

Rule 5462T—Briefs Filed With the Board

Rule 5462T describes procedural requirements related to briefs and the filing of briefs. The rule is adapted from Rule 450 of the Commission's Rules of Practice.

Rule 5463T—Oral Argument Before the Board

Rule 5463T concerns oral argument before the Board. Under Rule 5463T(a), the Board may order oral argument, with or without the motion of a party, on any matter. The rule provides that, in general, motions for oral argument will be granted unless exceptional circumstances make oral argument impractical or inadvisable. Rules 5463T(b)–(c) provide for procedures relating to oral argument. Rule 5463T(d) provides that a member of the Board who is not present for oral argument may nevertheless participate in the Board's decision as long as the Board member reviews a transcript of the argument before participating in the decision.

Rule 5464T—Additional Evidence

Rule 5464T provides that the Board may, upon its own motion or the motion of a party, allow the submission of additional evidence in connection with the Board's review of an initial decision. The rule is adapted from Rule 452 of the Commission's Rules of Practice.

Rule 5465T—Record Before the Board

Rule 5465T provides that the Board shall determine each matter on the basis of the record and provides certain requirements concerning the record. The rule is adapted from Rule 460 of the Commission's Rules of Practice.

Rule 5466T—Reconsideration

Rule 5466T provides procedures by which a party may seek reconsideration of a Board decision. The rule is adapted from Rule 470 of the Commission's Rules of Practice.

Rule 5469T—Board Consideration of Actions Made Pursuant to Delegated Authority

Rule 5469T provides procedures relating to Board consideration of petitions for review of actions made pursuant to authority delegated by the Board. Rule 5469T(a) provides that the Board may act summarily on the basis of the petition, or on the basis of the petition and any staff response, or may require additional statements in support of or opposition to the petition. Rule 5469T(b) provides that the effect of any staff action would not be stayed pending any petition for review of that action.

Rule 5500T—Commencement of Hearing on Disapproval of a Registration Application

Rule 5500T describes the procedure relating to the commencement of a Board adjudication proceeding to consider an application for registration. Under the Board's registration rules, if the Board is unable to make the determination necessary to approve a registration application, the Board will provide the applicant with notice of a hearing. Rule 5500T provides the procedures through which such a proceeding would be commenced.

Specifically, Rule 5500T provides that a proceeding would commence after the Board provides a notice of hearing under Rule 2106(b)(2)(ii) and the applicant timely files a request for a hearing date and notice of appearance, rather than opting to treat the Board's notice of hearing as a denial of the application. Under Rule 5500T(b), a request for hearing must include a statement that the applicant has elected not to treat the notice of hearing as a disapproval of its application and a statement describing with specificity why the applicant believes that the Board should not disapprove the application.

Rule 5501T—Procedures for a Hearing on Disapproval of a Registration Application

Rule 5501T provides that proceedings commenced pursuant to Rule 5500T are subject to the procedures set out in Parts 2 and 4 of Section 5 of the Board's rules.

(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. The proposed temporary rules supply procedures for the conduct of fair hearings. Moreover, the proposed temporary rules would apply only in the context of a hearing that an applicant for registration elects, at its option, to have.

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

The Board published the Enforcement Rules, including the rules that constitute the Temporary Hearing Rules, for public comment in PCAOB Release No. 2003–012 (July 28, 2003). A copy of PCAOB Release No. 2003–012 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 17 written comments. The Board has clarified and modified certain aspects of the rules that constitute the Temporary Hearing Rules in response to comments it received, as discussed below.

The Board proposed to define the term "hearing officer" to include a panel of Board members constituting less than a quorum of the Board, an individual Board member, or any other person duly authorized by the Board to preside at a hearing. Several commenters expressed the view that neither Board members nor staff of the interested division should ever serve as hearing officers. We never intended to permit staff of the interested division to serve as hearing officers, and we have revised the rule to exclude that possibility. Nor did we intend to provide for a Board member to serve as a hearing officer except in an extraordinary situation, and we are now persuaded that the rule should exclude that possibility as well. In general, we intend to rely on a corps of qualified persons whose service to the Board is strictly limited to the role of hearing officer. We may rely on consultants for this purpose, or we may employ a staff of hearing officers, or we may rely on a combination of the two.

Rule 5200T(c) provides that the Board will observe certain separation of functions principles. The proposed rule provided that any Board employee or agent engaged in investigative or prosecutorial functions for the Board in a proceeding could not, in that same proceeding or a factually related proceeding, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. One commenter suggested that this rule should clearly exclude all enforcement personnel from participating in the adjudication of a disciplinary proceeding, whether or not they had an investigative or prosecutorial role in the matter. We are persuaded that this represents a good policy choice and we have revised the rule accordingly. The final 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.

Rule 5401T provides that a person may appear on his own behalf before the Board or may be represented by counsel and imposes certain procedural requirements related to representation