

¹² The Board expects the SAG to make decisions in an efficient and speedy manner. To this end, the SAG need not defer decisions on recommendations for the annual or semi-annual open meetings. Rather, at the direction of the Chair, the SAG may make decisions on recommendations at any meeting, so long as it is open to the public in some manner, including, at the direction of the Chair, telephonically.