
It shall be unlawful for an auditor not to be independent under § 210.2-01(c)(2)(iii)(B), (c)(4), (c)(6), (c)(7), and § 210.2-07

§ 210.2–01 Qualifications of accountants.

(b) The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

(c) This paragraph sets forth a nonexclusive specification of circumstances inconsistent with paragraph (b) of this section.

(1) Financial relationships. An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant’s audit client, such as:

(i) Investments in audit clients. An accountant is not independent when:

(A) The accounting firm, any covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client, such as stocks, bonds, notes, options, or other securities. The term direct investment includes an investment in an audit client through an intermediary if:

(1) The accounting firm, covered person, or immediate family member, alone or together with other persons, supervises or participates in the intermediary’s investment decisions or has control over the intermediary; or

(2) The intermediary is not a diversified management investment company, as defined by section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), and has an investment in the audit client that amounts to 20% or more of the value of the intermediary’s total investments.

(B) Any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G (17 CFR 240.13d–101 or 240.13d–102) with the Commission indicating beneficial ownership of more than five percent of an audit client’s equity securities or controls an audit client, or a close family member of a partner, principal, or shareholder of the accounting firm controls an audit client.
(C) The accounting firm, any covered person in the firm, or any of his or her immediate family members, serves as voting trustee of a trust, or executor of an estate, containing the securities of an audit client, unless the accounting firm, covered person in the firm, or immediate family member has no authority to make investment decisions for the trust or estate.

(D) The accounting firm, any covered person in the firm, any of his or her immediate family members, or any group of the above persons has any material indirect investment in an audit client. For purposes of this paragraph, the term *material indirect investment* does not include ownership by any covered person in the firm, any of his or her immediate family members, or any group of the above persons of 5% or less of the outstanding shares of a diversified management investment company, as defined by section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), that invests in an audit client.

(E) The accounting firm, any covered person in the firm, or any of his or her immediate family members:

(1) Has any direct or material indirect investment in an entity where:

    (i) An audit client has an investment in that entity that is material to the audit client and has the ability to exercise significant influence over that entity; or

    (ii) The entity has an investment in an audit client that is material to that entity and has the ability to exercise significant influence over that audit client;

(2) Has any material investment in an entity over which an audit client has the ability to exercise significant influence; or

(3) Has the ability to exercise significant influence over an entity that has the ability to exercise significant influence over an audit client.

(ii) *Other financial interests in audit client.* An accountant is not independent when the accounting firm, any covered person in the firm, or any of his or her immediate family members has:

(A) *Loans/debtor-creditor relationship.* Any loan (including any margin loan) to or from an audit client, or an audit client’s officers, directors, or record or beneficial owners of more than ten percent of the audit client’s equity securities, except for the following loans obtained from a financial institution under its normal lending procedures, terms, and requirements:

    (1) Automobile loans and leases collateralized by the automobile;

    (2) Loans fully collateralized by the cash surrender value of an insurance policy;
(3) Loans fully collateralized by cash deposits at the same financial institution; and

(4) A mortgage loan collateralized by the borrower’s primary residence provided the loan was not obtained while the covered person in the firm was a covered person.

(B) Savings and checking accounts. Any savings, checking, or similar account at a bank, savings and loan, or similar institution that is an audit client, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation or any similar insurer, except that an accounting firm account may have an uninsured balance provided that the likelihood of the bank, savings and loan, or similar institution experiencing financial difficulties is remote.

(C) Broker-dealer accounts. Brokerage or similar accounts maintained with a broker-dealer that is an audit client, if:

(1) Any such account includes any asset other than cash or securities (within the meaning of “security” provided in the Securities Investor Protection Act of 1970 (“SIPA”) (15 U.S.C. 78aaa et seq.));

(2) The value of assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation advance, for those accounts, under Section 9 of SIPA (15 U.S.C. 78fff-3); or

(3) With respect to non-U.S. accounts not subject to SIPA protection, the value of assets in the accounts exceeds the amount insured or protected by a program similar to SIPA.

(D) Futures commission merchant accounts. Any futures, commodity, or similar account maintained with a futures commission merchant that is an audit client.

(E) Credit cards. Any aggregate outstanding credit card balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and any available grace period.

(F) Insurance products. Any individual policy issued by an insurer that is an audit client unless:

(1) The policy was obtained at a time when the covered person in the firm was not a covered person in the firm; and

(2) The likelihood of the insurer becoming insolvent is remote.
(G) Investment companies. Any financial interest in an entity that is part of an investment company complex that includes an audit client.

(iii) Exceptions. Notwithstanding paragraphs (c)(1)(i) and (c)(1)(ii) of this section, an accountant will not be deemed not independent if:

(A) Inheritance and gift. Any person acquires an unsolicited financial interest, such as through an unsolicited gift or inheritance, that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and the financial interest is disposed of as soon as practicable, but no later than 30 days after the person has knowledge of and the right to dispose of the financial interest.

(B) New audit engagement. Any person has a financial interest that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and:

1) The accountant did not audit the client’s financial statements for the immediately preceding fiscal year; and

2) The accountant is independent under paragraph (c)(1)(i) and (c)(1)(ii) of this section before the earlier of:

i) Signing an initial engagement letter or other agreement to provide audit, review, or attest services to the audit client; or

ii) Commencing any audit, review, or attest procedures (including planning the audit of the client’s financial statements).

(C) Employee compensation and benefit plans. An immediate family member of a person who is a covered person in the firm only by virtue of paragraphs (f)(11)(iii) or (f)(11)(iv) of this section has a financial interest that would cause an accountant to be not independent under paragraph (c)(1)(i) or (c)(1)(ii) of this section, and the acquisition of the financial interest was an unavoidable consequence of participation in his or her employer’s employee compensation or benefits program, provided that the financial interest, other than unexercised employee stock options, is disposed of as soon as practicable, but no later than 30 days after the person has the right to dispose of the financial interest.

(iv) Audit clients’ financial relationships. An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client’s officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.
(B) **Underwriting.** An accounting firm engages an audit client to act as an underwriter, broker-dealer, marketmaker, promoter, or analyst with respect to securities issued by the accounting firm.

(2) **Employment relationships.** An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has an employment relationship with an audit client, such as:

(i) **Employment at audit client of accountant.** A current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or serves as a member of the board of directors or similar management or governing body of the audit client.

(ii) **Employment at audit client of certain relatives of accountant.** A close family member of a covered person in the firm is in an accounting role or financial reporting oversight role at an audit client, or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

(iii) **Employment at audit client of former employee of accounting firm.** A former partner, principal, shareholder, or professional employee of an accounting firm is in an accounting role or financial reporting oversight role at an audit client, unless the individual:

(A) Does not influence the accounting firm’s operations or financial policies;

(B) Has no capital balances in the accounting firm; and

(C) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the accounting firm):

(1) Pursuant to a fully funded retirement plan, rabbi trust, or, in jurisdictions in which a rabbi trust does not exist, a similar vehicle; or

(2) In the case of a former professional employee who was not a partner, principal, or shareholder of the accounting firm and who has been disassociated from the accounting firm for more than five years, that is immaterial to the former professional employee.

(iv) **Employment at accounting firm of former employee of audit client.** A former officer, director, or employee of an audit client becomes a partner, principal, shareholder, or professional employee of the accounting firm, unless the individual does not participate in, and is not in a position to influence, the audit of the financial statements of the audit client covering any period during which he or she was employed by or associated with that audit client.
(3) **Business relationships.** An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client’s officers, directors, or substantial stockholders. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business.

(4) **Non-audit services.** An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) **Bookkeeping or other services related to the audit client’s accounting records or financial statements.**

(A) Any service involving:

(1) Maintaining or preparing the audit client’s accounting records;

(2) Preparing the audit client’s financial statements that are filed with the Commission or form the basis of financial statements filed with the Commission; or

(3) Preparing or originating source data underlying the audit client’s financial statements.

(B) Notwithstanding paragraph (c)(4)(i)(A) of this section, the accountant’s independence will not be impaired when the accountant provides these services:

(1) In emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions; or

(2) For foreign divisions or subsidiaries of an audit client, provided that:

(i) The services are limited, routine, or ministerial;

(ii) It is impractical for the foreign division or subsidiary to make other arrangements;

(iii) The foreign division or subsidiary is not material to the consolidated financial statements;

(iv) The foreign division or subsidiary does not have employees capable or competent to perform the services;
(v) The services performed are consistent with local professional ethics rules; and

(vi) The fees for all such services collectively (for the entire group of companies) do not exceed the greater of 1% of the consolidated audit fee or $10,000.

(ii) **Financial information systems design and implementation.**

(A) Directly or indirectly operating, or supervising the operation of, the audit client’s information system or managing the audit client’s local area network.

(B) Designing or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client’s financial statements taken as a whole, unless:

1. The audit client’s management has acknowledged in writing to the accounting firm and the audit client’s audit committee, or if there is no such committee then the board of directors, the audit client’s responsibility to establish and maintain a system of internal accounting controls in compliance with section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2));

2. The audit client’s management designates a competent employee or employees, preferably within senior management, with the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system;

3. The audit client’s management makes all management decisions with respect to the design and implementation of the hardware or software system including, but not limited to, decisions concerning the systems to be evaluated and selected, the controls and system procedures to be implemented, the scope and timetable of system implementation, and the testing, training, and conversion plans;

4. The audit client’s management evaluates the adequacy and results of the design and implementation of the hardware or software system; and

5. The audit client’s management does not rely on the accountant’s work as the primary basis for determining the adequacy of its internal controls and financial reporting systems.

(C) Nothing in this paragraph (c)(4)(ii) shall limit services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls, provided the auditor does not act as an employee or perform management functions.
(iii) Appraisal or valuation services or fairness opinions.

(A) Any appraisal service, valuation service, or any service involving a fairness opinion for an audit client, where it is reasonably likely that the results of these services, individually or in the aggregate, would be material to the financial statements, or where the results of these services will be audited by the accountant during an audit of the audit client’s financial statements.

(B) Notwithstanding paragraph (c)(4)(iii)(A) of this section, the accountant’s independence will not be impaired when:

(1) The accounting firm’s valuation expert reviews the work of the audit client or a specialist employed by the audit client, and the audit client or the specialist provides the primary support for the balances recorded in the client’s financial statements;

(2) The accounting firm’s actuaries value an audit client’s pension, other post-employment benefit, or similar liabilities, provided that the audit client has determined and taken responsibility for all significant assumptions and data;

(3) The valuation is performed in the context of the planning and implementation of a tax-planning strategy or for tax compliance services; or

(4) The valuation is for non-financial purposes where the results of the valuation do not affect the financial statements.

(iv) Actuarial services.

(A) Any actuarially-oriented advisory service involving the determination of insurance company policy reserves and related accounts for the audit client, unless:

(1) The audit client uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities;

(2) Management accepts responsibility for any significant actuarial methods and assumptions; and

(3) The accountant’s involvement is not continuous.

(B) Subject to complying with paragraph (c)(4)(iv)(A)(1)–(3) of this section, the accountant’s independence will not be impaired if the accountant:

(1) Assists management to develop appropriate methods, assumptions, and amounts for policy and loss reserves and other actuarial items presented in financial reports based on the audit client’s historical experience, current practice, and future plans;
(2) Assists management in the conversion of financial statements from a statutory basis to one conforming with generally accepted accounting principles;

(3) Analyzes actuarial considerations and alternatives in federal income tax planning; or

(4) Assists management in the financial analysis of various matters, such as proposed new policies, new markets, business acquisitions, and reinsurance needs.

(v) Internal audit services. Either of:

(A) Internal audit services in an amount greater than 40% of the total hours expended on the audit client’s internal audit activities in any one fiscal year, unless the audit client has less than $200 million in total assets. (For purposes of this paragraph, the term internal audit services does not include operational internal audit services unrelated to the internal accounting controls, financial systems, or financial statements.); or

(B) Any internal audit services, or any operational internal audit services unrelated to the internal accounting controls, financial systems, or financial statements, for an audit client, unless:

(1) The audit client’s management has acknowledged in writing to the accounting firm and the audit client’s audit committee, or if there is no such committee then the board of directors, the audit client’s responsibility to establish and maintain a system of internal accounting controls in compliance with section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2));

(2) The audit client’s management designates a competent employee or employees, preferably within senior management, to be responsible for the internal audit function;

(3) The audit client’s management determines the scope, risk, and frequency of internal audit activities, including those to be performed by the accountant;

(4) The audit client’s management evaluates the findings and results arising from the internal audit activities, including those performed by the accountant;

(5) The audit client’s management evaluates the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the accountant; and

(6) The audit client’s management does not rely on the accountant’s work as the primary basis for determining the adequacy of its internal controls.
(vi) Management functions. Acting, temporarily or permanently, as a
director, officer, or employee of an audit client, or performing any decision-
making, supervisory, or ongoing monitoring function for the audit client.

(vii) Human resources.

(A) Searching for or seeking out prospective candidates for managerial,
executive, or director positions;

(B) Engaging in psychological testing, or other formal testing or
evaluation programs;

(C) Undertaking reference checks of prospective candidates for an
executive or director position;

(D) Acting as a negotiator on the audit client’s behalf, such as determining
position, status or title, compensation, fringe benefits, or other conditions of
employment; or

(E) Recommending, or advising the audit client to hire, a specific
candidate for a specific job (except that an accounting firm may, upon request by
the audit client, interview candidates and advise the audit client on the candidate’s
competence for financial accounting, administrative, or control positions).

(viii) Broker-dealer services. Acting as a broker-dealer, promoter, or
underwriter, on behalf of an audit client, making investment decisions on behalf
of the audit client or otherwise having discretionary authority over an audit
client’s investments, executing a transaction to buy or sell an audit client’s
investment, or having custody of assets of the audit client, such as taking
temporary possession of securities purchased by the audit client.

(ix) Legal services. Providing any service to an audit client under
circumstances in which the person providing the service must be admitted to
practice before the courts of a United States jurisdiction.

(5) Contingent fees. An accountant is not independent if, at any point
during the audit and professional engagement period, the accountant provides any
service or product to an audit client for a contingent fee or a commission, or
receives a contingent fee or commission from an audit client.