

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.

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

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

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

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 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

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.

⁸ The Board revised EC5(a) to not cover Board members and professional staff’s spouses, spousal