

audit clients that are issuers¹⁸⁷ and fewer than ten partners from the provisions of this requirement.

F. Definitions

The rules that the Commission is adopting impact various parties involved in the audit and financial reporting process of issuers. To more clearly identify those parties, we have revised and added to the definitions in Rule 2-01(f) of Regulation S-X. This section discusses those definitions.

1. Accountant

The term “accountant” previously was defined under the rules of the Commission as a “certified public accountant or public accountant performing services in connection with an engagement for which independence is required.”¹⁸⁸ We have added to the definition the phrase, “registered public accounting firm.” Under the provisions of the Sarbanes-Oxley Act, public accounting firms must register with the Board in order to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.¹⁸⁹ Thus, the term “registered public accounting firm” refers to a firm that has registered with the Board in accordance with the requirements of the Sarbanes-Oxley Act.

2. Accounting Role

Under the previous rules of the Commission, “accounting role or financial reporting oversight role” was a defined term. However, because the rules requiring a cooling-off period for employment at the issuer relate only to those performing a financial reporting oversight role, the Commission has separated the definition of “accounting role” from that of “financial reporting oversight role.” The term “accounting role” refers to a role where a person can or does exercise more than minimal influence over the contents of the accounting records or over any person who prepares the accounting records. All persons in a “financial reporting oversight role” (defined below) also are in an “accounting role.” Persons in an accounting role include individuals in clerical positions responsible for accounting records (e.g., payroll, accounts payable, accounts receivable, purchasing, sales) as well as those who report to individuals in financial reporting oversight roles (e.g., assistant controller, assistant treasurer, manager

of internal audit, manager of financial reporting).

3. Financial Reporting Oversight Role

The term “financial reporting oversight role” refers to a role in which an individual has direct responsibility for or oversight of those who prepare the registrant’s financial statements and related information (e.g., management discussion and analysis), which will be included in a registrant’s document filed with the Commission. As noted above, “accounting role and financial reporting oversight role” previously was one definition. In order to subject the appropriate individuals to certain portions of these rules, we have bifurcated the definitions.

4. Audit Committee

Section 205 of the Sarbanes-Oxley Act defines an audit committee as:

A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer.

The Act further stipulates that if no such committee exists, then the audit committee is the entire board of directors. For purposes of these independence rules, the Commission is adopting the same meaning for audit committee as used in the Act.

The audit committee serves as an important body, serving the interests of investors, to help ensure that the registrant and its accountants fulfill their responsibilities under the securities laws. Because the definition of an audit committee can include the entire board of directors if no such committee of the board exists, these rules do not require registrants to establish audit committees. Likewise, the auditor independence rules do not require that the committee be composed of independent members of the board.¹⁹⁰

Some entities do not have boards of directors and therefore do not have audit committees. For example, some limited liability companies and limited partnerships that do not have a corporate general partner may not have an oversight body that is the equivalent of an audit committee. We are not exempting these entities from the requirements. Rather, such issuers should look through each general partner of the successive limited partnerships until a corporate general partner or an individual general partner is reached. With respect to a corporate general partner, the registrant should

look to the audit committee of the corporate general partner or to the full board of directors as fulfilling the role of the audit committee. With respect to an individual general partner, the registrant should look to the individual as fulfilling the role of the audit committee.

We are, however, exempting asset-backed issuers¹⁹¹ and unit investment trusts¹⁹² from this requirement. Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are not required to file financial statements like other companies. Similarly, unit investment trusts are not required to provide shareholder reports containing audited financial statements. Also, such entities typically are passively managed pools of assets. Therefore, we are not applying the requirements related to audit committees in this release to such entities.

5. Audit Engagement Team

As discussed earlier in this release, the cooling off period applies to members of the audit engagement team. As used in this release, the term audit engagement team means all partners (or person in an equivalent position) and professional employees participating in an audit, review, or attestation engagement of an audit client. Included within the audit engagement team would be partners and all other persons who consult with other members of the engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

6. Audit Partner

The term audit partner is an integral part of the rules we are adopting related to partner compensation and partner rotation. In each case, the affected parties are audit partners. As used in this rule, the term audit partner means a partner (or person in an equivalent position) who is a member of the audit engagement team (as defined above) who has responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements or who maintains regular contact with management and the audit committee.

The term audit partner would include the lead and concurring partners, partners such as relationship partners who serve the client at the issuer or

¹⁸⁷ As defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(f)).

¹⁸⁸ 17 CFR 2-01(f)(1).

¹⁸⁹ See, Section 102(a) of the Sarbanes-Oxley Act.

¹⁹⁰ See, Release No. 33-8173 (Jan. 8, 2003).

¹⁹¹ As defined in 17 CFR 240.13a-14(g) and 240.15d-14(g).

¹⁹² As defined by Section 4(2) of the Investment Company Act [15 U.S.C. 80a-4(2)].