

**Rule 1001—Definitions**

Rule 1001(a)(ix)T defines “accounting board demand” as a command to produce documents and/or to appear at a certain time and place to give testimony. The rules use this term only to identify demands made upon registered public accounting firms and associated persons of such firms. Under the Act, the Board has authority to require those firms and persons to provide any testimony or documents sought by the Board in furtherance of its responsibilities under the Act, and including in particular any testimony or documents that the Board considers relevant to an investigation.

Rule 1001(a)(x)T defines “accounting board request” as a request to produce documents and/or to appear at a certain time and place to give testimony. The rules use this term to distinguish the Board’s efforts to obtain documents and testimony from persons other than registered public accounting firms and their associated persons.

Rule 1001(c)(ii)T defines “counsel” as an attorney at law admitted to practice, and in good standing, before the Supreme Court of the United States or the highest court of any state.

Rule 1001(h)(i)T defines “hearing officer” to mean any person, other than a Board member or staff of the interested division, duly authorized by the Board to preside at a hearing.

Rule 1001(i)(iv)T defines “interested division” as a division or office of the Board assigned primary responsibility by the Board to participate in a particular proceeding. As a general matter, the interested division in a disciplinary proceeding will be the Division of Enforcement and Investigations, and the interested division in a hearing on disapproval of a registration application will be the Division of Registration and Inspections. The definition is adapted from Rule 101(a)(6) of the Commission’s Rules of Practice.

Rule 1001(o)(ii)T defines “order instituting proceedings” as an order issued by the Board commencing a disciplinary proceeding.

Rule 1001(p)(iii)T defines “party” as the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

Rule 1001(p)(iv)T defines “person” as any natural person or any business, legal or governmental entity or association.

Rule 1001(s)(iii)T defines “Secretary” as the Secretary of the Board.

**Rule 1002T—Time Computation**

Rule 1002T describes the method by which the Board shall compute time for purposes of complying with deadlines in the Board’s rules.

**Rule 5200T—Commencement of Disciplinary Proceedings**

Rule 5200T(b) provides for an appointment of a hearing officer by the Board as soon as practicable after issuance of the order instituting proceedings or after a registration applicant has requested a hearing pursuant to Rule 5500T(b). The rule is adapted from NASD Rule 9213(a).

Under Rule 5200T(b), the Board shall notify the parties of the hearing officer’s assignment. The hearing officer shall have authority to do all things necessary and appropriate to discharge his or her duties, including, but not limited to, the matters specified in Rule 5200T(b). The rule expressly subjects the hearing officer’s authority to the limitations described in Rule 5402T (concerning hearing officer disqualification) and Rule 5403T (concerning ex parte communications).

Rule 5200T(c) provides that the Board will observe certain separation of functions principles. The rule provides that neither the staff of the Division of Enforcement and Investigations, nor any other staff who engaged in investigative or prosecutorial functions on a matter, may participate or advise in the decision, or the review of the decision, except as a witness or counsel. In addition, the rule provides that a hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

With respect to proceedings that involve a common question of law or fact, Rule 5200T(d) provides that the Board or a hearing officer may, by order, consolidate the proceedings for hearing of any or all matters at issue in the proceedings. The rule is adapted from Rule 201 of the Commission’s Rules of Practice. The rule provides that consolidation shall not prejudice any rights that any party may have under the Board’s Rules and shall not affect the right of any party to raise issues that could have been raised in the absence of consolidation.

**Rule 5201T—Notification of Commencement of Disciplinary Proceedings**

Rule 5201T(c) provides that, in the case of a hearing on a registration application commenced under Rule

5500T, the notice of hearing shall state proposed grounds for disapproving the registration application.

**Rule 5202T—Record of Disciplinary Proceedings**

Rule 5202T(a) describes the material that shall make up the contents of the record in a disciplinary proceeding (Rule 5202T(a)(1)) and the contents of the record on disapproval of an application for registration (Rule 5202T(a)(2)). Under Rule 5202T(b), any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered part of the record but shall be maintained by the Secretary until all opportunities for Commission and judicial review have been exhausted or waived. Paragraphs (c)–(e) of Rule 5202T address the substitution of true copies for documents in the record, the preparation of the record and the certification of the record index, and the final transmittal of record items to the Secretary. The rule is adapted from Rules 350 and 351 of the Commission’s Rules of Practice.

**Rule 5203T—Public and Private Hearings**

Under Rule 5203T, a hearing on disapproval of a registration application shall be nonpublic unless the Board orders otherwise. The rule essentially creates a presumption that a hearing on disapproval of a registration application will be non-public. A disapproval hearing will, by its nature, involve a firm that is not yet a registered firm and may well involve a record that includes confidential information submitted as part of the registration application. The rule reserves to the Board the flexibility to make the hearing public if warranted by unusual circumstances. In any event, if the Board decides, after a hearing, to disapprove the application, that decision, along with the reasons for the decision, will be made public according to the provisions of Section 105(d) of the Act.

**Rule 5204T—Determinations in Disciplinary Proceedings**

Rule 5204T(b) provides that, unless the Board orders otherwise, the hearing officer shall prepare an initial decision following a hearing. The rule provides that the initial decision shall include findings and conclusions, including sanctions, if appropriate, and the reasons or basis therefore, as to all the material issues of fact, law, or discretion presented on the record and such other information as the Board may require.