# NEW YORK CITY

# CAMPAIGN FINANCE BOARD

# RULES

This booklet contains the rules adopted by the New York City Campaign Finance Board, as last revised on January 13, 2018. Campaign Finance Board rules are codified in Title 52 of the official compilation of the Rules of the City of New York (RCNY) (Lenz & Riecker, Inc.).

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New York City Campaign Finance Board
(Effective January 13, 2018)

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**New York City Campaign Finance Board Rules**

**Chapter 1 General Provisions**

**Rule 1-01 Scope of Rules.**

Chapters 1 through 9 are the requirements applicable to candidates seeking nomination for election or election to the office of mayor, comptroller, public advocate, borough president, or member of the City Council.

Chapter 10 pertains to the Voter Guide and applies to all candidates seeking to have statements included in the Voter Guide.

Chapter 11 contains the requirements for transition and inauguration activities, which apply to all elected candidates.

Chapter 12 contains the procedural rules for formal adjudications.

Chapter 13 pertains to the disclosure of independent expenditures.

**Rule 1-02 Definitions.**

**"Act"** means the New York City Campaign Finance Act, codified in Chapter 7 of Title 3 of the Code (§3-701, et seq.).

**"Advance"** means a payment for goods or services on behalf of a campaign made with the expectation that the payment will be reimbursed by the campaign. An advance is considered to be an in-kind contribution from the person making the advance until it has been reimbursed by the campaign, and a campaign may not accept an advance from a prohibited source.

**"Authorized committee"** means an authorized committee as defined in the Act. Except as otherwise specified, the requirements of these Rules do not apply to committees that are not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules. An authorized committee is "not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules" only if the committee does not, at any time, accept contributions, loans, or other receipts, or make expenditures, including expenditures of surplus funds, in that election, or aid or otherwise take part in that election.

**"Board"** means the Campaign Finance Board established pursuant to §3-708 of the Code.

**"Business dealings with the city"** means business dealings with the city as defined in the Act.

**"Candidate"** means a candidate as defined in New York Election Law Article 14. Except as otherwise provided in these Rules, a "candidate" includes every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate.

**"Certification"** means the certification filed by participants or limited participants to indicate that they have chosen to join the Program.

**"Charter"** means the New York City Charter.

**"Code"** means the Administrative Code of the City of New York.

**"Contribution"** means a contribution as defined in the Act.

**"Disclosure statement"** means the campaign finance disclosure statement filed with the Board under Chapter 3 of these rules.

**"Doing business database"** means the doing business database as defined in the Act.

**"Domestic partner"** means a domestic partner as defined in §1-112(21) of the Code.

**"Election"** means any primary, runoff primary, special, runoff special, or general election for nomination or election.

**"Election cycle"** means the period beginning on the first January 12 following the most recent general election for the specific office to which a candidate is seeking nomination or election and ending on the first January 11 following the next general election for that office.

**"Entity"** means any organization of one or more individuals, and includes any parent, subsidiary, branch, division, department, or local unit thereof.

**"Federal form"** means a report of receipts and disbursements required to be filed by a candidate or political committee with the Federal Election Commission.

**"Fund"** means the New York City Election Campaign Finance Fund established by the Act.

**"Fundraising agent"** means any of the following persons or entities that have accepted or may accept contributions on behalf of the candidate: (1) paid or volunteer full-time campaign workers; or (2) commercial fundraising firms retained by the candidate and the agents thereof.

**"In-kind contribution"** (a) "In-kind contribution" means: (1) a gift, subscription, loan, advance of, or payment for, any thing of value (other than money) made to or for any candidate or authorized committee; and (2) the payment by any person other than an authorized committee of compensation for the personal services of another person which are rendered to the candidate or authorized committee without charge.

(b) "In-kind contribution" does not include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee.

**"Intermediary"** means an intermediary as defined in the Act.

**"Labor organization"** means a labor organization as defined in the Act.

**"Matchable contribution"** means a matchable contribution as defined in the Act.

**"Mobile fundraising vendor"** means any persons or entities that provided services to a campaign related to the processing or receipt of any text message contribution.

**"Multicandidate committee"** means a political committee authorized to support more than one candidate, and includes any committee subject to §14-114(4) of the New York Election Law and any party or constituted committee.

**"On the ballot"** means on the ballot as defined by §1-104 of the New York State Election Law.

**"Optional early public funds payment"** means the disbursement of optional public financing occurring prior to two weeks after the last day to file designating petitions for a primary election.

**"Participant"** means a candidate for nomination or election to the office of mayor, public advocate, comptroller, borough president, or member of the City Council who has chosen to join the Program for an election by filing a written certification pursuant to §3-703(1)(c) of the Code. **"Limited participant"** means a candidate

who has chosen to join the Program for an election by filing a written certification pursuant to §3-718(1)(iii) of the Code. **"Non-participant"** means a candidate for such office who has not filed either certification. Except as otherwise provided in these Rules, a "participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-703(1)(e) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "limited participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-718(1)(iv) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "non-participant" includes the candidate, every political committee authorized by the candidate for the covered election, the treasurer of each such committee, and any other agent of the candidate.

**"Political committee"** means a political committee as defined in the Act.

**"Principal committee"** means the principal committee as defined in the Act.

**"Program"** means the New York City Campaign Finance Program established by the Act.

**"Public funds"** means monies disbursed from the Fund.

**"Receipts"** include monetary and in-kind contributions, loans, and any other payment received by a candidate. **"Other receipts"** are payments that are not contributions or loans, such as interest, dividends, expenditure refunds, proceeds from sales or leases of assets, and any other sources of income.

**"Registered user"** means the individual registered with the wireless carrier to use the specific mobile device from which a contribution made via text message was initiated.

**"Reporting period"** means a time period covered by a disclosure statement, as described in Rule 3-03.

**"Rule"** means a rule issued by the Board. The phrase "these Rules" means any and all rules adopted by the Board.

**"State form"** means a statement of campaign receipts and expenditures required to be filed by a candidate or political committee with the New York State or City Board of Elections.

**"Transfer"** means any exchange of funds or any other thing of value between political committees, other than multicandidate committees, authorized by the same candidate pursuant to §14-112 of the New York Election Law. In Rule 2-06 the term "transfer" refers to funds exchanged between different bank or other depository accounts.

**"Treasurer"** means the treasurer of any authorized committee involved in a covered election, except as otherwise provided in these Rules.

**"Unspent campaign funds"** means the amount a participant may be required to repay to the Board pursuant to § 3-710(2)(c) of the Code.

**"Text message contribution"** means a text message contribution as defined in the Act.

**Rule 1-03 Restrictions on Use of Receipts.**

**(a) Restriction on use.** In addition to the restriction set forth in Rule 5-03(e)(2) and, except as otherwise provided in subdivision (b):

(1) the candidate may expend, transfer, or use receipts, including those receipts resulting from a sale, lease, or other transfer of assets, only to pay expenses incurred in that election; no receipts, including receipts accepted for another election, if any, deposited in a separate account as provided in Rule 2-06(b), may be expended, transferred, or used for any other purpose until any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid;

(2) receipts deposited in an account shall not be used for any purpose other than the election for which that account was established, pursuant to Rule 2-06(b), except as otherwise provided in Rule 2-06(c) for runoff primary election or runoff special election accounts;

(3) after the participant first receives public funds for an election, the principal committee for that election may not make a transfer to a political committee not involved in that election until all unspent campaign funds from that election have been repaid;

(4) after the participant first receives public funds for an election, the principal committee for that election may not make expenditures to pay expenses or debt from a previous election (other than a primary election held in the same calendar year).

**(b) Exception.** After the first January 11 after an election, a candidate involved in that election may expend, transfer, or use receipts accepted for another election, provided that the receipts have been deposited in and are disbursed from a separate account, as provided in Rule 2-06(b). Funds accepted and separately deposited for the previous election may be transferred to this account only after any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid. Contributions and loans accepted for the previous election after such election are subject to Rules 1-04(m) and 1-05(g).

**Rule 1-04 Contributions.**

**(a) Receipt.** A monetary contribution is received on the date it is delivered. Notwithstanding the foregoing, a text message contribution is received on the date it is delivered to an authorized committee, after payment of the contributor's wireless bill, by a wireless carrier or other mobile fundraising vendor. An in-kind contribution is received on the date the goods or services are received or rendered. Candidates must report the date of receipt of each contribution that is accepted and deposited on disclosure statements filed with the Board.

**(b) Deposit.** All monetary contributions must be accepted and deposited, or rejected and returned to a contributor, within 20 business days after receipt except contributions made in the form of cash must be accepted and deposited, or rejected and returned to a contributor, within 10 business days after receipt. All contributions that are accepted and deposited are subject to the Act's contribution limits and prohibitions and must be reported to the Board. If a candidate returns a contribution after its deposit, the return must be reported to the Board.

**(c) Returning receipts.**

**(1) Excess and prohibited contributions.** When a candidate knows or has reason to know that he or she has accepted a contribution, contributions, or aggregate contributions from a single source in excess of the applicable contribution limit, including a contribution or contributions from a contributor having business dealings with the city, or from a source prohibited by the Act or the Charter, the candidate shall promptly return the excess portion or prohibited contribution, as the case may be, by bank check or certified check made out to the contributor; provided, however, that in the case of a contribution from a contributor having business dealings with the city in excess of the applicable limitation set forth in §3-703(1-a) of the Code, the candidate shall return the excess portion of such contribution within 20 days of receipt of notice from the Board that the contribution exceeds such limitation. Alternatively, if return of the contribution to the contributor is impracticable, the candidate may pay to the Fund an amount equal to the amount of the prohibited contribution or the excess portion, as the case may be. Remedial actions taken pursuant to this rule will not, however, preclude imposition of a penalty under the Act; provided, however, that no violation shall issue and no penalty shall be imposed where the excess portion of a contribution from a contributor having business dealings with the city is postmarked or delivered within 20 days of receipt of notification from the Board. The Board shall provide such notification to the candidate within 20 days of the reporting of the contribution, or, in the case of a contribution reported during the six weeks preceding the candidate's next covered election, the Board shall provide such notification within 3 business days; provided, however, that if such twentieth day is a Saturday, Sunday, or legal holiday, notification by the Board by 5 p.m. on the next business day shall be considered timely. If the candidate demonstrates to the Board, within 20 days of receipt

of such notice, that the contributor identified by the Board as having business dealings with the city has applied to the Mayor's Office of Contract Services or the City Clerk for removal from the doing business database and that such application is pending, the candidate may retain contribution(s) received from such contributor until the Board notifies the candidate that the Mayor's Office of Contract Services or the City Clerk has denied the application for removal, in which case the candidate shall have 20 days from receipt of such second notice to return the excess portion of the contribution(s). Contributions from contributors who have applied for removal from the doing business database shall not be considered matchable contributions unless and until the contributor is removed from the doing business database by the Mayor's Office of Contract Services or the City Clerk. A candidate may not accept any contributions in excess of the applicable contribution limits or from sources prohibited by the Act or the Charter.

**(2) Restrictions on return.** After receiving public funds for an election, a participant may not return a contribution, unless directed by the Board to do so, until any required repayments to the Fund have been made, except if the contribution: (i) exceeds the contribution limit, including the limit applicable to contributors having business dealings with the city, (ii) is otherwise illegal, (iii) is returned because of the particular source or intermediary involved, or (iv) was deposited in a separate account pursuant to Rule 2-06(c) for a runoff election that is not held.

**(d) Contributions from political committees.**

(1) Pursuant to §3-703(1)(k) of the Code, a participant may not accept a contribution from a political committee, unless the political committee has registered with the Board pursuant to §3-707 of the Code for the period that includes the participant's next covered election or so registers within ten days of receipt of the contribution. The registration shall be submitted in such form and manner as shall be determined by the Board and shall include such information as may be required by the Board, including:

(i) the name and address of the committee, and the name, address, and employer of the chairperson, treasurer, and liaison of the committee;

(ii) an indication whether the committee is a political action committee, a candidate committee (and if so, identification of the candidate(s) supported by the committee), or another kind of political committee;

(iii) identification of the governmental agency or agencies with which the committee files its financial disclosure statements;

(iv) an indication whether the committee makes monetary contributions, in-kind contributions, and/or independent expenditures, and the name, address and employer of each person with the authority to determine the candidates for whom the committee makes contributions and/or independent expenditures; and

(v) an indication whether the committee accepts contributions from corporations, limited liability companies, or partnerships and undertakes not to use funds from such entities for contributions to participants.

Political committees that do not submit the information required by the Board, or any required signatures or notarizations, will not be considered to be registered.

(2) The registration shall remain in effect through the January 11 following the next regularly scheduled citywide election, unless there has been a material change in the information included in the registration. In the event of a material change, an amendment to the registration shall be filed in order to keep the registration in effect. The Board shall establish a procedure for renewing a previous registration for the next election cycle.

(3) It is the responsibility of the participant to determine whether a contribution from a political committee may be accepted. Participants have the burden to check the cumulative list of registered political committees, published by the Board on a daily basis, to ensure that each political committee contribution accepted is from a political committee that registered with the Board previously or within ten days after the acceptance of the contribution. The participant has the burden of demonstrating why a contribution from a political committee that had not registered in a timely manner has been retained.

**(e) Corporations, limited liability companies, and partnerships.** Candidates may not accept, directly, indirectly, or by transfer, contributions, loans, guarantees or other security for a loan from a corporation, limited liability company, or partnership, including a limited liability partnership or professional corporation. This prohibition does not apply to loans made in the regular course of business, regardless of the lender's form of business entity; but does prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership. This prohibition does not apply to contributions by political committees that are corporations, limited liability companies, or partnerships.

**(f) Attributing a contribution to an election.** A contribution is presumed to be accepted for the first election in which the participant, limited participant, or non-participant is a candidate following the day that it is received, except: (1) as otherwise provided in Rules 1-04(c)(2), 1-04(m), and 1-07; (2) in the case of a State or local election, contributions received before the first January 12 after an election will also be presumed to be accepted for that election; and (3) in the case of a federal election, contributions received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under federal law and regulations.

**(g) In-kind contributions.**

**(1) As expenditures.** An in-kind contribution to a candidate is also an expenditure made by the candidate. The date an in-kind contribution is received is also the date of its expenditure. If a debt, other than a loan, incurred by a candidate is forgiven, the act of forgiving is an in-kind contribution to but not an expenditure by the candidate.

**(2) Valuation.** The candidate shall use a reasonable estimate of fair market value in determining the monetary value of an in-kind contribution and shall maintain a receipt or other written record supporting the valuation. "Fair market value" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time the goods are received. "Fair market value" for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

**(3) Goods and services provided at a price below fair market value.** If goods or services are provided at less than fair market value, the amount of the resulting in-kind contribution is the difference between the fair market value of the goods or services at the time the goods or services are received and the amount charged to the candidate.

**(4) Extensions of credit.**

(i) Generally**.** A creditor who extends credit to a candidate for a period beyond 90 days, has made a contribution equal in value to the credit extended, unless the creditor has made a commercially reasonable attempt to collect the debt

(ii) Corporate, limited liability company, and partnership vendors**.** Notwithstanding subparagraph (i), if a candidate demonstrates that a creditor that is a corporation, limited liability company, or partnership did not intend to make a contribution, the extension of credit will not result by itself in the candidate being deemed to have accepted a contribution from a corporation, limited liability company, or partnership, as prohibited by law.

(iii) Loans**.** This paragraph does not apply to loans.

**(5) Debts forgiven.** A debt owed by a candidate which is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable manner.

**(6) Commercially reasonable treatment of debts.** The Board will consider as evidence of commercially reasonable treatment that: (i) all commercially reasonable efforts have been taken to satisfy the outstanding debt; and (ii) the creditor has pursued its remedies in the same manner as that employed by creditors of other debtors, including the institution of lawsuits.

**(7) Failure to report liability.** Notwithstanding any implication of paragraph (4) to the contrary, a candidate's failure to report an outstanding liability in a contemporaneous manner is a violation of §3-703(6) of the Code. Such a liability will be deemed an in-kind contribution.

**(h) Multiple contributions from a single source.** If a candidate accepts more than one contribution from a single source, the contributions shall be totaled to determine the candidate's compliance with the applicable contribution limit. A "single source" includes any person, persons in combination, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled, including every political committee established, maintained, or controlled by the same person, persons in combination, or entity. If a candidate accepts multiple contributions from a single source consisting of at least one contribution from a person having business dealings with the city and one or more contributions from an entity established, maintained, or controlled by that person, the applicable contribution limit shall be the limit applicable to persons having business dealings with the city pursuant to §3-703(1-a) of the Code.

**(1) General factors.** Factors for determining whether a person, persons in combination, or an entity establishes, maintains, or controls another entity include, but are not limited to:

(i) whether the person or entity makes decisions or establishes policy for the other entity, including determinations of the recipients of its contributions and the purposes of its expenditures;

(ii) whether the person or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the other entity;

(iii) whether contributions made by the person or entity and the other entity reflect a similar pattern; and

(iv) whether the person or entity knows of and has acquiesced in public representations by the other entity that it is acting on its behalf or under its direction.

**(2) Labor organizations.** Notwithstanding paragraph (1), different labor organizations shall not be considered to be a single source for the purpose of compliance with the applicable contribution limit if the candidate demonstrates that the contributors satisfy the four criteria below:

(i) the labor organizations do not share a majority of members of their governing boards;

(ii) the labor organizations do not share a majority of the officers of their governing boards;

(iii) the labor organizations maintain separate accounts with different signatories; and

(iv) the labor organizations make contributions from separate accounts.

It is the responsibility of the candidate to determine whether a contribution exceeds the applicable contribution limit. To ensure that the candidate does not accept a contribution exceeding the applicable limit, the candidate must review the relationship between affiliated contributors before the candidate accepts and deposits their contributions or rejects and returns the contributions under Rule 1-04(b) and (c). The candidate

has the burden of demonstrating why the candidate has retained an over-the-limit contribution from contributors who or which constitute a single source.

**(i) Omitted.**

**(j) Earmarked contributions.** If a candidate accepts from a political committee a contribution that had been given to the committee by a contributor who limits the political committee's choice or directs the selection of the recipient, the contribution shall be considered to be from both the original contributor and from the political committee. This rule does not apply to political committees acting solely as intermediaries and not exercising any discretion over the selection of the ultimate recipient, or to political committees making contributions from funds that have not been earmarked by the contributors. Nothing in this subdivision shall be construed to modify the requirements of New York Election Law §14-120.

**(k) Joint contributions.**

(1) Except as otherwise provided for in subdivisions (i) or (j), no contribution shall be considered to be made by more than one person or entity, unless the check or other monetary instrument representing the contribution includes the signature of each person making the contribution (or authorized person in the case of an entity making a contribution).

(2) If a check or other monetary instrument representing a joint contribution does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

**(l) Tickets for fund-raising events.** The entire amount paid to attend a fund-raising event and the entire amount paid as the purchase price for a fund-raising item sold by a candidate are contributions.

**(m) Post-election contributions.** Contributions accepted after an election may be used to pay liabilities incurred in that election, subject to the applicable contribution limit and prohibitions, only if deposited in and disbursed from an account established and maintained for that election, as provided in Rule 2-06(b).

**(n) Solicitation of contributions for elections not subject to the Act.** If a candidate makes a solicitation for a contribution for an election not subject to the requirements of the Act, the solicitation must specify that the contribution is being solicited for an election that is not subject to the requirements of the Act.

**(o) Court-ordered rerun elections.** Candidates may not accept additional contributions permitted for a court-ordered rerun election pursuant to §3-703(1)(f) of the Code before the canvass of returns in, or conduct of, the preceding election is contested in a court of competent jurisdiction. If a rerun election is ordered by a court but subsequently canceled, a candidate who would have been on the ballot has the burden of demonstrating that any portion of contributions in excess of the limit applicable under §3-703(1)(f) of the Code may be reasonably attributed to expenses incurred for the rerun election before its cancellation.

**(p) Joint fundraising; endorsements.**

(1) If a candidate makes expenditures in connection with, or otherwise cooperates in, raising contributions for any other candidate or political committee:

(i) the expenditures incurred and in-kind contributions received in connection with such fundraising, including in the form of endorsements, shall be allocated in accordance with Rule 1-08(h); and

(ii) if any of the contributions so raised is:

(A) in an amount that exceeds the amount of the contribution limit applicable to the candidate under §3-703(1)(f) of the Code (including when aggregated with contributions the candidate receives from the same source); or

(B) from a source that would be prohibited to the candidate by the Act or the Charter; the candidate shall have the burden of demonstrating that the contribution was not used in a manner that directly or indirectly assisted or benefited the candidate in violation of the applicable limit or prohibition.

This paragraph shall not be construed to prohibit a candidate from making a monetary contribution to any other candidate or political committee, provided, however, that such contributions may result in reduced public funds payments pursuant to Rule 5-01(n).

(2) To ensure compliance with the contribution limits of §3-703(1)(f) of the Code, candidates who run together as a "ticket," and make joint expenditures to raise contributions, shall additionally abide by the requirements of this subdivision.

(i) When paying his or her share of joint expenditures (by direct payment or reimbursement), the payor shall have the burden of demonstrating that the amount disbursed does not derive from contributions that would exceed the other candidate's contribution limit, if those contributions were aggregated with contributions previously received by the other candidate.

(ii) Therefore, no disbursement for joint expenditures shall be made before the candidate is able to account fully for the disbursement with contributions that would not exceed the other candidate's contribution limit, if so aggregated. Failure to make reimbursement within 30 days of the expenditure, however, will result in a deduction in public funds payments otherwise due to the candidate to be reimbursed, pursuant to Rule 5-01(n)(1), and failure to make reimbursement within 90 days will result in treatment of the expenditure as an in-kind contribution to the candidate failing to make reimbursement, pursuant to Rule 1-04(g)(4).

**(q) Anticipated runoff primary or runoff special elections.** A candidate seeking the nomination of a political party or seeking election in a special election may not accept contributions for a runoff primary election or runoff special election, unless the candidate has previously demonstrated to the Board that a runoff election is reasonably anticipated. Runoff election contributions may not be accepted once it is no longer reasonable to anticipate such a runoff election. To the extent permitted by this subdivision, the candidate (and each opposing candidate seeking the same party nomination or seeking election in the same special election, as the case may be) may solicit and accept additional contributions for the anticipated runoff election, up to the amount permitted for the runoff election by §3-703(1)(f) of the Code, under the following conditions:

(1) every runoff election contribution shall be deposited in a separate account and subject to restrictions on use, as provided in Rule 2-06(c);

(2) until a primary or special election is held that results in a runoff election, each solicitation of runoff election contributions shall expressly state that such contributions are being solicited only for a runoff election that may not occur;

(3) no single contribution check shall be accepted in an amount that exceeds the limit applicable for the primary and general election, or special election, under §3-703(1)(f) or (h) of the Code; and

(4) each disclosure statement submitted by the candidate shall include a copy of the most recent bank statement for its runoff election account.

**(r) Contributions by minors.** (1) A participant or non-participant may accept a contribution from a minor child (individual under 18 years of age) only if: (i) the decision to contribute was made knowingly and voluntarily by the minor child; (ii) the funds, goods, or services contributed were owned and controlled exclusively by the minor child, such as income earned by the child, or a bank account opened and maintained exclusively in the child's name; and (iii) the contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed.

(2) Contributions by individuals under 18 years of age shall not be matchable.

**(s) Candidates may not accept a contribution in violation of state or federal law.**

**Rule 1-05 Loans.**

**(a) Repayment by next election.** A loan must be repaid by the date of the next election, or else the loan, guarantee, or other security for a loan will be considered a contribution subject to the Act's contribution limits.

**(b) Loans not made in regular course of business.** A loan not made in the regular course of the lender's business shall be deemed, to the extent not repaid to the lender by the date of the next election, a contribution by the lender.

**(c) Loans made in regular course of business.** A loan made in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the next election, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collaterizing, or otherwise providing security for the loan. Neither the Act nor the Charter prohibits receipt of a loan made in the regular course of the lender's business, regardless whether the lender is a corporation, limited liability company, or partnership.

**(d) Third party repays loan.** If any portion of a loan is repaid by a person or entity other than the participant or non-participant receiving the loan, the portion thus repaid shall be a contribution by that person or entity.

**(e) Omitted.**

**(f) Omitted.**

**(g) Post-election loans.** Loans received after an election that are used for that election are considered contributions for that election, and must be deposited in and disbursed from an account established and maintained for that election, as provided in Rule 2-06(b), except that a loan made by the candidate after the election for the purpose of (i) paying penalties pursuant to the Act or (ii) making required repayments to the Fund is not subject to the contribution limit.

**(h) Attributing a loan to an election.** A loan is presumed to be accepted for the first election in which the participant or non-participant is a candidate following the day that the loan is received, except: (1) as otherwise provided in Rule 1-05(g); (2) in the case of a State or local election, loans received before the first January 12 after an election will also be presumed to be accepted for that election; and (3) in the case of a federal election, loans received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under federal law and regulations.

**(i) Deposit.** All loans must be accepted and deposited, or rejected and returned, within 10 business days after receipt.

**(j) Loans forgiven.** Any portion of a loan that is forgiven is a monetary contribution.

**Rule 1-06 Special Elections.**

If a special election to fill a vacancy is declared, the Board may provide for the following special requirements and procedures for candidates in the special election, after considering the date of the election and any other relevant factors: (a) a standard by which contributions, loans, and/or expenditures are presumed to be accepted or made for the special election, notwithstanding Rules 1-04(f), 1-05(h), and 1-08(c)(1); (b) a standard for determining the total amount of surplus funds from previous elections; and (c) such other requirements and procedures as the Board may deem necessary to implement the provisions of the Act in the special election fully and effectively.

**Rule 1-07 Funds Originally Received for Other Elections.**

**(a) Use.** Funds originally received by a committee not otherwise involved in a covered election may be used in a covered election subject to the requirements of this rule, but may not be claimed as matchable contributions for that election.

**(b) Surplus funds.** The Board deems the cash balance reported in the candidate's first semi-annual form or Board disclosure statement at the beginning of the first reporting period for an election to be the total amount of surplus funds the committee had from a previous election; except that the amount deemed to be surplus funds may be reduced by the following: (1) the total amount of debts and obligations outstanding at the beginning of the reporting period; (2) the total amount subsequently transferred to a political committee that is not involved in a covered election; and (3) if the candidate was a participant in the previous election, the total amount of public funds subsequently repaid.

When requested by the Board, candidates shall provide additional information regarding totals and transactions reported in State forms or Board disclosure statements.

**(c) Contribution limit; prohibited contributions.** Candidates have the burden of demonstrating that surplus funds and transfers of funds from committees not otherwise involved in the covered election do not derive from: (1) contributions in excess of the Act's contribution limits, including contributions that would exceed the Act's contribution limits when aggregated with other contributions accepted from the same source; or (2) contributions from sources prohibited by the Act or the Charter. In addition, participants have the burden of demonstrating that funds transferred from a committee, other than another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the board in a timely manner, derive solely from contributions for which records demonstrating the contributors' intent to designate the contributions for the covered election have been submitted and maintained as required pursuant to Rules 3-03(c)(2) and 4-01(b)(4), respectively.

For purposes of enforcing the contribution limit and contribution prohibitions, the Board shall attribute surplus funds and such transfers to the last monetary contributions, loans, and other receipts received by: 1. the candidate on or before the date of the cash balance described in subdivision (b), in the case of surplus funds; or 2. the transferor committee before making the transfer. The candidate shall either promptly return the portion of any contribution that exceeds the Act's contribution limit or violates a prohibition of the Act or the Charter, as provided in Rule 1-04(c)(1), or deposit the excess portion or amount of the prohibited contribution, as the case may be, into a separate account not to be used in a covered election.

**(d) Related expenditures.** Expenditures made in connection with raising or administering funds transferred from a committee not otherwise involved in a covered election are subject to the expenditure limits of the Act and shall be reported as provided in Rule 3-03(c)(2). As provided for in Rule 1-08(o), the participant shall have the burden of demonstrating that any expenditures incurred by the transferor committee are not subject to the expenditure limits of the Act.

**Rule 1-08 Expenditures.**

**(a) Expenditures.** Expenditures include all disbursements made, liabilities incurred, and in-kind contributions received by a candidate, except disbursements to return contributions, repay loans, return public funds, and transfers. Some expenditures are subject to the expenditure limits of the Act and other expenditures are exempt.

**(b) Making an expenditure.** As provided and described in §3-706 (1) and (2) of the Code, an expenditure for goods or services is made when the goods or services are received, used, or rendered, regardless when payment is made. Expenditures for goods or services received, used, or rendered in more than one year, including campaign websites, shall be attributed in a reasonable manner to the expenditure limits of §3-706(1) or (2) of the Code, as appropriate.

(1) Expenditures for campaign advertising or other campaign communications shall be attributed to the expenditure limit in effect when the advertisement or communication is distributed, broadcast, or published. For the

purposes of this paragraph, "campaign advertising or other campaign communications" shall not include a campaign website. A communication that is mailed shall be considered to have been "distributed" on the date on which it was postmarked.

(2) Expenditures for services performed or deliverables provided over a period that includes both the primary and the general elections shall be attributed in a reasonable manner to the expenditure limits of § 3-706(1) and (2) of the Code, as appropriate.

(3) Notwithstanding the requirements of this subdivision, the Board may require a candidate to demonstrate that an expenditure should be attributed to the expenditure limit provided in §3-706(1) or (2) of the Code, as appropriate, based on the timing, nature, and purpose of the expenditure.

**(c) Attributing an expenditure to an election.**

(1) An expenditure is presumed to be made for the first election (in which the participant, limited participant or non-participant is a candidate) following the day it is made, except: (i) in the case of a State or local election, expenditures made before the first January 12 after an election will also be presumed to be made for that election; (ii) in the case of a federal election, expenditures made before the first January 1 after the election will also be presumed to be made for that election, except as may otherwise be provided under federal law and regulations.

(2) (i) If there is no contested primary election for an office, expenditures made by a participant or limited participant seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(ii) If there is a contested or write-in primary election in any party for an office, every participant or limited participant seeking that office, regardless whether the participant or limited participant is in the primary election, may make expenditures subject to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after the date of the primary election.

(iii) Notwithstanding subparagraph (i), if a participant or limited participant demonstrates to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election in any party for the office the participant or limited participant seeks, the participant or limited participant may attribute expenditures made before and during that period to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after that period. In order to demonstrate to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election, the participant or limited participant must file a petition, consisting of an affidavit with supporting documentation, with the Board no later than ten business days following the date the last remaining candidate other than the participant or limited participant was finally disqualified from the ballot as set forth in Rule 5-02(b). The affidavit must specify the period of time during which it was reasonable to anticipate that a primary election would be held, identify the prospective candidate(s), and provide a factual basis for the participant's or limited participant's belief that a primary election was reasonably anticipated during the specified period of time. The supporting documentation must demonstrate that the prospective candidate(s) engaged in activities that would lead a reasonable person to believe that such candidate(s) would participate in the primary election. Such activities may include: (i) raising or spending funds for the primary election; (ii) authorizing a political committee with the Board of Elections for the primary election; (iii) filing a filer registration and/or certification form with the Board; (iv) engaging in petitioning activity, including the filing of petitions with the Board of Elections; (v) producing and/or distributing campaign

literature; and (vi) campaigning for office or otherwise publicly declaring an intent to participate in the primary election.

(iv) Once it is determined by petition litigation or otherwise that no primary election will be held for nomination to an office, expenditures made by participants or limited participants seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(v) Expenditures made before the primary election by a participant or limited participant who is a candidate in a contested primary election are subject to the primary election expenditure limit of §3-706(1) of the Code, regardless whether the participant or limited participant has also received the nomination of another party without a primary election.

(3) Candidates have the burden of demonstrating that expenditures made by committees reported not to be involved in the election in which the candidate is currently a participant or limited participant were not made in connection with such election. Failure to meet this burden will result in the application of all Program requirements to these committees for such election.

(4) Special elections. An expenditure is presumed to be subject to the special election expenditure limit on and after the date a special election was first reasonably anticipated, as determined by the Board. Participants or limited participants may present evidence to the Board, demonstrating the date a special election was first reasonably anticipated.

**(d) Expenditure limits.**

(1) All expenditures made by a participant or limited participant for the purpose of promoting or facilitating his or her nomination or election, including expenditures made for the purpose of promoting or facilitating the defeat of an opponent or prospective opponent, are subject to the expenditure limit applicable under the Act. All expenditures made by the participant or limited participant and his or her principal committee shall be totaled to determine the participant's or limited participant's compliance with the applicable expenditure limit. Expenditures made after the last election in an election year in which the participant or limited participant is a candidate, or a special election, are not subject to the expenditure limits for that election.

(2) A participant or limited participant is permitted to make expenditures in excess of the limits of §3-706(2) of the Code, but not in excess of the limits of §3-706(1) of the Code. The limits of §3-706(2) are the minimum amounts that a participant or limited participant must spend during the three calendar years before the election year in order to spend the total aggregate amount the Act and these Rules permit during those years and the time period encompassed by the expenditure limit that first applies to the candidate in the election year, pursuant to §3-706(1) of the Code.

(3) All expenditures made by a participant or limited participant for the purpose of advocating a vote for or against a proposal on the ballot in an election that is also a covered election, regardless whether the expenditures were also made to promote or facilitate the participant's nomination or election, shall be subject to the expenditure limits applicable in such covered election.

(4) Exempt expenses.

(i) The following shall not be subject to the expenditure limits:

(A) expenses made for the purpose of bringing or responding to any action, proceeding, claim or suit before any court or arbitrator or administrative agency to determine a candidate's or political committee's compliance with the requirements of this chapter, including eligibility for public funds payments, or pursuant to or with respect to election law or other law or regulation governing candidate or political committee activity or ballot status;

(B) expenses to challenge or defend the validity of petitions of designation or nomination or certificates of nomination, acceptance, authorization, declination or substitution, and expenses related to the canvassing or re-canvassing of election results; and

(C) expenses related to the post-election audit, except as provided in subparagraph (ii) of this paragraph.

(ii) Exempt expenses related to the post-election audit shall include pre-election expenses for organizing and copying existing records in preparation for submission during the post-election audit, but shall not include pre-election expenses for:

(A) Ordinary compliance activities, such as the review of records to identify missing documents, evaluating whether documents meet Board standards, and identifying, preventing, and correcting any potential violation;

(B) Post-election work for which an invoice is issued or paid prior to the election;

(C) Salaries or other payments to campaign managers, finance chairpersons, treasurers, accountants, advisors, or other consultants;

(D) Legal or accounting fees;

(E) Costs associated with record creation and retention;

(F) Costs associated with running an office or business, such as standard bookkeeping, maintaining checkbook registers, petty cash journals, bank records, and loan records;

(G) Bookkeeping for payroll or vendor payments; and

(H) Other standard practices that political committees routinely perform as entities that raise and spend funds.

**(e) Expenditure limit relief.**

(i) Pursuant to §3-706(3)(a) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds half the applicable expenditure limit pursuant to §3-706(1)(a) of the Code, then the expenditure limit applicable to participating candidates and limited participating candidates in the election for that office will be increased to one hundred fifty percent of the expenditure limit.

(ii) Pursuant to §3-706(3)(b) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit pursuant to §3-706(1)(b) of the Code, then the expenditure limit will no longer apply to participating candidates and limited participating candidates in the election for that office.

**(f) Independent expenditures.**

(1) In determining whether an expenditure is independent, the Board may consider any of the factors from the following non-exhaustive list:

(i) whether the person or entity making the expenditure is also an agent of a candidate;

(ii) whether any person authorized to accept receipts or make expenditures for the person or entity making the expenditure is also an agent of a candidate;

(iii) whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person or entity making the expenditure;

(iv) whether the person or entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons or entities as those that have established, financed, maintained, or controlled a political committee authorized by the candidate;

(v) whether the candidate shares or rents space for a campaign-related purpose with or from the person or entity making the expenditure;

(vi) whether the candidate has solicited or collected funds on behalf of the person or entity making the expenditure, during the same election cycle in which the expenditure is made;

(vii) whether the candidate, or any public or private office held or entity controlled by the candidate, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle in which the expenditure is made; and

(viii) whether the candidate and the person or entity making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate's communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate.

(2) Upon consideration of the factors described in subsection (1), the Board may determine by a preponderance of evidence that an expenditure was not independent. Prior to such determination, the candidate and/or the person or entity making the expenditure shall have an opportunity to provide evidence indicating that such expenditure was independent.

(3) Financing the dissemination, distribution, or republication of any broadcast or any written, graphic, or other form of campaign materials prepared by a candidate is a contribution to, and an expenditure by, the candidate, unless this activity was not in any way undertaken, authorized, requested, suggested, fostered, or otherwise cooperated in by the candidate.

(4) An expenditure for the purpose of promoting or facilitating the nomination or election of a candidate, which is determined not to be an independent expenditure, is a contribution to, and an expenditure by, the candidate.

(5) (i) Communication between, or common agents shared by, parties and their nominees will not require a conclusion that all spending by the party's constituted committees and party committees in an election is an in-kind contribution to the nominee. The following expenditures made by party committees or constituted committees are not considered in-kind contributions to a candidate unless it is demonstrated that the candidate in some way cooperated in the expenditure and that the expenditure was intended to benefit that candidate:

(A) materials or activities that promote the party, or oppose another party, by name, platform, principles, history, theme, slogans, issues, or philosophy, without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(B) materials or activities in connection with candidates and elections not subject to the requirements of the Act.

(C) training, compensating, or providing materials for poll watchers appointed by the party pursuant to New York Election Law §8-500.

(D) promoting party enrollment or voter turnout without reference to particular candidates in an upcoming election subject to Program requirements, including research, polling, recruitment of party employees and volunteers, and development and maintenance of voter and contributor lists.

(E) raising funds for the party without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(F) mailing of absentee ballot applications in a special or general election in which an office not subject to the requirements of the Act is on the ballot.

(ii) The Board may require a candidate to demonstrate in any proceeding before the Board that any of the following expenditures that are made by a party committee or constituted committee are not in-kind contributions to the candidate:

(A) expenditures for materials or activity that include an electioneering message about a clearly identified candidate for a covered election.

(B) expenditures for advertisements, broadcasting, mailings, or electronic media for a candidate or against his or her opponent, including a home page on the Internet.

(C) expenditures for which the candidate has, without making public disclosure of an outstanding liability in a timely manner, promised or made reimbursement or other payment to the party committee or constituted committee. These expenditures will be considered in-kind contributions during the time preceding the reimbursement or other payment by the candidate.

(6) If candidates announce they are running together as a "ticket" for which they have chosen to join together in a broad spectrum of activities to promote each other's election, the Board will presume that expenditures made by one candidate's campaign for materials or activities that clearly identify the other candidate are in-kind contributions to the second candidate. The following factors would increase the burden a candidate would have in overcoming this presumption: (i) the campaigns have staff, consultants, office space, or telephone lines in common; (ii) other in-kind contributions, expenditure refunds, advances, or joint expenditures have been made between these campaigns. If the expenditures are in-kind contributions, the expenditures are subject to the apportionment requirements of Rule 1-08(h).

**(g) Spending public funds.**

(1) Public funds may be used only for expenditures by a participant's principal committee to further the participant's nomination or election either in a special election to fill a vacancy or during the calendar year in which the election in which the candidate is a participant is held.

(2) Public funds may not be used for:

(i) an expenditure for any purpose other than the furtherance of the participant's nomination or election;

(ii) an expenditure not incurred during the calendar year of the election;

(iii) an expenditure in violation of any law;

(iv) payments made to the participant or a spouse, domestic partner, child, grandchild, parent, grandparent, brother, or sister of the participant or spouse or domestic partner of such child, grandchild, parent, grandparent, brother, or sister, or to a business entity in which the participant or any such person has a 10 percent or greater ownership interest;

(v) payments in excess of the fair market value of services, materials, facilities, or other things of value received;

(vi) (A) any expenditure made after the participant has been finally disqualified or had his or her petitions finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made (1) as otherwise permitted pursuant to §3-709(7) of the Code, or (2) for a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the candidate seeks election for the same office;

(B) any expenditure made after the only remaining opponent of the participant has been finally disqualified or had his or her petitions declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made for a

different election (other than a special election to fill a vacancy) held later in the same calendar year in which the participant seeks election for the same office;

(C) any other election, if the public funds were originally received for a special election to fill a vacancy.

(vii) payments in cash;

(viii) any contribution, transfer, or loan made to another candidate or political committee;

(ix) gifts, except brochures, buttons, signs and other printed campaign material;

(x) any expenditures to challenge or defend the validity of petitions of designation, or nomination, or certificates of nomination, acceptance, authorization, declination, or substitution, and expenses related to the canvassing of election results;

(xi) any expenditure for which records required by Rule 4-01 are not maintained or obtained by the participant;

(xii) any expenditure that is not itemized in a disclosure statement submitted pursuant to Rule 3-03;

(xiii) any payment that is not made or reimbursed from an account disclosed by the participant pursuant to Rule 1-11(a)(iv) or 2-01(a);

(xiv) reimbursement for advances, except in the case of individual purchases in excess of $250;

(xv) expenditures made in connection with any action, claim or suit before any court or arbitrator;

(xvi) expenditures made primarily for the purpose of expressly advocating a vote for or against a ballot proposal, other than expenditures made also to further the participating candidate's nomination for election or election;

(xvii) payment of any penalty or fine imposed pursuant to federal, state or local law; or

(xviii) payments for services that were never received, including payments for legal services pursuant to a retainer agreement to the extent payments for such services exceed the value of the services rendered.

(3) It is presumed that the following bills for goods and services are not qualified campaign expenditures: (i) bills for an election that are first reported in a disclosure statement submitted later than the 10 day or 27 day post-election disclosure statement applicable to that election; and (ii) bills first reported in an amendment to or resubmission of a disclosure statement that is made after the last election in an election year in which the participant is a candidate, or after a special election.

(4) A liability that is not reported in a contemporaneous manner is a violation of §3-703(6) of the Code and will not be considered a qualified campaign expenditure.

**(h) Joint expenditures; endorsements.**

(1) In accordance with the Act, nothing in these Rules shall be construed to restrict a candidate from authorizing expenditures for joint campaign materials and other joint campaign activities, including fundraising and campaign communications such as mailings and telephone and other communications, if the benefit the candidate derives from the material or activity is proportionally equivalent to the candidate's expenditures for the material or activity. To the extent a candidate derives a disproportionate benefit, the

candidate is considered to have received a contribution and made an expenditure. Among the factors the Board will consider in determining whether the benefit is "proportionally equivalent," are: (i) the focus of the material or activity; (ii) the geographic distribution or location of the material or activity; (iii) the subject matter of the communication; (iv) the references to the candidate or the candidate's appearances therein; (v) the relative prominence of a candidate's references or appearances in the communication, including the size and location of references to the candidate and any photographs of the candidate; (vi) the timing of the communication; and (vii) other circumstances surrounding the communication. The amount spent by the candidate for these purposes is subject to the expenditure limit applicable under the Act, unless it is otherwise exempt.

(2) Notwithstanding the provisions of paragraph (1) above, the following activities in support of another candidate by a participant, limited participant or non-participant shall not be considered contributions to or expenditures by such participant, limited participant or non-participant, except to the extent that such activities are paid for by the participant, limited participant or non-participant for a covered election:

(i) the act alone of endorsing or appearing with another candidate for public office, party nomination or party position;

(ii) the insubstantial communication of such endorsement or appearance described in subparagraph (i), such as where the candidate's name is one of several names appearing on the communication and is of equivalent prominence as the other names;

(iii) fundraising assistance to another candidate in the form of written communications that do not promote the participant, limited participant or non-participant, such as the appearance of the participant's, limited participant's or non-participant's name or signature on a letter soliciting funds for another candidate or the appearance of the participant's, limited participant's or non-participant's name on fundraising material where the participant's, limited participant's or non-participant's name appears alone or with other names and is of equivalent prominence as the other names; and

(iv) a typical communication by a political club to its members, which includes the name of a candidate, provided that the candidate is already a member of the political club, the political club has fewer than 500 members, and the communication does not solicit funds on behalf of or otherwise promote the participant's, limited participant's or non-participant's campaign for a covered election.

(3) (i) The Board may, in its discretion, determine that the benefit to a candidate from references to or appearances of that candidate contained in another candidate's communication, such as campaign literature or an automated telephone call, is of *de minimis* value to the candidate based on the factors listed in paragraph (1) or other factors.

(ii) Candidates and other individuals or entities may present information to the Board establishing such a *de minimis* benefit pursuant to Rule 7-01, or in such other manner as the Board may determine, or the candidate may present such information during the post-election audit process.

**(i) Expenditures by check.** No candidate may expend an amount in excess of $100 except by check drawn on a reported depository and signed by the candidate or person authorized to sign checks by the candidate.

**(j) Omitted.**

**(k) Volunteer services.** Candidates may not pay volunteers for services already performed on a voluntary basis for that election, but may hire them as paid employees or retain them as consultants for future services. Candidates may not accept professional services on a volunteer basis from individuals who previously provided, on a paid basis, services of a similar nature to the same campaign during the same election cycle. Candidates may not accept volunteer services from any entity, or from an individual having an ownership interest of ten percent or more in, or control over, any entity that provided paid services to the same campaign during the same election cycle.

Notwithstanding the foregoing, after the election, candidates may accept volunteer services from individuals who previously provided paid services.

**(l) Expenditure limit compliance.**

(1) Participants and limited participants shall monitor whether their total expenditures exceed the limit of §3-706(1) of the Code or, if applicable, the limit of §3-706(3)(a)(i) of the Code. The amount of the expenditure limit that applies to the participant or limited participant in the calendar year of the election, pursuant to §3-706(1) of the Code, shall be reduced by the amount by which the initial expenditure limit pursuant to §3-706(2) of the Code is exceeded. Participants and limited participants have the burden of demonstrating that expenditures are exempt pursuant to §3-706(4) of the Code. A participant or limited participant shall meet this burden by maintaining contemporaneous, detailed records that demonstrate that each individual expenditure claimed as exempt is exempt in accordance with §3-706(4) of the Code and submitting such documentation as required under paragraph (2) below.

(2) If a participant or limited participant fails to submit documentation sufficient to substantiate an exempt expenditure claim, the expenditure subject to such claim shall not be considered exempt from the expenditure limit applicable to the participant or limited participant under §3-706(1) or §3-706(3)(a)(i) of the Code.

(3) For purposes of this subdivision, in determining whether a participant's or limited participant's total expenditures exceed the amount of the limit applicable under §3-706(1) or §3-706(3)(a)(i) of the Code, the following expenditures shall be excluded: (i) expenditures made in the first three years of the election cycle, to the extent such expenditures do not exceed the limit applicable under §3-706(2) of the Code; and (ii) in the case of the general election expenditure limit, expenditures made not later than the closing date of the 10 day post-primary election disclosure statement, provided that the participant or limited participant was subject to a primary election expenditure limit.

(4) Notwithstanding anything otherwise provided for in this subdivision, the reimbursement of an advance shall not be considered an exempt expenditure.

**(m) Fundraising for more than one election.** When a candidate makes expenditures for a single event or other activity to raise funds for more than one office sought, and the first election that will be held is:

(1) a covered election, the full amount of such expenditures is subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter.

(2) not a covered election, a portion of such expenditures will be subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter in such proportion as the total funds raised in connection with such event or other fundraising activity for the second election bears to the total such funds raised for both elections. Alternatively, the candidate may demonstrate to the Board that a different apportionment is applicable in accordance with Rule 1-07(d).

**(n) Fundraising solicitations.** Each written solicitation of contributions by or on behalf of a candidate, whether in paper or electronic format, shall include the following statement, written in a conspicuous and clearly recognizable manner: "State law prohibits making a contribution in someone else's name, reimbursing someone for a contribution made in your name, being reimbursed for a contribution made in your name, or claiming to have made a contribution when a loan is made."

**(o) Expenditure limit compliance for transfers.** In the case of a transfer of funds from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate, the participant must allocate to the transferred contributions any expenditures incurred by the transferor committee during the covered election cycle in connection with raising or administering transferred contributions, and any expenditures incurred by the transferor committee prior to the covered election cycle in connection with raising the transferred contributions. In such a case, the participant has the burden of demonstrating, for the purpose of

compliance with the expenditure limits of the Act, what expenditures incurred by the transferor committee were not made in connection with raising or administering the transferred contributions. At the Board's request, the participant shall provide documentation related to any such expenditures, including copies of Federal forms or disclosure statements filed with the New York State or City Board of Elections on behalf of the transferor committee. Expenditures will be applied towards the expenditure limit in effect at the time of the transfer; provided, however, that in the case of transfers made prior to the covered election cycle, expenditures will be applied towards the expenditure limits of § 3-706(2).

**(p) Expenditures not in furtherance of the campaign.** In determining whether or not an expenditure is in furtherance of a candidate's nomination or election, the Board may consider any of the factors from the following non-exhaustive list:

(1) the timing of the expenditure;
(2) whether the campaign has already purchased duplicative services or equipment;
(3) the nature of the goods or services purchased;
(4) whether an unusually high proportion of funds was spent on a specific category of expenditure;
(5) whether a high total dollar amount or proportion of payments was made to individuals rather than to entities;
(6) whether the campaign has demonstrated a pattern of making other expenditures not in furtherance of the campaign or impermissible post-election expenditures; and
(7) whether an expenditure made less than one month prior to the election, or after the election, is accompanied by the reporting of a corresponding outstanding liability.

**Rule 1-09 Documents Submitted to and Issued by the Board.**

**(a) Date received.**

**(1) Generally.** Documents submitted to the Board, whether in an electronic manner or otherwise, will be deemed to have been submitted upon receipt by the Board. The Board receives hand-delivered documents at its offices, weekdays between 9 a.m. and 5 p.m., unless otherwise provided by the Board.

**(2) Postmark date.** Except as otherwise provided in paragraph (3) for disclosure statements, a document submitted by non-electronic mail will be deemed to have been received by the Board on the date the document is postmarked. Documents delivered by non-electronic common carriers other than the United States Post Office will be deemed to have been received by the Board on the date the common carrier received the document. Candidates have the burden of demonstrating the date the common carrier received such document, including by means of the common carrier's time stamp or payment receipt.

**(3) Disclosure statements.**

(i) Candidates who submit disclosure statements through non-electronic mail with the United States Post Office or by other non-electronic common carrier shall obtain a receipt or date stamp confirming the date on which the carrier received the disclosure statement. Such disclosure statements that are delivered by the Post Office or common carrier to the Board without a postmark or similar mark will be presumed to have been mailed three days earlier unless evidence presented to the Board, such as a post office receipt, establishes otherwise.

(ii) A complete disclosure statement, submitted in an electronic manner or otherwise, actually received by the Board no later than close of business on the due date for that disclosure statement applicable under Rule 3-02 will be considered to be submitted in a timely manner and to permit the Board to make a payment determination based on matchable contributions claimed therein when the Board next makes payment determinations. In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board may not review disclosure statements for possible payment if they are not

actually received by the Board by the specified due date, although the Board may review such disclosure statements when making payment determinations at a later date.

(iii) A complete disclosure statement, not actually received by the Board by the due date applicable under Rule 3-02, that is delivered by non-electronic mail with a postmark date that is on or before the due date, or received by another non-electronic common carrier on or before the due date, nonetheless will be considered to be submitted in a timely manner. This submission, however, may not be sufficiently timely to permit the Board to make a payment determination when the Board next makes payment determinations so the Board shall make a determination on such a disclosure statement at such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(iv) A candidate who fails to deliver a complete disclosure statement in a timely manner is in violation of the Act and subject to penalty under §§ 3-710.5 and 3-711(1) of the Code.

**(4) Documents submitted electronically.** Candidates and others submitting documents to the Board electronically shall submit such documents in such electronic manner as shall be provided by the Board.

**(b) Legibility; Readability.** The Board will not accept any electronic disclosure statement or other document, or any part thereof, that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board, or if the disclosure statement or other document, or any part thereof, is in a non-electronic format, is illegible.

**(c) Documentation.** Disclosure statements will not be deemed complete unless submitted with the records required by Rules 3-04(a) and 4-01(b)(2) and (3) for each matchable contribution claimed in the disclosure statement.

**(d) Date issued or provided.** Documents sent by mail, including any report or notice, shall be considered issued or provided by the Board on the date the document is postmarked. Documents sent by a common carrier shall be considered issued or provided by the Board on the date that the documents were received by the common carrier. Documents sent by electronic mail to an e-mail address provided to the Board shall be considered issued or provided upon transmission, unless the Board is informed that the transmission did not reach the intended recipient.

**Rule 1-10 Severability.**

If any rule or portion thereof is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these rules. If the application of any rule or portion thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the application thereof to other persons and circumstances.

**Rule 1-11 Filer Registration.**

(a) Not later than the day that a candidate files the first disclosure statement for an election, the candidate shall submit a filer registration form. The filer registration form shall include:

(1) the candidate's name, address information and telephone numbers, e-mail address, and employment information;

(2) the name and mailing address, and treasurer name, treasurer address information and telephone numbers, treasurer e-mail address, and treasurer employment information, of every political committee authorized by the candidate that has not been terminated, and, in the case of a participant or limited participant, an indication of which such committee is the principal committee;

(3) the name, mailing address, e-mail address, and telephone number of any person designated by the candidate to act as liaison with the Board for each committee filing disclosure statements;

(4) identification of all bank accounts and other depository accounts, including merchant and payment processor accounts, into which receipts have been, or will be, deposited, and all bank accounts used for the purpose of repaying debt from a previous election; and

(5) other information as required by the Board.

(b) The candidate shall notify the Board of any material change, including any new information, or any change to any required information, concerning any political committee, bank account, merchant or payment processor account, candidate or treasurer employment, address, telephone number, or e-mail address, in the filer registration form in such manner as may be provided by the Board. The candidate shall notify the Board of any such changes no later than the next deadline for filing a disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change; provided, however, that if the candidate has extinguished all outstanding liabilities resulting from the election to which the filer registration relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the filer registration information after the date the candidate's final audit report is issued, except as provided in Rule 4-03(b).

**(c) Small campaign registration.** If neither the expected total cumulative receipts nor the expected total cumulative expenditures of a candidate, including expenditures made with the candidate's personal funds, exceeds an amount equal to the amount applicable to qualify for the exception provided in section 14-124(4) of the State Election Law, the candidate may, instead of submitting a filer registration form, submit a small campaign registration form, which must contain such information as may be required by the Board. The small campaign registration form must also include an affirmation stating that neither the total cumulative receipts nor the total cumulative expenditures of the candidate, including expenditures made with the candidate's personal funds, will exceed the amount applicable to qualify for the exception provided in section 14-124(4) of the State Election Law, and that if such amount is exceeded, the candidate will submit a filer registration form and all subsequent required disclosure statements, beginning on or before the deadline to file the next disclosure statement.

**(d) Applicable requirements.** Because the requirements of the Act and these Rules apply to financial transactions that take place before a participant or limited participant joins the Program, the Board advises candidates to comply with all applicable requirements set forth in the Act and these Rules, in anticipation of joining the Program.

**(e) Construction.** The submission of a filer registration form, or an amendment thereto, shall not be construed as a statement of intent to become a candidate, to run for any particular office, or to join the Program.

## Chapter 2 Candidate Requirements

### Rule 2-01 Certification.

**(a) Contents.** The candidate shall specify in the certification whether he or she is joining the Program as a participant pursuant to §3-703 of the Code or as a limited participant pursuant to §3-718 of the Code. The certification shall include all filer registration information required by Rule 1-11 and such other information as required by the Board, including all information necessary to receive payment by electronic funds transfer. In the certification, the participant or limited participant shall designate a principal committee. A candidate filing the certification as a limited participant shall affirm that he or she has a sufficient amount of personal funds to fund his or her own campaign. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

**(b) Legal effect.** The participant shall comply fully with Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the participant: (1) meets all the requirements of law to have his or her name on the ballot in the election; or (2) meets the Act's threshold for eligibility for public funds; or (3) accepts public funds; or (4) is otherwise not eligible to receive public funds in the election. The limited participant shall comply fully with the Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the limited participant meets all the requirements of law to have his or her name on the ballot in the election. A candidate who does not file a timely certification or who rescinds his or her certification in a timely manner shall be deemed to be a non-participant pursuant to §3-719 of the Code. The certification applies to all elections for an office covered by the Act that are held in the same calendar year or to a special election to fill a vacancy in an office covered by the Act.

**(c) Signatures.** The certification shall contain any signatures and notarizations as may be required by the Board; provided, however, that to the extent the Board permits a candidate to submit a certification in a non-electronic format, such certification will only be accepted by the Board if it contains an original notarized signature from both the candidate and the principal committee treasurer.

**(d) Amendments.** The participant or limited participant shall notify the Board of any material change in the information submitted pursuant to this rule, including, but not limited to any new, or any change to any required information concerning any political committee, bank account, unique merchant account, candidate or treasurer employment, address, telephone number, or e-mail address, included in the filer registration information required by Rule 1-11, in such manner as may be provided by the Board and no later than the next deadline for filing a disclosure statement or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change, provided, however, that if the participant or limited participant has extinguished all outstanding liabilities resulting from the election to which the certification relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the information required by Rule 1-11 after issuance of the candidate's final audit report, except as provided in Rule 4-03(b). If, based upon a reasonable belief that there has been a material change in the information submitted, the Board requests an amendment, the participant or limited participant shall submit promptly any amendment necessary in such manner as may be provided by the Board. Notification of any change to the candidate's or treasurer's information included in the certification must be made to the Board for six (6) years after the date of the last election to which the certification relates.

**(e) Petition for extraordinary circumstances.**

(1) Pursuant to §3-703(1)(c) of the Code, a certification may be accepted no later than the seventh day after the occurrence of an extraordinary circumstance in an election, if: (i) prior to, or together with, the certification, a written petition is submitted to the Board, sworn to or affirmed by a candidate in such election seeking to join the Program as a participant or limited participant, which sets forth the facts alleged to present an extraordinary circumstance; and (ii) following review of the petition, the Board declares that an extraordinary circumstance has occurred in the election which permits or permitted the acceptance of additional certifications, as provided in §3-703(1)(c). The Board shall provide written notice to each participant and limited participant in an election of its declaration of an extraordinary circumstance in the

election, which shall include the names of any additional candidates who have filed certifications in a timely manner in light of the extraordinary circumstance.

(2) Nothing in this rule shall be construed to: (i) require the Board to make a declaration of an extraordinary circumstance within seven days of its occurrence; or (ii) extend the deadline for joining the Program, in the event the Board does not declare that an extraordinary circumstance has occurred until more than seven days after its occurrence; or (iii) prohibit the acceptance of a certification filed by a candidate in an election within seven days after the occurrence of an extraordinary circumstance in that election, if the candidate did not file a petition under subparagraph (1)(i), provided that another candidate in such election has filed such a petition and the Board makes the declaration under subparagraph (1)(ii).

(3) An "extraordinary circumstance" includes: (i) the death of a candidate in an election, (ii) the resignation or removal of the person holding the office sought, and (iii) the submission to the Board of a written declaration, sworn to or affirmed by the holder of the office sought, terminating his or her campaign for reelection (which may be submitted together with a petition under subparagraph (1)(i)).

**(f) Rescission.** A participant or limited participant may rescind his or her certification on or before the ninth Monday preceding the primary election or prior to the receipt of public funds, whichever occurs first, by filing a certification rescission form.

**Rule 2-02 Breach of Certification.**

The Board considers each of the following activities to be a fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification:

(a) submission of a disclosure statement which the participant knew or should have known includes substantial fraudulent matchable contribution claims;

(b) use of public funds to make or reimburse substantial campaign expenditures which the participant knew or should have known were fraudulent;

(c) cooperation in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a participant's or limited participant's nomination or election, which is purported to be paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the participant or limited participant;

(d) use of a political committee or other entity over which a participant or limited participant exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the participant's or limited participant's nomination or election; and

(e) submission of substantial information which the participant or limited participant knew or should have known was false, or the submission of substantial documentation which the participant or limited participant knew or should have known was fabricated or falsified, which would avoid a finding of violation or public funds repayment determination.

In the event of a fundamental breach, the participant will be deemed by the Board to be ineligible for public funds and to have forfeited all public funds previously received for the elections covered by the certification, and the participant or limited participant will be subject to such civil and criminal sanctions as are applicable under §3-711 of the Code and other applicable law. This rule is not intended to be an enumeration of all circumstances that may constitute a fundamental breach of obligations, as may be determined by the Board.

**Rules 2-03 to 2-05 Omitted.**

**Rule 2-06 Bank Accounts.**

**(a) Deposit of receipts.** All contributions, loans, and other receipts shall be deposited into the account(s) listed on the candidate's filer registration and/or certification and in disclosure statements filed with the Board. Candidates opening accounts shall maintain at least one account with check writing privileges.

**(b) Separate accounts for different elections.** Receipts accepted for one election shall not be commingled in any account with receipts accepted for any other election, except that receipts for a primary and general election for the same office in the same calendar year may be deposited in the same account. Notwithstanding the foregoing, a candidate seeking election both to an office subject to the Act and to a federal office may maintain a separate allocation account for shared expenses in accordance with Advisory Opinion No. 1996-2 (July 18, 1996).

**(c) Runoff primary and runoff special elections.** A candidate may accept contributions for an anticipated runoff primary or anticipated runoff special election pursuant to Rule 1-04(q).

(1) (i) If a candidate accepts receipts for a runoff election, they shall be deposited into an account from which no disbursements, withdrawals, or transfers are made prior to the day of the preceding primary or special election, as the case may be, except that such contributions may be returned to contributors until the candidate first receives public funds for the runoff election.

(ii) Receipts accepted for a runoff primary shall not be (i) commingled in any account with any receipts accepted for any other election; or (ii) used for a primary or general election held in the year that the runoff primary is held or anticipated.

(iii) Receipts accepted for a runoff special election shall not be commingled in any account with any receipts accepted for any other election or used for any other election until the runoff special election is actually held; provided, however, that funds may be transferred from a special election account to a runoff special election account after the special election so that the funds transferred may be spent in the runoff special election. Receipts accepted for an anticipated runoff special election that is not held may not be spent or otherwise transferred until the earlier of (A) the first January 12 after the date of the special election for which the runoff special election was anticipated or (B) the date upon which all the candidate's liabilities from the special election have been extinguished.

(2) Notwithstanding any provision of subdivision (b) or paragraph (c)(1) to the contrary, funds may be exchanged between an account maintained for a primary and/or the general election and an account maintained for a runoff primary for the following reasons only: (i) transfers from a primary and/or general election account to a runoff primary account made after the primary election so that the funds transferred may be spent in the runoff primary; and (ii) transfers from a runoff primary account to a primary and/or general election account made after the runoff primary is held so that the funds transferred may be spent in the general election.

**(d) Special elections.** Receipts accepted for a special election shall not be commingled in any account with any receipts accepted for any other election, except that receipts accepted for a special election may be deposited into an account established for a runoff special election pursuant to Rule 1-04(q) in accordance with paragraph (c) above.

**(e) Personal and business funds.** The personal or business funds of a candidate, his or her agent, or any other person or entity may not be commingled with campaign funds. This rule does not restrict the deposit of contributions or loans into an account maintained by an authorized committee.

**(f) Court-ordered rerun elections.** Public funds received for a court-ordered rerun election shall not be commingled in any account with any other funds.

**(g) Segregated Bank Accounts for Rule 5-01(n) Disbursements.** Contributions received pursuant to Rule 5-01(n)(2) shall be deposited into a segregated bank account established pursuant to such Rule.

**Rule 2-07 Disqualification from Ballot.**

**(a) Public funds eligibility.** To be eligible for public funds, a participant must qualify to be on the ballot, and be opposed on the ballot, or, for the optional early public funds payment, certify that he or she intends to meet all the requirements of law to have his or her name on the ballot for the primary or general election.

**(b) Notice of disqualification.** If a participant or the participant's only remaining opponent in an election is disqualified from the ballot by the New York City Board of Elections or a court of competent jurisdiction, the participant shall immediately inform the Board, by a hand-delivered memorandum, facsimile transmission, telegram, or other method of equivalent speed. If the disqualification by a court of competent jurisdiction was on the grounds that fraudulent acts were committed in order to obtain a place on the ballot, the notice shall so state.

**(c) Remedies for disqualification.** The participant shall notify the Board immediately, in writing, if the disqualified candidate is seeking to appeal or otherwise remedy a disqualification. This notice shall indicate whether a judicial appeal is being taken as of right or by permission and the specific nature of any other judicial remedy sought.

**(d) Disqualification reversed.** The participant shall immediately inform the Board, in writing, if the disqualification of the participant or the opponent is reversed by a court of competent jurisdiction.

**Rule 2-08 Write-In Candidates.**

**(a) Notice.** Any candidate who is seeking nomination or election to a covered office as a write-in candidate must promptly notify the Board in writing.

**(b) Disclosure obligations.** Any candidate who is seeking nomination or election as a write-in candidate must file all disclosure statements for the election as required by Rule 3-02.

**(c) Ineligibility for public funds.** A participant who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election is ineligible to receive public funds. A participant who is on the ballot for a covered election and who is opposed in such election solely by one or more candidates seeking nomination or election exclusively as write-in candidates and who are not on the ballot is ineligible to receive public funds.

**(d) Inclusion in Voter Guide.** A candidate who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election shall not be included in the voter guide for that election.

**Rule 2-09 Terminating a Candidacy.**

**(a) No "Opting-Out."** A candidate may discontinue filing disclosure statements after filing a verified statement that his or her candidacy is terminated in accordance with subsections (b) or (c) of this rule, or if the Board has deemed the candidacy terminated pursuant to subsection (d) of this rule. Terminating a candidacy does not relieve the candidate of other Program obligations, such as maintaining records required by these Rules, submitting documentation or information in response to requests by the Board, and paying penalties for violations of the requirements of the Act and these Rules.

**(b) "Off the ballot" termination.**

(1) A participant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (i) is not on the ballot for that election; (ii) is not seeking nomination or election as a write-in candidate; (iii) has not received public funds; and (iv) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to Rule 5-02(b). The

verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(2) A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate: (i) is not on the ballot for that election; and (ii) is not seeking nomination or election as a write-in candidate. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

**(c) "Ceased campaigning" termination.** A participant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (1) has ceased all campaign activity for that election; (2) has not received public funds; and (3) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to Rule 5-02(b). A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate has ceased all campaign activity for that election. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

**(d) Termination by Board.** The Board may send a notice to a participant that his or her candidacy has been deemed terminated if the participant: (1) is not on the ballot for that election; (2) has not received public funds; and (3) has not submitted a petition for payment after final disqualification from the ballot, pursuant to Rule 5-02(b). The Board may send a notice to a limited participant or non-participant that his or her candidacy has been deemed terminated if the candidate is not on the ballot for that election. If the candidate is continuing to seek nomination or election as a write-in candidate, or, in the case of a participant, intends to submit a petition for public funds pursuant to Rule 5-02(b), the candidate must so notify the Board within 10 days after receiving the notice of termination, in which case the Board will reverse the termination and the candidate must continue to submit disclosure statements. In any event, the termination will be reversed and disclosure obligations resumed if the candidate remains a candidate in the election.

**Rule 2-10 Limited Participation.**

**(a) Generally**. A limited participant shall not be eligible to receive public funds pursuant to §3-705 of the Code. A limited participant is not subject to the contribution limits pursuant to §3-703(f) of the Code; provided, however, that a limited participant shall not accept, at any time before or after the filing of a certification with the Board, either directly, indirectly, or by transfer, any monetary or in-kind contribution, or any loan, guarantee, or other security for such loan made in connection with such candidate's nomination for election or election, except for monetary contributions from the candidate to his or her principal committee made out of the candidate's personal funds or property, in-kind contributions made by the candidate to his or her principal committee, and advances received. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

**(b) Program compliance**. Except as otherwise specified in these Rules, the limited participant shall comply fully with Program requirements, including the following:

**(1) Campaign finance disclosure statements**. The limited participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

**(2) Accounting and auditing**. The limited participant shall be subject to all Program accounting and auditing requirements as set forth in Chapter 4 of these Rules.

**(3) Expenditure limitations**. The limited participant shall not make expenditures which in the aggregate exceed the expenditure limitations set forth in the Act.

**(c) Penalties**. The limited participant shall be subject to penalties pursuant to §§ 3-710.5 and 3-711 of the Code for violations of the Act or these Rules.

**Rule 2-11 Non-Participation.**

**(a) Generally**. A candidate who does not file a certification pursuant to either §3-703 or §3-718 of the Code, or who rescinds his or her certification prior to the rescission deadline by filing a certification rescission form, shall be deemed to be a non-participant pursuant to §3-719 of the Code. A non-participant shall not be eligible to receive public funds pursuant to §3-705 of the Code and shall not be subject to the expenditure limitations provided in §3-706 of the Code. A non-participant may accept contributions from political committees notwithstanding the restrictions on such contributions contained in §3-703(k) of the Code.

**(b) Compliance**. Except as otherwise specified in these Rules, the non-participant shall comply fully with the requirements of the Act:

**(1) Campaign finance disclosure statements**. The non-participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

**(2) Accounting and auditing**. The non-participant shall be subject to all accounting and auditing requirements as set forth in Chapter 4 of these Rules.

**(3) Corporate, limited liability company, and partnership contributions**. The non-participant shall not accept, either directly or indirectly, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, or partnership, including a limited liability partnership, other than a corporation, limited liability company, or partnership that is a political committee as defined in the Act. This prohibition does not apply to loans made in the regular course of business, regardless what form of business entity the lender assumes; but does prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership.

**(4) Contribution limitations**. The non-participant shall not accept, either directly, indirectly, or by transfer, any contribution or contributions from any one individual, political committee, labor organization or other entity for all covered elections held in the same calendar year in which he or she is a candidate which in the aggregate exceed the contribution limitations set forth in §3-703(1)(f) and (1-a) of the Code; provided, however, that a non-participant may make contributions to his or her own authorized committees with his or her personal funds or property and may make advances or loans with his or her personal funds or property, without regard to any contribution limitations provided in §3-703(1)(f) or (h) or (1-a) of the Code. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

**(c) Penalties.** A non-participant shall be subject to penalties pursuant to §§ 3-710.5 and 3-711 of the Code for violations of the Act of these Rules.

**Rule 2-12 Training.**

**(a) Mandatory pre-election training.** Participating candidates, their campaign managers, treasurers or persons with significant managerial control over a campaign shall be required to attend a training provided by the Board concerning compliance with the requirements of the Program and use of the Program software. Such training shall be completed in accordance with a schedule to be published by the Board. For purposes of determining compliance with this rule, "persons with significant managerial control" shall not include campaign consultants, and the individual attending the training must be listed on the candidate's filer registration.

**(b) Optional Post-Election Training.** In order to prepare campaigns to respond effectively to issues raised in the draft audit report, the Act encourages candidates and their staffs to attend post-election audit trainings. Pursuant to § 3-710(1) of the Code, where the candidate, the campaign manager, or the treasurer has attended a post-election audit training provided by the Board, the Board will issue final audit reports within fourteen months after

the deadline for submission of the final disclosure report for the covered election, in the case of city council and borough-wide races, and within sixteen months after the deadline for submission of the final disclosure report for the covered election in the case of citywide races. The deadlines for attendance at such trainings shall be:

(1) For city council and borough-wide races, the earlier of twenty days following issuance of the draft audit report or eight months after the deadline for submission of the final disclosure report for the covered election;

(2) For citywide races, the earlier of twenty days following issuance of the draft audit report or ten months after the deadline for submission of the final disclosure report for the covered election.

**Rule 2-13 Identification of communications**

(a) When a candidate makes expenditures for any literature, advertisement, or other communication, the communication must include the words "paid for by" followed by the first and last name of the candidate or the name of the candidate's authorized committee, or, if the candidate has more than one authorized committee, the candidate's principal committee; provided that, if the name of the committee does not include the first and/or last name of the candidate, then the words "paid for by" must be followed by the first and last name of the candidate, either instead of or in addition to the name of the committee.

(b) When a candidate authorizes any individual or entity, other than the candidate, to pay for any literature, advertisement, or other communication in support of or in opposition to any candidate in any covered election, the communication must include the words "authorized by" followed by the first and last name of the candidate or the name of the candidate's authorized committee, or, if the candidate has more than one authorized committee, the candidate's principal committee; provided that, if the name of the committee does not include the first and/or last name of the candidate, then the words "authorized by" must be followed by the first and last name of the candidate, either instead of or in addition to the name of the committee.

(c) The identification required by subdivision a or b of this section must be in the following form:

(1) For printed material, an internet advertisement, or a website, the identification must be written in a font of conspicuous size and style and contained in a box within the borders of the communication.

(2) For a communication broadcast on radio, the identification must be clearly spoken at the beginning or end of the communication.

(3) For a communication broadcast by television, satellite, cable, or similar medium, the identification must be clearly spoken at the beginning or end of the communication and, simultaneous with the spoken disclosure, written in a font of conspicuous size and style contained in a box within the borders of the communication.

(4) For a telephone communication, the identification must be clearly spoken at the beginning or end of the communication. If the identification is spoken at the end of the communication, then the name of the candidate must also be clearly spoken at the beginning of the call.

(d) For communications primarily in a language other than English, all required written or spoken identification required by this rule must be in such language.

(e) This requirement may be modified by the Board concerning items upon which identification would be impractical.

## Chapter 3 Campaign Finance Disclosure Statements

**Rule 3-01 Explanation.**

Disclosure statements serve several different purposes: (a) they provide comprehensive disclosure of candidates' campaign finances for prompt examination by the voting public and permit integration into the Board's computerized Campaign Finance Information System for purposes of additional disclosure, monitoring of campaign finances, and analysis mandated by the Act; (b) they enable the Board to monitor candidate compliance with Program requirements; and (c) they enable participants to make claims for public funds.

**Rule 3-02 Filing Dates.**

**(a) First disclosure statement.**

(1) A candidate's first disclosure statement shall be the first disclosure statement during the applicable election cycle covering the date on which the candidate first raises or spends funds in furtherance of his or her campaign for election for an office covered by the Act unless otherwise provided by New York Election Law.

(2) In a special election held to fill a vacancy, a candidate's first disclosure statement is due 32 days before the election unless otherwise provided by New York Election Law. As provided pursuant to New York Election Law, if the first disclosure statement for a special election is otherwise due within a period of five days of a required semi-annual disclosure statement, the candidate may file a single combined statement on the date on which the latter of the two separate statements is required to be filed.

**(b) Semi-annual disclosure statements.**

(1) Semi-annual disclosure statements are due on January 15 and July 15 in each year of the election cycle and on January 15 in the year after the election.

(2) Notwithstanding paragraph (1) above, (i) for candidates in a special election who continue to raise or spend funds for the following primary or general election, the 27 day post-election disclosure statement described in subdivision (d) shall be the last statement required for the special election; provided, however, that in the event that there is a runoff special election, the semi-annual disclosure statement described in subdivision (d) shall be the last disclosure statement required for all candidates in the special election who continue to raise or spend funds for the following primary or general election, regardless whether they were candidates in the runoff special election; and (ii) for candidates in a special election who do not continue to raise or spend funds for the following primary or general election, the first semi-annual disclosure statement due following the date of the special election shall be the last statement required for the special election, provided, however, that if the first semi-annual disclosure statement following the date of the special election is due less than 30 days after the deadline for filing the 27 day post-election disclosure statement, then the second semi-annual disclosure statement after the date of the special election shall be the last statement required for the special election.

(3) Following submission of the last disclosure statement for an election, the candidate remains, in any case, with respect to the previous election, subject to all other Program requirements and shall submit such information and proof of compliance as may be requested by the Board, including copies of State forms, bank records, and records demonstrating payment of outstanding liabilities.

**(c) Pre-election disclosure statements:** Pre-election disclosure statements are due 32 and 11 days before the election and, at the Board's discretion, on or by March 15 and May 15 in the year of the election. In a runoff election, the only pre-election statement is due 4 days before the election.

**(d) Post-election disclosure statements:** Post-election disclosure statements are due 27 days after the election, except in the case of a primary or runoff primary election, the disclosure statement is due 10 days after the election, and in the case of a runoff special election, disclosure statements are due both 27 days after the election and

on the first January 15 or July 15 following the date of the runoff special election. Candidates in the special election must file both post-runoff special election disclosure statements regardless whether they were on the ballot in the runoff special election.

**(e) Daily disclosures during two weeks preceding the election.** If a candidate, during the 14 days preceding an election, accepts aggregate contributions and/or loans from a single source in excess of $1,000 or makes aggregate expenditures to a single vendor in excess of $20,000, the candidate shall report, in a disclosure to the Board, all contributions and loans accepted from such source or expenditures made to such vendor during that 14-day period. The first such disclosure must be received by the Board within 24 hours after the contribution or loan that causes the total to exceed $1,000 is accepted or the expenditure that causes the total to exceed $20,000 is made. Each subsequent disclosure must be received by the Board within 24 hours after the contribution or loan is accepted or expenditure is made. Information reported in these disclosures must also be included in the candidate's next post-election disclosure statement.

**(f) Exceptions.**

**(1) Not in primary election.** A candidate need not submit the two pre-primary and the 10 day post-primary election disclosure statements if the candidate is not a candidate in a primary election unless the candidate is a participant or limited participant claiming that expenditures are subject to a primary election spending limit, pursuant to Rule 1-08(c)(2)(ii) or (iii). If the candidate is not a candidate in the primary, daily disclosures during the two weeks preceding the primary need not be submitted.

**(2) Not in general election.** A candidate need not submit the two pre-general election and 27 day post-general election disclosure statements or daily disclosures during the two weeks preceding the general election, if the candidate is not a candidate in the general election.

**(3) Deferred filing.** A candidate need not submit a full disclosure statement, if the candidate has accepted less than $2,000 in contributions and loans since the candidate last submitted a disclosure statement and has not made expenditures exceeding forty-five percent of the applicable expenditure limit. This paragraph does not apply to semi-annual disclosure statements. On each disclosure statement filing date for which an exception is not provided pursuant to paragraph (1) or (2), the treasurer shall verify, in a manner provided by the Board, that a full disclosure statement is not required to be submitted pursuant to this paragraph.

**(4) Small campaigns.** A candidate who has filed a small campaign registration form pursuant to Rule 1-11(c) need not submit disclosure statements if neither the total cumulative receipts nor the total cumulative expenditures of the candidate exceeds an amount equal to the amount necessary to qualify for the exception provided in section 14-124(4) of the State Election Law. If a candidate who has filed a small campaign registration form raises or spends an amount exceeding the amount necessary to qualify for the exception provided in section 14-124(4) of the State Election Law, the candidate must submit all subsequent required disclosure statements, beginning on or before the deadline to file the next disclosure statement. The first such statement filed must include all prior financial activity beginning at the inception of the campaign.

**(5) Other political committees.** Political committees that are not involved in a covered election shall not file disclosure statements, or State or Federal forms, except as requested by the Board. Notwithstanding the foregoing, the financial records of any committees of a candidate are subject to Board review for purposes of monitoring the candidate's compliance with the requirements of the Act and these Rules and shall be made available to the Board upon its request.

**(6) Next disclosure statement.** Information which would otherwise be included in a disclosure statement for which an exception is provided pursuant to paragraph (1), (2), (3), or (4) shall be included in the next disclosure statement required to be submitted to the Board.

**(7) Board requests.** Notwithstanding any deferral or exception provided by this subdivision, candidates must submit such disclosure statements or other documents as may be requested by the Board.

**(8) Terminated candidacy.** A candidate need not submit any disclosure statements if his or her candidacy has been terminated, as described in Rule 2-09(b), (c), and (d), and the termination is not reversed pursuant to Rule 2-09(d).

**(9) Terminated committee.** If a committee terminates activities (by complete payment of all liabilities and expenditure of all funds in its possession) before the last disclosure statement for an election is due, the committee shall file its last disclosure statement for the election upon its termination, together with a cover letter stating that it has terminated its activities.

**(g) Omitted.**

**(h) Weekends and holidays.** If a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the submission of the disclosure statement by 5 p.m. on the next business day shall be considered timely.

**Rule 3-03 Contents.**

**(a) Reporting period.**

**(1) Generally.** The reporting period for each disclosure statement shall: (i) except for the first disclosure statement for an election, begin on the third day before the deadline for the submission of the candidate's preceding disclosure statement; and (ii) conclude on and include the fourth day before the deadline for the submission of that disclosure statement (except as otherwise provided in Rule 3-02(f)(9)).

**(2) First disclosure statement.** The reporting period for a candidate's first disclosure statement for an election shall begin on the day the candidate first raises or spends funds in furtherance of his or her election for an office covered by the Act. Submissions required by Rule 3-02(a)(2) shall cover the reporting periods of the missing disclosure.

**(3) Special elections.** In the case of a special election the reporting period for the first disclosure statement shall conclude on the thirty-sixth day before the election, unless otherwise provided pursuant to New York Election Law.

**(b) Summary information.** Each disclosure statement shall include the following information about the committee involved in the election: (1) the cash balance at the beginning and end of the reporting period; (2) total itemized and unitemized contributions, loans, and other receipts accepted during the reporting period; and (3) total itemized and unitemized expenditures made during the reporting period. A separate disclosure statement shall be submitted for each committee involved in the election. All data reported in disclosure statements, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

**(c) Contributions and other receipts.**

**(1) Basic contents.** Each disclosure statement shall include the following information about receipts accepted by the committee during the reporting period: (i) for each contribution accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address; (ii) the date of receipt and amount of each contribution accepted or other receipt; (iii) whether a contribution was made in cash; (iv) the number of any check or money order used to make the contribution; (v) the date and amount of each contribution returned to a contributor; (vi) each previously reported contribution for which the check was returned unpaid; (vii) in the case of contributions claimed as matchable and/or in excess of the amounts set forth in §3-703(1-a) of the Code, whether the contributor has business dealings with the City as defined in the Act; and (viii) such other information as the Board may require.

**(2) Transfers.** The candidate shall report contemporaneously the aggregate amount of each transfer and each contribution to which it is attributed. In addition, the participant shall report, in the case of a transfer from a committee not otherwise involved in the covered election, other than another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the board in a

timely manner: (i) all expenditures made by the transferor committee during the election cycle of the covered election; and (ii) all expenditures made by the transferor committee prior to the covered election cycle in connection with raising such contributions. Such reporting of expenditures shall be made in the same disclosure statement in which the transfer is reported, except that expenditures incurred during the covered election cycle for purposes other than raising or administering the transferred contributions need not be reported in disclosure statements to be filed with the Board but rather may be disclosed to the Board by providing copies of the transferor committee's New York City or New York State Boards of Elections or Federal disclosure statements. Further, the candidate shall submit contemporaneously the records required to be maintained pursuant to Rule 4-01(b)(4).

**(3) Advances and reimbursements.** The candidate shall report in each disclosure statement: (i) the name and address of each person, including the candidate, who has made purchases on behalf of the committee during the reporting period with the expectation of being reimbursed by the committee; (ii) the date and amount of each such purchase; (iii) the name and address of the person or entity from whom the purchase has been made; (iv) the form of the purchase; (v) the purpose of the purchase; (vi) the name of each person, including the candidate, whom the committee reimbursed for purchases made on behalf of the committee during the reporting period, each purchase being reimbursed, and the amount and form of each reimbursement; and (vii) such other information as the Board may require.

**(4) Contributions totaling $99 or less from a single source.**

(i) Contributions totaling $99 or less from a single source need not be separately itemized in a disclosure statement. Contributions that are not itemized are not matchable.

(ii) Candidates shall include the total amount of unitemized contributions delivered or solicited by an intermediary when reporting the total amount of all contributions the intermediary has delivered or solicited.

**(5) Unitemized contributions totaling more than $99 from a single source.** If a candidate has accepted unitemized contributions totaling more than $99 from a single source, the contribution causing the total to exceed $99 shall be itemized and the total of previously unitemized contributions shall be reported in the same disclosure statement. All subsequent contributions from that single source must be itemized.

**(6) Employment information.**

(i) The candidate need not report the occupation, employer, or business address of any contributor making contributions totaling $99 or less.

(ii) Notwithstanding subdivision (i), the participant shall report the occupation, employer, and business address of any contributor making contributions totaling $99 or less if such contributor is an employee of the candidate or an employee of the spouse or domestic partner of such candidate or an employee of a business entity in which such candidate, spouse or domestic partner has an ownership interest of ten percent or more or in which such candidate, spouse or domestic partner holds a management position, such as the position of officer, director or trustee.

(iii) Matchable contribution claims on contributions totaling more than $99 shall be invalid unless the participant has reported the contributor’s occupation, employer, and business address. Matchable contribution claims on contributions totaling less than $99 shall be invalid unless the participant has reported the contributor’s occupation, employer, and business address when such information is required pursuant to subdivision (ii).

**(7) Intermediary requirements.**

(i) Exceptions**.** (A) The candidate need not report an intermediary for aggregate contributions of $500 or less collected from a contributor in connection with a party or other candidate-related event held at the residence of the person delivering the contribution, unless the expenses of such events at such residence for such candidate exceed $500 for an election. (B) The candidate need not report an intermediary for contributions collected at a campaign sponsored fundraising event paid for in whole or in part by the campaign. In the case of contributions collected at a non-campaign sponsored fundraising event where there are multiple hosts, the hosts shall designate one host who shall be reported by the candidate as the intermediary for all such contributions. For the purposes of this rule, "campaign sponsored fundraising event" shall mean an event organized by a candidate's authorized committee to raise funds for such candidate.

(ii) Contributions delivered to fundraising agents**.** The candidate shall report any intermediary delivering a contribution to a fundraising agent and shall not report the fundraising agent as an intermediary in a disclosure statement. The candidate shall also report each fundraising agent not reported in a previous disclosure statement for the election.

(iii) Contributions delivered by an intermediary's agent**.** The candidate shall report as the intermediary a person who solicits contribution(s) and directs his or her agent to deliver them to the candidate or fundraising agent. The candidate shall not report the agent as an intermediary.

**(8) Omitted.**

**(9) Affiliated contributors.** Affiliated contributors considered to be a "single source" under Rule 1-04(h) must be identified on a schedule provided by the Board.

**(10) Joint fundraising events.** The candidate shall report in a cover letter submitted with the disclosure statement a list of all contributions reported in that disclosure statement that were accepted at an event at which contributions were solicited or accepted both for elections subject to and not subject to the Act.

**(d) Loans.** Each disclosure statement shall include the following information about loans accepted or repaid by the committee during the reporting period: (1) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address; (2) the date and amount of each loan, guarantee, or other security for a loan accepted; (3) the date and amount of each loan payment made; (4) the amount of any portion of a loan which has been forgiven; and (5) such other information as the Board may require.

**(e) Expenditures.**

(1) Each disclosure statement shall include the following information about expenditures (disbursements and unpaid liabilities) made by the candidate during the reporting period: (i) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement; (ii) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred; (iii) the reason why any expenditure is exempt; and (iv) such other information as the Board may require.

(2) Expenditures of less than $50 need not be separately itemized in a disclosure statement. Public funds may not be used to pay for unitemized expenditures.

**(3) Subcontracted goods and services.** If the candidate makes an expenditure to a consultant or other person or entity who or which subcontracts for finished goods or services on behalf of the candidate, the disclosure statement shall include: (i) expenditures made by the candidate to the consultant or other person or entity during the reporting period; and (ii) if the cost of the subcontracted goods or services provided by a single person or entity exceeds $5,000 in a campaign, the name and address of that person or entity, the amount(s) expended to that person or entity for subcontracted goods or services, and the purpose(s) of those goods or services; provided that this disclosure shall be made in the manner provided by the Board, either beginning in the reporting period in which the candidate knows or has reason to believe that such cost first

exceeds $5,000 or in the first post-election disclosure statement for the election to which the expenditure relates.

**(4) Credit card and charge card purchases.** The candidate shall report the actual vendor and purchase price incurred for any goods purchased with a credit card or charge card, in the manner provided by the Board. Disbursements to credit card and charge card accounts shall not be itemized as such.

**(5) Contributions to political committees.** Political contributions to political committees that support or oppose candidates in New York City (except political committees of other candidates), including state party committees, that are made by a candidate with his or her personal funds and that, in the aggregate for any single political committee, exceed the contribution limit applicable to the offices of mayor, public advocate, and comptroller for contributors having business dealings with the city pursuant to section 3-703(1-a) of the Code, are presumed to be expenditures in furtherance of the candidate's campaign and contributions from the candidate to the candidate's campaign, and, as such, must be reported to the Board. The candidate may rebut this presumption by providing evidence indicating that the contributions were not in furtherance of the candidate's campaign. Such contributions are subject to all applicable expenditure and contribution limits, except that contributions made to committees registered with the New York State Board of Elections and/or the Federal Election Commission as independent expenditure committees are not subject to such limits. Candidates must create and maintain records of such contributions. Contributions made with a candidate's personal funds as provided in this paragraph shall not be the basis for a deduction from such candidate's public funds payment pursuant to Rule 5-01(n)(1).

**(f) Documentation.** Together with each disclosure statement, the candidate shall submit documentation to verify the accuracy of the data reported, including all bank records and deposit slips required to be maintained pursuant to Rules 4-01(b)(1) and 4-01(f)(1) not previously submitted. A disclosure statement may be rejected as an insufficient submission if not accompanied by such documentation.

**Rule 3-04 Claiming Matchable Contributions.**

**(a) Threshold; Back-up documentation.** A participant's disclosure statement shall indicate whether he or she has met the Act's threshold for eligibility for public funds. Participants shall submit with each disclosure statement a copy of the records required to be maintained pursuant to Rules 4-01(b)(2) and (3) for each matchable contribution claimed in the disclosure statement. A matchable contribution claim will be invalidated unless the records that are required to be maintained pursuant to Rules 4-01(b)(2) and (3) are submitted with the disclosure statement in which the contribution is reported. Matchable contribution claims determined by the Board to be invalid pursuant to the Act and these Rules shall not be counted toward a participant's threshold for eligibility for public financing. This rule applies to candidates seeking to preserve matchable contribution claims received prior to filing a certification with the Board pursuant to §3-703(12)(a) of the Code.

**(b) Matchable contributions.** The disclosure statement shall state the total amount of matchable contributions claimed in a reporting period and whether the participant seeks public funds for these matchable contributions. Contributions received in violation of any law, including but not limited to cash contributions from any one contributor greater than $100, are not matchable.

**(c) Returned contributions are not matchable.** A matchable contribution may not be claimed for any portion of a contribution that is returned to or not paid by the contributor. A participant must rescind claims for matchable contributions that are returned or not paid, in the manner provided by the Board, and the participant's public fund payments will be reduced by the matchable contribution amounts returned.

**(d) Loans and loans forgiven are not matchable.** Pursuant to §3-702(3) of the Code, a matchable contribution may not be claimed for a loan or a loan that is forgiven.

**Rule 3-05 Segregated Account Bank Statements, Contribution Cards, and Checks.**

Participants seeking to comply with the exception to Rule 5-01(n)(1) contained in paragraph (2) of that Rule must submit copies of segregated account bank statements, contribution cards, and checks to the Board in the manner and to the extent provided by the Rule.

**Rule 3-06 Forms for Disclosure Statements.**

Candidates shall submit disclosure statements in such form and manner as shall be provided by the Board and in accordance with Chapter 9 of these Rules.

**Rule 3-07 Insufficient Disclosure Statements.**

Disclosure statements that fail to comply substantially with disclosure requirements of the Act or these Rules will not be accepted by the Board. Amendments to or resubmissions of disclosure statements are prohibited unless expressly authorized or requested by the Board.

**Rule 3-08 Verification.**

The candidate or treasurer shall verify that the disclosure statement is true and complete to the best of his or her knowledge, information, and belief. The disclosure statement shall contain such signatures as may be required by the Board; provided, that to the extent a candidate is permitted to submit a disclosure statement in a non-electronic format pursuant to Chapter 9 of these Rules, such disclosure statement will only be accepted by the Board if it contains an original signature from the candidate or the treasurer.

**Rule 3-09 Supplemental Documents.**

The Board may, in its discretion, include in its public disclosure file any document submitted with a disclosure statement, or requested by the Board, including but not limited to copies of records required by Chapter 4, State form filings, and submissions made by candidates after an election cycle.

**Rule 3-10 Ballot Proposal Committees.**

A political committee making expenditures in support of or in opposition to a ballot proposal may voluntarily file disclosure statements on disclosure forms provided by the Board and in accordance with the schedule for making these filings at the Board of Elections. These filings may not be accepted unless the committee meets all disclosure requirements of Code §3-703(6) for expenditures, contributions, loans, and other receipts. The Board will enter the information it accepts into its public computer system. These filings shall be available for public inspection and copying at the offices of the Board. A voluntary submission pursuant to this rule is not subject to the audit process or the contribution and expenditure limits of the Program.

**Rule 3-11 Proof of Filing with the Conflicts of Interest Board; Payment of Penalties.**

**(a) Requirements.** In order to be eligible to receive public funds, a participant must comply with the requirements in § 12-110 of the Code, including payment of any penalties assessed by the conflicts of interest board. The Board may obtain confirmation of the participant's compliance from the conflicts of interest board. The failure of a participant to demonstrate such compliance by the deadline established by the conflicts of interest board may result in a delay of any payment by the Board of public funds the participant may otherwise be eligible to receive until the next scheduled payment date.

**(1) Due dates.** A participant may submit proof of compliance with the Board and such proof shall be considered timely submitted if it is submitted to the Board on or prior to the last business day of July in the year of the covered election, except as provided by paragraph (2).

**(2) Special election due dates.** In the case of a special election, if the deadline for filing financial disclosure reports with the conflicts of interest board pursuant to § 12-110(b)(2) of the Code is before the due

date for the first disclosure statement required to be filed with the Board pursuant to Rule 3-02(a)(2), the participant's compliance with the requirements in § 12-110 of the Code shall be considered timely demonstrated to the Board if the Board receives confirmation of the participant's compliance on or prior to the disclosure statement due date. If the deadline for filing financial disclosure reports with the conflicts of interest board pursuant to § 12-110(b)(2) of the Code is on or after the due date for the first disclosure statement required to be filed with the Board pursuant to Rule 3-02(a)(2), the participant's compliance with the requirements in § 12-110 of the Code shall be considered timely demonstrated to the Board if the Board receives confirmation of the participant's compliance no later than one business day after the last day for filing disclosure reports with the conflicts of interest board.

**(b) Date submitted.** Rule 1-09 shall be applicable for the purpose of determining the date of receipt by the Board of documents submitted pursuant to this Rule.

## Chapter 4 Accounting and Auditing

### Rule 4-01 Records to be Kept.

**(a) Generally.** Candidates must keep records that enable the Board to verify the accuracy of disclosure statements, substantiate that expenditures were made in furtherance of the campaign, were qualified expenditures, or were permissible post-election expenditures, and confirm any matchable contributions claimed. Candidates must maintain and may be required to produce originals and copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in their disclosure statements. Candidates shall maintain clear and accurate records sufficient to show an audit trail that demonstrates compliance with the Act and these Rules. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board. Nothing in this chapter shall be construed to modify the requirements of New York Election Law §14-118. The records maintained for each campaign finance transaction, whether maintained on paper and/or electronically, shall be accurate and, if necessary, modified promptly to ensure continuing accuracy. Records that are contemporaneous and complete, as described in this Rule, including records using forms supplied by the Board, shall be presumed to be sufficient to demonstrate financial activity. If at any time a candidate becomes aware that a record of an expenditure, whether maintained on paper or electronically or both, is missing or incomplete, the candidate may create a new record or modify an existing record, provided that the record so created or modified is clearly identified by the candidate as such, and provided, further, that if the missing or incomplete record is an invoice from a vendor, the candidate must in the first instance attempt to get a duplicate or more complete record directly from such vendor prior to creating a new record or modifying an existing record. In addition, the candidate must create a further record, in the form of a signed, dated, and notarized statement by the candidate and/or treasurer and/or other campaign representative having first-hand knowledge of the matter, explaining the reasons for and the circumstances surrounding the creation or modification of a record. The Board reserves the right not to accept a noncontemporaneous record created or modified pursuant to this paragraph if, after review of the timing and other circumstances, it determines that the record is not sufficient to document the actual transaction.

**(b) Receipts.**

**(1) Deposit slips.** Candidates shall maintain copies of all deposit slips. The deposit slips shall be grouped together with the monetary instruments representing the receipts deposited into the bank or other depository accounts held by the candidate for an election, unless the candidate maintains other records that show, in a manner that similarly facilitates expeditious review, when these receipts were deposited. Where the bank or depository does not provide itemized deposit slips, candidates shall make a contemporaneous written record of each deposit. Such written record shall indicate the date of the deposit, the source and amount of each item deposited, whether each item deposited was a check, a money order, or cash, the name and title of the individual who made the deposit, and the total amount deposited.

**(2) Photocopies of checks and other monetary instruments.** Candidates shall maintain a photocopy of each check or other monetary instrument representing a contribution or other monetary receipt. In order for a contribution in the form of a check signed by an authorized agent of the contributor to be matchable, participants must maintain:

(i) a copy of the check upon which is printed the name of the actual contributor; and
(ii) a document, signed by the contributor, which indicates:
  (A) that the person signing the check is authorized to do so;
  (B) the date and amount of the contribution; and
  (C) the principal committee's name.

**(3) Contribution records.**

(i) For each contribution received, all candidates shall maintain records demonstrating the source and details of the contribution as described herein. All records required to be maintained must be provided to the Board upon request.

(A) Cash contributions. For each contribution received from an individual contributor via cash, the record must be in the form of a contribution card.

(B) Money order contributions.

(1) For each contribution received via money order, the record must include a copy of the money order made out to the authorized committee.

(2) The candidate must also maintain a contribution card, if the contributor's name and residential address are not printed on the money order by the issuer.

(C) Check contributions.

(1) For each contribution received via check, the record must include a copy of the check made out to the authorized committee and signed by the contributor.

(2) For each contribution received from an individual contributor via check, the candidate must also maintain a contribution card, if the check used to make the contribution is not signed by the contributor.

(D) Credit card contributions.

(1) For each contribution received via credit card, including contributions received over the internet, the record must have been provided by the merchant or processor and must contain: the contributor's name, residential address, credit card account type, credit card account number, credit card expiration date, the amount of the contribution, and an indicator showing that the contribution was charged to the contributor's account and processed. In the case of credit card contributions made over the internet, the contributor must actively agree online to an affirmation statement, as required by subparagraph (ii)(A) of this paragraph, and the candidate must maintain a copy of all website content concerning the solicitation and processing of credit card contributions.

(2) The candidate must also maintain copies of the merchant account or payment processor agreement, all merchant account statements, credit card processing company statements and correspondence, transaction reports, or other records demonstrating that the credit card used to process the transaction is that of the individual contributor (including proof of approval by the credit card processor for each contribution and proof of real time address verification), the account's fee schedule, and the opening and closing dates of the account. Merchant account statements must be provided in such form as may be required by the Board.

(E) Text message contributions. For each contribution received via text message, the record must have been provided by the mobile fundraising vendor and must contain: the contributor's name, residential address, and phone number; the amount of the contribution; and the name, residential address, and phone number of the registered user of the specific mobile device used to initiate the contribution, to the extent that such information may be reasonably obtained under law. The candidate must also maintain the following records for each text message contribution received:

(1) copies of all relevant third-party vendor agreements between the candidate and mobile fundraising vendor, copies of records maintained by a mobile fundraising vendor listing contributors and amounts pledged and paid, receipts indicating fees paid by the candidate to a mobile fundraising vendor and fees deducted by such vendor, and similar records relating to the solicitation or receipt of text message contributions;

(2) copies of any content used by the candidate to solicit text message contributions; and

(3) copies of any templates or scripts used by a mobile fundraising vendor to communicate with a contributor in facilitating and processing a text message contribution.

(F) Segregated account documentation.

(1) Segregated account contribution cards. For each contribution from an individual contributor that the participant deposits into a segregated bank account pursuant to Rule 5-01(n)(2), the record must be in the form of a contribution card.

(2) Segregated account bank statements, contribution cards, and checks. Participants seeking to comply with the exception contained in Rule 5-01(n)(2) must submit segregated account contribution cards and copies of segregated account bank statements and checks to the Board in the manner and to the extent provided by Rule 5-01(n) with each disclosure statement filing.

(G) Intermediaries. For each contribution accepted from an intermediary, including any contributions delivered to a fundraising agent, or solicited by an intermediary where such solicitation is known to the candidate, the candidate must maintain a separate record in the form of an intermediary statement. The intermediary statement must contain: the intermediary's name, residential address, employer and business address; the names of the contributors; and the amounts contributed. This record must be signed by the intermediary, or if the intermediary is unable to sign his or her name, marked with an "X" by the intermediary and signed by a witness. Adjacent to the signature or mark, the intermediary must write the date on which he or she signed or marked the form.

(ii) Contribution cards.

(A) Contribution cards must contain the contributor's name and residential address, the amount of the contribution, the authorized committee's name, and the contributor's selection of an instrument code corresponding to the instrument used to make the contribution. Credit card contribution cards must also contain the credit card account type, account number, and expiration date.

(B) Contribution cards must be signed by the contributor or, if the contributor is unable to sign his or her name, marked with an "X" by the contributor and signed by a witness to the contribution. Adjacent to the signature or mark, the contributor must write the date on which he or she signed or marked the contribution card. After a contribution has been signed, it may not be corrected, modified, or altered by anyone other than the contributor. The Board shall provide a template of all contribution cards required to be maintained pursuant to this section.

(C) A contribution card that contains any additional information and signatures required by Rule 5-01(n)(2) shall also satisfy the requirements of that Rule.

(iii) Affirmation statements.

(A) Unless otherwise specified herein, above the line for the contributor's signature, contribution cards must state: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that I was not, nor, to my knowledge, was anyone else, reimbursed in any manner for this contribution; that this contribution is not being made as a loan; and that this contribution is being made from my personal funds or my personal account, which has no corporate or business affiliation."

(B) For text message contributions, the candidate must maintain records demonstrating that the contributor has certified via text message the following statement: "I certify I am the registered user of this phone and will pay the amount specified from my personal funds."

(C) Segregated account contribution cards must state, above the line for the contributor's signature: "I understand that this entire contribution will be used only (i) to pay expenses or debt from a previous election; (ii) by the candidate for an election other than the election for which this contribution is made; or (iii) to support candidates other than the candidate to whose campaign this contribution is made, political party committees, or political clubs. I further understand that this contribution will not be matched with public funds. I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that I was not, nor, to my knowledge, was anyone else, reimbursed in any manner for this contribution; that this contribution is not being made as a loan; and that this contribution is being made from my personal funds or my personal account, which has no corporate affiliation."

(D) Intermediary statements must state, above the line for the intermediary's signature: "I hereby affirm that I did not, nor, to my knowledge, did anyone else, reimburse any contributor in any manner for his or her contribution, and that none of the submitted contributions were made by the contributor as a loan. The making of false statements in this document is punishable as a class E felony pursuant to § 175.35 of the Penal Law and/or a Class A misdemeanor pursuant to § 210.45 of the Penal Law."

**(4) Transfers.**

Candidates shall obtain and maintain all records specified by the Board regarding transfers, including, but not limited to, in the case of transfers from a committee not otherwise involved in the covered election, other than another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the board in a timely manner, a record, obtained prior to receipt of the transfer, demonstrating, for each contribution to be transferred to a participant's authorized committee, the contributor's intent to designate the contribution for the covered election. This record shall contain the statements: "I understand that this contribution will be used by the candidate for an election other than that for which the contribution was originally made. I further understand that the law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution was made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." This record must be signed by the contributor, or, if the contributor is unable to sign his or her name, marked with an "X" by the contributor and signed by a witness to the contribution. Adjacent to the signature or mark, the contributor must write the date on which he or she signed or marked the record.

**(c) In-kind contributions.** For each in-kind contribution, candidates shall maintain a receipt or other written record that provides the date(s) the in-kind contribution was made, the name and address of the contributor, a detailed description of the goods or services provided, and such further information and/or documentation necessary to show how the value of the contribution was determined.

**(d) Bills.** Candidates shall retain a copy of each bill for goods or services provided. Candidates shall maintain written documentation showing that a bill has been forgiven. Documentation for goods or services must be contemporaneous and must provide the date the vendor was retained or the date the goods or services were provided, the vendor's name and address, the amount of the expenditures, and a detailed description of the goods and services provided. If the invoice supplied by the vendor does not meet these requirements, the candidate must create an additional contemporaneous record containing the necessary information, and such record must be signed by the vendor and the campaign treasurer or other representative of the campaign. In the case of services that were subcontracted by the vendor, candidates must obtain documentation meeting the above requirements for the subcontracted services from the vendor. For wages, salaries, and consulting fees, candidates must maintain a contemporaneous record, signed by the employee or consultant and the campaign, and dated, providing the name and address of the employee or consultant, a detailed description of the services, the amount of the wages, salary or consulting fees, the date(s) on which the work was performed, the period for which the individual was retained, and a detailed breakdown of the number of hours worked. The Board shall provide specimens of records for employees and consultants, including daily timesheets for election day workers and consultant agreements.

**(e) Disbursements.**

**(1) By check.** A candidate shall make all disbursements by check, except for petty cash. The date, payee name, purpose, and number of each check, as well as all inter-account transfers, any other debits, and any additional information as determined by the Board, shall be recorded in a checkbook register.

**(2) Petty cash.** Candidates may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the candidate shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

**(3) Credit card and charge card purchases.** Candidates shall maintain a monthly billing statement or customer receipt for each disbursement from a credit card or charge card account showing vendors underlying the disbursement.

**(4) Reimbursement of advances.** Candidates shall obtain vouchers for any reimbursements they make to persons, including the candidate, for purchases made on behalf of the committee. The voucher shall be presented by the person making the purchase and shall include his or her name, the date and amount of the purchase, the vendor's name, and the manner of payment, including check number, credit card name, and cash. A receipt, bill, or invoice from the vendor shall be attached to the voucher.

**(f) Bank records.** Candidates shall maintain the following records received from banks and other depositories relating to accounts: (1) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds and (2) all returned and cancelled disbursement checks, including substitute checks which may be returned by the bank in lieu of cancelled checks.

**(g) Loans.** The candidate shall obtain, maintain, and make available to the Board upon its request written documentation: (1) for each loan received, including loans made by the candidate; (2) for each loan repayment; and (3) that shows that a loan has been forgiven. The loan agreement shall be contemporaneous and in writing, shall be signed and dated by both parties, and shall provide all terms and conditions of the loan, including the amount and term of the loan. The candidate shall retain copies of loan checks and records of electronic transfers.

**(h) Subcontracted goods and services.** Candidates required to itemize the cost of subcontracted goods and services pursuant to Rule 3-03(e)(3)(ii) shall obtain and maintain documentation from the consultant or other person who or which subcontracts, containing all information required to be disclosed pursuant to that rule.

**(i) Fundraisers.** Candidates shall maintain records for all fund-raising events, including all house parties, which shall contain: the date and location of the event; the person(s) and/or organization(s), other than the candidate's authorized committee, hosting the event; an itemized listing of all expenses incurred in connection with the event, including all expenses whether or not paid or incurred by the authorized committee; and the contributor name and amount of each contribution received at or in connection with the event. This subdivision does not apply to activities on an individual's residential premises, including house parties, to the extent that the cost of those activities do not exceed $500 and are not contributions pursuant to §3-702(8)(ii) of the Code.

**(j) Campaign offices.** Candidates shall maintain a list identifying the address of each campaign office.

**(k) Political advertisements and literature.** Pursuant to New York Election Law §14-106, candidates shall maintain copies of all advertisements, pamphlets, circulars, flyers, brochures, letterheads, and other printed matter purchased or produced and a schedule of all radio or television time purchased and scripts used therein.

**(l) Vendors.** In addition to obtaining and keeping contemporaneous documentation (such as bills) for all goods and services provided by vendors, including campaign consultants and attorneys, and employees, when a candidate retains or otherwise authorizes a person or entity (including an employee) to provide goods and/or

services to the candidate, and the candidate knows or has reason to believe that the goods and/or services to be provided directly or indirectly by this vendor will exceed $1,000 in value during the campaign, the candidate shall:

(1) keep a copy of the contemporaneously written contract with the vendor, which shall, at a minimum, provide the name and address of the vendor, be signed and dated by both parties, state the terms of the contract including the terms of payment and a detailed description of the goods and/or services to be provided, and shall include, if the contract was at any time amended, a contemporaneously written contract amendment, signed and dated by both parties and describing in detail the changes to the terms and conditions of the contract, or

(2) if no contemporaneously written contract has been entered into, keep a contemporaneously written record that includes the date the vendor is retained or otherwise authorized by the candidate, the name and address of the vendor, and the terms of the agreement or understanding between the candidate and the vendor including the terms of payment and a detailed description of the goods and/or services the vendor is expected to provide. If the agreement or understanding was at any time amended, the candidate shall create and maintain a contemporaneously written record describing in detail the changes to the terms and conditions of the agreement or understanding.

In addition to the records to be kept pursuant to subparagraphs (1) or (2) above, the candidate shall keep evidence sufficient to demonstrate that the work described in the contract was in fact performed and completed. Such evidence may include samples or copies of work product, emails, time records, phone records, and photographs or other documentary evidence. Where such evidence is nonexistent or unavailable, the candidate shall maintain affidavits signed by the vendor and either the candidate, treasurer, or other campaign representative having first-hand knowledge, describing the goods or services provided and the reason(s) why documentary evidence is nonexistent or unavailable.

**(m) Advances.** In such form as may be prescribed by the Board, candidates shall maintain records of advances which shall include the name and address of each person who made an advance on behalf of the authorized committee, the amount so advanced, the name and address of each payee to whom advanced funds were paid, the amount paid, and the purpose of each payment.

**(n) Business dealings with the City.** For each individual or entity making a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in §3-703(1-a) of the Code, candidates shall maintain all records specified by the Board concerning whether such individual or entity has business dealings with the City.

**(o) Travel.** Candidates shall obtain and maintain originals and copies of all checks, bills, or other documentation to verify campaign-related travel transactions reported in disclosure statements. In addition to the above, for all travel, with the exception of travel by public transportation within New York City, candidates shall create and maintain a contemporaneous record describing the campaign-related purpose of the travel, the complete travel itinerary, the dates of the travel, and the names of all individuals who participated in the travel. For travel by private car, candidates must create and maintain a contemporaneous travel log providing, for each trip and each vehicle, the names of the driver and passengers, the date(s) and purpose of each trip, the itinerary, including all the locations of any campaign events and other stops, the beginning and ending mileage, and the total mileage. Travel between two stops is considered an individual trip for logging purposes even if the stops are part of a multi-stop itinerary. For the purposes of reporting and reimbursing campaign expenditures, candidates shall calculate expenditures for travel by private car based on mileage according to the provisions of directive six of the New York City Comptroller.

**Rule 4-02 Omitted**.

**Rule 4-03 Record Retention.**

**(a) Six-year retention period.** The candidate shall retain all records and documents required to be kept under Rule 4-01 for 6 years after the date of the last election to which the records or documents relate.

**(b) Custodian and location of records.** At the time of the filing of the filer registration form and/or certification, the candidate shall notify the Board, in writing, of the name, address, e-mail address, and telephone number of the person who is the custodian for the candidate's records and documents for an election and the location of those records and documents. Thereafter, for 6 years after the date of the last election to which the records or documents relate, the candidate shall notify the Board, in writing, of any change of custodian, of the custodian's address, e-mail address, or telephone number, and of the location of the candidate's records and documents, no later than the deadline for filing the next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change.

**Rule 4-04 Assistance to Candidates; Records.**

In order to promote compliance with the requirements of the Act and these Rules, the Board's staff shall offer assistance to candidates in developing campaign procedures for gathering campaign finance information and keeping records and shall, to the extent feasible, provide model recordkeeping journals and forms. A participant's failure to keep records required by this Chapter, or provide to the Board, upon its request or as required by these Rules, records or other information, may result in a determination that matchable contribution claims are invalid pursuant to Rule 5-01(d)(17); a determination pursuant to § 3-710(2)(b) of the Code that the participant made expenditures for purposes other than qualified campaign expenditures, including a determination whether the participating candidate shall be required to personally repay such expenditures to the Board; a determination pursuant to § 3-710(2)(c) of the Code that the participant must return excess funds to the Board due to the failure to demonstrate that the participant made expenditures in furtherance of his or her nomination or election equal to or greater than the total of contributions, other receipts, and payments from the fund received; the withholding of public funds pursuant to Rule 5-01(e); and the assessment of penalties pursuant to §§ 3-710.5 and 3-711 of the Code.

**Rule 4-05 Audits.**

(a) The Board shall conduct desk and field audits of participants, limited participants, and non-participants, regardless whether the candidates receive public funds. Field audits may be conducted before or after an election, as the Board deems appropriate. In conducting audits, the Board may use random sampling of data and other analytic techniques, as appropriate. The Board shall conduct campaign audits in accordance with generally accepted government auditing standards.

(b) The Board shall issue all draft and final audit reports in accordance with the deadlines provided in §3-710(1)(a) and (b) of the Code subject to any applicable exceptions to those deadlines provided in §3-710(1)(d), (e), and (f) of the Code; provided, however, that the Board shall not be required to provide the candidate a final audit report within fourteen months after the deadline for submission of the final disclosure report for the covered election for city council races and borough-wide races, or within sixteen months after the deadline for submission of the final disclosure report for the covered election for citywide races, unless the candidate or the candidate's treasurer or campaign manager completed an audit training provided by the Board prior to the applicable deadline provided in Rule 2-12(b).

## Chapter 5 Public Funds

### Rule 5-01 Payment Procedure.

**(a) (1) Board determines eligibility.** No payments from the Fund shall be made to a participant unless the Board has determined that a candidate has met all eligibility requirements of the Act and these rules. The Board shall notify the participant of a determination of ineligibility.

**(2) Public funds cap.**

(i) The Board shall determine, pursuant to §3-705(7)(a) of the Code, whether a participant is opposed by another candidate who has spent or contracted or obligated to spend, or received in loans or contributions, or both, an amount which in the aggregate exceeds one-fifth of the expenditure limit applicable to the participant. Such determination shall be made pursuant to Rule 7-03.

(ii) Participants seeking additional public funds pursuant to §3-705(7)(b) of the Code must file a signed statement with the Board pursuant to §3-705(7)(b) no later than the due date for the disclosure statement immediately preceding the public funds payment for which the participant is seeking to receive the additional public funds; provided, however, that participants seeking to receive the additional public funds on the first date payments are made by the Board after the optional early public funds payment, must file the signed statement with the Board no later than the day before the first date the Board of Elections conducts hearings on any ballot petition filed by any candidate seeking nomination for election in any primary occurring in the same election cycle for which the candidate is seeking nomination for election, without regard to whether such hearings are related to a petition filed by an opponent of the participant.

**(3) Small primaries.**

(i) A participant on the ballot in one or more primary election(s) in which the number of persons eligible to vote for party nominees in each such election totals fewer than one thousand shall not receive public funds in excess of five thousand dollars for qualified campaign expenditures in such election or elections; provided, however, that the foregoing limitation shall not apply to such participant if he or she is opposed in a primary election by (A) a participant who is not subject to such limitation or (B) a limited participant or non-participant who has spent or contracted or obligated to spend in excess of ten thousand dollars for such primary election. The Board shall determine whether a non-participant has exceeded such ten thousand dollar level pursuant to Rule 7-03.

(ii) For the purposes of subparagraph (i), the number of persons eligible to vote for party nominees in a primary election shall be as determined by the Board of Elections for the calendar year of the primary election pursuant to §5-604 of the New York Election Law. If such determination for any primary election is not available from the Board of Elections as of the day before the due date for filing a certification pursuant to §3-703(1)(c) of the Code, the most recent determination by the Board of Elections of the persons eligible to vote for party nominees for the office for which such primary election is held shall be relied upon.

**(4) Non-competitive campaigns**

(i) Pursuant to §3-705(9) of the Code, a participating candidate who endorses or otherwise publicly supports his or her opponent for election shall not be eligible for public funds.

(ii) Pursuant to §3-705(10) of the Code, a participating candidate who loses the primary election but remains on the ballot for the general election shall be ineligible to receive public funds unless the candidate certifies to the Board that he or she will actively campaign for office, by measures including but not limited to raising and spending funds, seeking endorsements, and broadly soliciting votes.

**(b) Preliminary review of disclosure statements.**

(i) In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board shall conduct a preliminary review of all disclosure statements filed. This preliminary review may be delayed if the participant fails to submit a disclosure statement or information requested by the Board by the date required by the Board, or submits a disclosure statement that fails to comply substantially with the requirements of the Act or these rules. A preliminary review may also be delayed for other reasons, including, but not limited to, consideration of whether a basis exists for an ineligibility determination, as described in subdivision (f). A delayed preliminary review may result in a delay in a payment determination, until such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(ii) After a participant has been informed that a matchable contribution claim has been deemed invalid or that the participant is ineligible for public funds, the participant shall not include in any petition or request to the Board any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

**(c) Basis for payments.** The amount paid to a participant shall be based upon the Board's review and audit of matchable contributions claimed and qualified campaign expenditures.

**(d) Validity of matchable contribution claims and projected rate of invalid claims.** The Board shall not make payment for any matchable contribution claim it determines or projects to be invalid. The Board shall consider the following factors in determining that matchable contribution claims are invalid and in projecting a rate of invalid matchable contribution claims:

(1) cash contributions from any one contributor that are greater than $100 in the aggregate, in violation of New York Election Law §14-118(2), or money order contributions from any one contributor that are greater than $100 in the aggregate;

(2) contributors who are individuals under the age of eighteen years or that are entities other than individuals;

(3) matchable contribution claims that would yield more than $1,050 in public funds per contributor;

(4) contributions that exceed the contribution limit applicable under the Act;

(5) contributor addresses that are not residential addresses within New York City;

(6) contributions for which information is omitted from or illegible in a disclosure statement;

(7) contributions made later than December 31 of the election year;

(8) contributions originally received for elections other than the election in which the candidate is currently a participant, as described in Rule 1-07;

(9) matchable contribution claims that exceed the gross amount of the contribution;

(10) contributions that were not received within the reporting period or that were made by post-dated check;

(11) (i) contributions totaling more than $99 for which a participant has not reported the contributor's occupation, employer, and business address; (ii) contributions totaling less than $99 for which a participant is required to report the contributor's occupation, employer, and business address, pursuant to Rule 3-03(c)(6)(ii), but has failed to do so;

(12) contributions that were returned to or not paid by the contributor;

(13) checks drawn by a person other than the contributor except checks signed by a contributor's authorized agent where the documentation required under Rule 4-01(b)(2) has been maintained and provided;

(14) contributions that are otherwise not matchable contributions within the meaning of the Act;

(15) any information that suggests that a contribution has not been processed or reported in accordance with Program requirements;

(16) any other information that suggests that matchable contribution claims may be invalid;

(17) contributions for which a record required under Chapter 4 was not kept or provided upon request;

(18) contributions for which complete supporting documentation required by Rule 3-04(a) has not been submitted;

(19) check or money order contributions made payable to entities other than the committee that has reported receiving the contribution;

(20) contributions that were made or accepted in violation of any federal, state, or local law;

(21) contributions that were not contemporaneously reported as matchable in disclosure statements or were reported in such statements that were not filed in a complete and timely manner;

(22) contribution checks drawn on business accounts, or accounts that bear indicia of being business accounts, such as the contributor's professional title;

(23) contributions purportedly from different contributors that were made by money orders bearing consecutive serial numbers or other markings indicating that they were purchased simultaneously;

(24) arithmetical errors in totals reported;

(25) contributions that were not itemized in a disclosure statement;

(26) contributions required to be deposited into an account established for a runoff election, as provided in Rule 2-06(c);

(27) contributions from individuals, other than employees of the candidate's principal committee, who are vendors to the participant or individuals who have an interest in a vendor to the participant, unless the expenditure to the vendor is reimbursement for an advance. For the purposes of this rule, "individuals who have an interest in a vendor" shall mean individuals having an ownership interest of ten percent or more in a vendor or control over the vendor. An individual shall be deemed to have control over the vendor firm if the individual holds a management position, such as the position of officer, director or trustee; and

(28) contributions from individuals having business dealings with the city, as defined in §3-702(18) of the Code, and contributions from lobbyists as defined in §3-211 of the Code; and

(29) contributions for which any person subject to the limitations of §3-703(1-a) of the Code acted as an intermediary.

**(e) Withholding of public funds.** The Board shall withhold five percent of the amount of public funds payable to a participant until the final pre-election payment for any election in which the participant is eligible to receive public funds. In addition, the Board, in its discretion, may withhold a reasonable portion of the amount of public funds payable to a participant based upon:

(1) a projection of the rate(s) of invalid matchable contribution claims; and

(2) the participant's failure to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information.

**(f) Basis for ineligibility determination.** The Board may determine that public funds shall not be paid to a participant if:

(1) the participant has failed to meet one of the eligibility criteria of the Act or these Rules;

(2) the participant is required to repay public funds previously received, as described in Rule 5-03, or the participant has failed to pay any outstanding claim of the Board for the payment of civil penalties or the repayment of public funds against such participant or his or her principal committee or a principal committee of such participant from a prior covered election, provided that the participant has received written notice of the potential payment obligation and potential ineligibility determination in advance of the certification deadline for the current covered election or an opportunity to present reasons for his or her eligibility for public funds to the Board;

(3) the participant fails to submit a disclosure statement required by these rules;

(4) the participant fails to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information that verifies campaign activity;

(5) previous public fund payments to the participant for the election equal the maximum permitted by the Act;

(6) if the participant fails to demonstrate compliance with §12-110 of the Code, as required pursuant to §3-703(1)(m) of the Code and Rule 3-11;

(7) the participant endorses or publicly supports his or her opponent for election pursuant to §3-705(9) of the Code;

(8) the participant loses in the primary election but remains on the ballot for the general election and fails to certify to the Board, as required by §3-705(10) of the Code, that he or she will actively campaign for office in the general election, or the participant certifies to the Board that he or she will actively campaign for office in the general election but thereafter fails to engage in campaign activity that shall include but not be limited to, raising and spending funds, seeking endorsements, and broadly soliciting votes;

(9) there is reason to believe that the participant or an agent of the participant has committed a violation of the Act or these Rules;

(10) the participant or an agent of the participant has been found by the Board to have committed fraud in the course of Program participation or to be in breach of certification pursuant to Rule 2-02; or

(11) there is reason to believe that the participant or an agent of the participant has engaged in conduct detrimental to the Program that is in violation of any other applicable law.

**(g) Payment is not final determination.** Payments of public funds pursuant to this rule shall not constitute the Board's final determination of the amount, if any, for which the participant qualifies. The Board shall provide specific notice of any such final determination.

**(h) Notice to participants.** The Board shall notify participants of any difference between the amount claimed and amount paid. Subsequent payments may be adjusted upward or downward to reflect further review and auditing of previous matchable contribution claims.

**(i) Pre-election payments.**

(1) Pursuant to §§ 3-709(5) and (6) of the Code: (i) no public funds shall be paid to participants in a primary or general election any earlier than four business days after the final day to file a written certification for such election pursuant to paragraph (c) of subdivision 1 of section 3-703 of the Code; (ii) no public funds shall be paid to participants in a runoff primary election or general election any earlier than the day after the day of the primary election held to nominate candidates for such election; and (iii) no public funds shall be paid to participants in a runoff special election held to fill a vacancy any earlier than the day after the day of the special election for which such runoff special election is held.

(2) Pursuant to §3-703(1)(a) and (5) of the Code, public funds are not payable to a participant who has not met the legal requirements to have his or her name on the ballot, who is unopposed, or, for the optional early public funds payment, who has not certified that he or she intends to meet all the requirements of law to have his or her name on the ballot.

(3) The Board shall schedule at least three payment dates in the thirty days prior to a covered election, and the Board shall provide each participant a written determination specifying the basis for any payment or non-payment. As provided in Rule 5-02(a), the participant may petition the Board in writing for a reconsideration of any such payment or non-payment determination, prior to the election, and such reconsideration shall occur within five business days of the filing of such petition.

**(j) Flat grants in special circumstances.** Pursuant to §3-705(5)(a) of the Code, the Board shall pay to a participant in a runoff primary election or runoff special election an amount equal to twenty-five cents for each one dollar of public funds paid to the participant for the preceding election. The amount paid pursuant to this subdivision may be adjusted to reflect further review and auditing of matchable contribution claims for the preceding election. The Board shall make payments pursuant to this subdivision within four business days after the date of the preceding election or as soon thereafter as practicable.

**(k) Post-payment audits.** All determinations by the Board of eligibility and payment are subject to post-payment audit and final readjustment.

**(l) Characterization of payments as for the primary or general election.**

(1) If a participant is on the ballot and has an opponent on the ballot in both a primary and the general elections, payments made after the primary election will be characterized initially as follows:

(i) As a primary election payment, if the payment is made on the basis of contribution and expenditure information reported in or before the disclosure statement due 10 days after the primary election, except as otherwise provided in subparagraph (ii).

(ii) As a general election payment, to the extent that any further primary election payments would exceed a maximum applicable in the primary election pursuant to the Act.

(iii) As a general election payment, if the payment is made on the basis of contribution and expenditure information reported in disclosure statements due later than 10 days after the primary election.

(2) If the Board determines that payments characterized initially as either primary or general election payments were, in fact, used for qualified campaign expenditures incurred in the other election, the payments will be recharacterized accordingly, and additional payments may be made or repayments required, if

appropriate. The total public funds used for qualified campaign expenditures in a single election may not exceed the maximum applicable pursuant to §3-705(2) of the Code.

**(m) Post-election payments.** After an election the Board may defer payment determinations for a participant until the completion of its audit of the participant. The Board shall not make payments based upon disclosure statement amendments or resubmissions filed (i) after December 31 in an election year, including but not limited to amendments or resubmissions of the disclosure statement due the first January 15 after the election, or (ii) after the final disclosure statement in the case of a special election; provided however, that the Board may make payments based upon such amendments or resubmissions solely if they are made in response to invalid matching claims reports to which the Board has requested a response after December 31 in an election year or after the final special election disclosure statement, as the case may be.

**(n) Deductions from payments.**

(1) The total amount of public funds payable to a participant for a covered primary, general, or special election shall be reduced by the sum of the following: (i) the amount of outstanding civil penalties assessed by the Board as a result of the participant's failure to comply with the Act and these Rules during the current covered election; and (ii) the amount of the participant's:

(A) transfers and other disbursements from a political committee that is involved in an election in which the candidate is currently a participant, to a political committee that is not involved in that election;

(B) expenditures made to pay expenses for or debt from a previous election, including repayments of public funds and payment of penalties owed to the Board for a previous election;

(C) contributions to other political committees that do not meet the requirements provided in §3-705(8) of the Code for contributions that shall not be a basis for reducing public funds payments; and

(D) loans to other candidates that are not repaid within 30 days or by the date of the election, whichever is earlier, or spending for other candidates, including joint expenditures, to the extent such expenditures benefit another candidate, and independent expenditures; provided that independent expenditures made by the principal committee of a participant shall not be a basis for reducing public funds payments to that participant, where such expenditures do not, in the aggregate, exceed the amount provided in §§ 3-705(8)(i), (ii), or (iii) of the Code, as applicable, for contributions to political committees;

(E) loans to or spending for political party committees and political clubs that are not reimbursed within 30 days or by the date of the election, whichever is earlier, provided that if the participant demonstrates that the expenditure was for a tangible item that directly promotes the participant's election, such as an advertisement in a fundraising journal, this subdivision shall not apply to the fair market value of that item; and

(F) expenditures made for the purpose of furthering the participant's election to the position of Speaker of the City Council.

(2) Disbursements that would otherwise result in a deduction pursuant to subparagraph (ii) of paragraph (1) of this subdivision shall not result in any such deduction if:

(i) such disbursements are made out of a segregated bank account;

(ii) at no time does the segregated bank account contain any funds other than contributions received by the participant and deposited directly into the account pursuant to this Rule, and bank interest paid thereon;

(iii) funds deposited into the segregated bank account are not used for any purpose other than disbursements governed by subparagraph (ii) of paragraph (1) above or payment of bank fees associated with the segregated bank account;

(iv) contributors whose contributions are deposited into the segregated bank account have confirmed in writing, pursuant to Rule 4-01(b)(3)(ii)(C), that they understand that these contributions will only be used for such disbursements and will not be matched with public funds;
(v) copies of such written confirmations are submitted to the Board by the due date for the disclosure statement in which such contributions are required to be reported pursuant to these Rules;
(vi) copies of checks for each disbursement out of the segregated bank account are submitted to the Board by the due date for the disclosure statement in which such disbursements are required to be reported pursuant to these Rules;
(vii) a copy of each bank statement for the segregated bank account is submitted to the Board by the due date for the next disclosure statement; and
(viii) for each individual contribution deposited into the segregated bank account, and each disbursement out of the segregated bank account, the participant has complied with all other applicable provisions of the Act and these Rules, including but not limited to the record keeping and reporting provisions.

(3) Participants shall deposit the entire amount of a contribution into the segregated bank account provided for in paragraph (2), and may not divide the contribution between different accounts.

(4) Contributions deposited into a segregated bank account pursuant to this Rule will not be matched with public funds.

(5) Any funds remaining in a segregated bank account after the election must be returned to the contributors whose contributions were deposited into the account, or, if that is impracticable, to the Fund, on or before December 31 in the year following the year of the election.

(6) A participant who establishes a segregated bank account pursuant to this Rule, but fails to comply with any provision of paragraph (2), (3), (4), or (5) of this subdivision, shall no longer be entitled to the exception from paragraph (1) contained in paragraph (2) of this subdivision.

(7) Funds deposited into, and disbursements made from, a segregated bank account established and maintained in compliance with this Rule for the purpose of making expenditures to pay expenses for or debt from a previous election, including repayments of public funds owed to the Board, will not be considered to be raised or spent for the current covered election for purposes of the participant's expenditure limit calculation.

**(o) Use of final payment.** Before the Board makes final payment, the participant shall submit to the Board bills or other documentation of outstanding debt for which the final public funds payment will be used. Within 60 days after the final public funds payment, the participant must demonstrate that the public funds were used to pay such outstanding debt or shall repay the public funds to the Board.

**(p) Responding to invalid matching claims reports.** In the event that the Board concludes that one or more of a participant's matchable contribution claims are invalid, a participant responding to the Board's report shall do so by the March 15 following the election or 60 days after receiving the report, whichever is later. In the case of a special election, a participant shall respond to an invalid matching claims report no later than 60 days after receiving the report.

**(q) Ballot disqualification by Board of Elections; candidate not opposed on the ballot.** The Board will not make payment to any participant disqualified from the ballot by the Board of Elections or by a court, or to any participant for an election in which all other candidates have been disqualified from the ballot by the Board of Elections or by a court, until after such participant or other candidate, as the case may be, is restored to the ballot by a subsequent determination by a court of competent jurisdiction. A participant who appears as the only candidate on the ballot in an election shall not be eligible to receive public funds notwithstanding any write-in candidates in that election, except as otherwise provided in Rule 5-02(b).

**(r) Reduction in maximum public funds payable.** Pursuant to §3-705 of the Act, the maximum amount of public funds a participant may otherwise be eligible to receive will be reduced by the sum of the following: (1) any

public funds retained by the Board in lieu of civil penalties; (2) any public funds retained by the Board in lieu of funds the participant is required to pay back to the Fund pursuant to the Act; (3) any public funds withheld pursuant to Rule 5-01(e)(2); and (4) pursuant to §3-703(1-b) of the Code, an amount equal to the total unreturned contributions in excess of the limitations applicable to persons having business dealings with the city.

**(s) Approval by Board subject to correction of limited, isolated, and easily corrected compliance issues**. The Board, in its discretion, may approve a public funds payment to a participant, notwithstanding that the participant has been determined by the Board to be ineligible to receive public funds because of limited, isolated, and easily corrected compliance issues. Such approval of public funds disbursement shall be conditioned upon a satisfactory demonstration by the participant that it has taken action, as specified by the Board and within a period of time specified by the Board, to comply with the Act and these rules. The participant shall have the burden of demonstrating to the Board that it has fully complied with the Board's requirements.

**(t) Payment of expenditures made in connection with litigation with public funds.** A participating candidate and his or her principal committee may not use public funds to pay expenditures made in connection with any action, claim, or suit before any court or arbitrator.

**(u) Payment by Electronic Funds Transfer.** All payments of public funds shall be by electronic funds transfer unless the Board determines, in its sole discretion, to use an alternative payment method. In order to receive prompt payment, the participating candidate shall provide the Board with a voided check and such additional information as shall be required by the Board.

**Rule 5-02 Review of Eligibility, Payment, and Repayment Determinations.**

**(a) Written petitions for review.**

(1) After the Board provides a participant a written determination specifying the basis for payment or non-payment of public funds prior to the election, the participant may petition the Board in writing for reconsideration of such determination. Such petition must state the grounds for reconsideration and may include a request to appear before the Board concerning the subject of such petition. Before the election, the Board shall review the determination that is the subject of the petition for review within five business days of the filing of such petition. In the event the Board is unable to convene within five business days, the Board may delegate to the Chair of the Board or his or her designee authority to make a determination regarding the petition. The Board shall timely issue a written determination on the subject of the petition. If the petition is denied, the Board's notice shall inform the participant of the right to appeal the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules.

(2) The participating candidate and his or her principal committee shall not include in any such petition any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

(3) The participating candidate may submit a petition for review of a payment or non-payment determination after the issuance of the participant's final audit report within thirty days of issuance of the final audit report and only upon submission of information and/or documentation that was unavailable to the Board previously and is material to such determination, and a showing that the participant had good cause for the previous failure to provide such information and/or documentation.

**(b) Final disqualification from the ballot.** The Board will consider a candidate to be finally disqualified from the ballot on the earlier of the date of an administrative or judicial determination disqualifying the candidate for which there is no appeal as of right (unless the disqualification is reversed on appeal or otherwise) or of the election. Payment may be made to a participant who was temporarily on the ballot or opposed in an election, pursuant to a determination of the Board of Elections or a court of competent jurisdiction, but then ultimately disqualified from the ballot or unopposed in that election, only when the Board's audit of the participant's campaign

has been completed and only if the participant has, within 30 days after the date of the final disqualification, as provided herein, filed a written petition, sworn to or affirmed, and supporting documentation that demonstrates that: (1) liabilities in qualified campaign expenditures incurred before the date of final disqualification remain unpaid; (2) the total amount of cash on hand is insufficient to pay these liabilities; (3) hardship will exist if public funds are not paid; (4) any and all expenditures made and liabilities incurred after the final disqualification were reasonable and necessary; and (5) the campaign was otherwise eligible and in compliance with all other Program requirements as of the date of final disqualification and has remained in compliance at all times since that date. The petition shall also include an undertaking to use any public funds paid for extinguishing the liabilities enumerated pursuant to paragraph (1).

**Rule 5-03 Repaying Public Funds.**

**(a) Participants returning public funds.** Participants returning public funds shall make a check payable or endorse the public fund check to the "New York City Election Campaign Finance Fund." Participants may not reclaim public funds they have returned.

**(b) Participant is disqualified from the ballot.**

(1) Pursuant to §3-709(7) of the Code, a participant who has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, may not thereafter spend public funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures. All public funds in excess of such liabilities previously incurred shall be promptly repaid to the Board; the amount to be repaid shall be determined in accordance with §3-710(2)(b) of the Code and subdivision (d). A repayment made pursuant to §3-709(7) shall not preclude a determination that an additional repayment is required pursuant to that or any other provision of the Act.

(2) Pursuant to §3-710(3) of the Code, a participant who has been disqualified by a court of competent jurisdiction on the grounds that he or she committed fraudulent acts in order to obtain a place on the ballot, and such decision is not reversed, shall pay to the Board an amount equal to the total public funds paid to the participant. Payments required pursuant to this paragraph shall be made promptly upon such final determination.

**(c) Excess public fund payments.** Pursuant to §3-710(2)(a) of the Code, the Board shall notify a participant in writing if public funds paid to the participant were in excess of the aggregate amount for which the participant qualified, and such participant shall pay to the Board an amount equal to the amount of the excess payments.

**(d) Improper use of public funds.** Pursuant to §3-710(2)(b) of the Code, the Board shall notify a participant in writing if it finds that public funds paid to the participant were used for purposes other than qualified campaign expenditures and the participant shall repay to the Board any improperly used public funds; provided, however, that in considering whether or not a participating candidate shall be required to pay to the board such amount or an amount less than the entire amount to be repaid, the Board shall act in accordance with the following: (i) where credible documentation supporting each qualified expenditure exists but is incomplete, the Board shall not impose such liability for such expenditure; (ii) where there is an absence of credible documentation for each qualified expenditure, the Board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to trained staff, internal procedures to follow published Board guidelines and procedures to follow standard financial controls.

**(e) Unspent campaign funds.**

(1) Pursuant to §3-710(2)(c) of the Code, the Board shall notify a participant in writing if it finds that the participant owes unspent campaign funds to the Board. The participant shall promptly pay to the Board unspent campaign funds from an election; provided, however, that all unspent campaign funds for a participant shall be immediately due and payable to the Board upon a determination by the Board that the participant has delayed the post-election audit process. The participant shall promptly pay to the Board any

additional unspent campaign funds based upon a determination made by the Board at a subsequent date. The amount of unspent campaign funds shall be presumed to be equal to the participant's authorized committee bank account balance on January 11 in the year following the election, or for special elections, on the last day of the reporting period for the final disclosure statement the candidate is required to file with the Board for such election, less any permissible documented post-election expenditures pursuant to subparagraph (ii) of paragraph (2) of this subdivision. The Board may also consider information revealed in the course of an audit or investigation in making an unspent campaign funds determination, including, but not limited to, the fact that campaign expenditures were made in violation of law, that expenditures were made for any purpose other than the furtherance of the participant's nomination or election, or that the participant has not maintained or provided requested documentation. If a participant repays to the Fund all funds remaining in his or her authorized committee bank account on or before December 31 in the year of the election, or, for special elections, on or before the last day of the month following the month in which the election took place, such participant shall be presumed not to owe additional unspent funds, provided that any contributions received and expenditures made after such funds are repaid must be raised and spent in compliance with the Act and these Rules.

(2) (i) A participant may not use receipts for any purpose other than disbursements in the preceding election until all unspent campaign funds have been repaid, except as otherwise provided in Rule 1-03(b). Notwithstanding the presumption of Rule 1-08(c)(1), a participant has the burden of demonstrating that a post-election expenditure is for the preceding election.

(ii) Before repaying unspent campaign funds, a participant may make post-election expenditures only for routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit. Such expenditures may include: payment of utility bills and rent; reasonable staff salaries and consultancy fees for responding to a post-election audit; reasonable staff salaries and legal fees incurred prior to the date of the issuance of the participant's final audit report and associated with defending against a claim that public funds must be repaid; a post-election event for staff, volunteers, and/or supporters held within thirty days of the election; reasonable moving expenses related to closing the campaign office; a holiday card mailing to contributors, campaign volunteers, and staff; thank you notes for contributors, campaign volunteers, and staff; payment of taxes and other reasonable expenses for compliance with applicable tax laws; and interest expense. Routine post-election expenditures that may be paid for with unspent campaign funds do not include such items as post-election mailings other than as specifically provided for in this subparagraph; making contributions; or making bonus payments or gifts to staff or volunteers. Unspent campaign funds may not be used for transition and inauguration activities.

(iii) Notwithstanding the restriction on the use of receipts provided in subdivision (2)(i), a participant who has outstanding liabilities from the election, including a participant who owes public funds or penalties to the Board, may make post-election expenditures for the purpose of raising funds to repay such debt, provided, however, that such expenditures and any contributions received shall be included in the participant's unspent funds calculation unless such expenditures and contributions are incurred or received after the date of the issuance of the participant's final audit report.

**(f) Other reasons for repayment.** The Board shall notify a participant of any amount of public funds to be repaid because: (i) the participant has not maintained copies of checks or contribution cards that document matchable contributions; or (ii) the public funds paid were based on contributions that have been returned or contribution checks that have not been paid; or (iii) the participant has failed to demonstrate eligibility for the public funds paid or compliance with Program requirements, or both; or (iv) a determination pursuant to §§ 3-705(6), (7), or 3-706(3) of the Code is reversed following reconsideration pursuant to Rule 7-03(k).

**(g) Repayment determinations.** The participant shall promptly repay public funds upon any determination made by the Board that a repayment is required pursuant to the Act and this rule. Any claim for the repayment of public funds shall be based on a final determination issued by the Board following an adjudication pursuant to Rule 7-02(f), unless such adjudication is waived by the candidate or principal committee.

**Rule 5-04 Fund Administration.**

To safeguard the administration of the Fund and assure candidates that sufficient public funds will be available to make all payments required by the Act in upcoming elections, as guaranteed to participants by Charter §1052(a)(10), the Board shall: (a) make budget requests for the Fund sufficient to cover all anticipated Fund obligations in the upcoming fiscal year and to maintain a reserve for contingencies; (b) when it has determined that monies in the Fund are insufficient or likely to be insufficient for payments to participants, report this determination to the Commissioner of Finance and provide its estimate of the additional amount which will be necessary to make such payments pursuant to the Act (together with a detailed statement of the assumptions and methodologies on which the estimate is based), as required by Charter §1052(a)(10), not more than four days after which the Commissioner of Finance is required by Charter §1052(a)(10) to transfer an amount equal to the Board's estimate from the City's general fund to the Fund; (c) take steps to ensure that the Fund is maintained in a separate account, credited with all sums appropriated therefor and all earnings accruing thereon, in the custody of the comptroller on behalf of the Board, as required by Charter §1052(a)(10); (d) take steps to ensure that the Fund and its administration are insulated from the risk of improper action by any City official or agency or any agent or contractor thereof; (e) subject the Fund to periodic audits by independent outside auditors; and (f) take such other actions as are necessary and proper to insure the integrity of the Fund.

## Chapter 6 Public Access to Information

### Rule 6-01 Generally.

**(a) Records access officer.** The Board's Director of Administrative Services or the Executive Director's designee is its records access officer. The records access officer is responsible for ensuring appropriate agency response to public requests for access to records. The records access officer shall ensure that Board staff:

(1) upon receipt of a written request to inspect records: (i) make the records available for inspection; or (ii) deny access to the records in whole or in part and explain in writing the reason for the denial;

(2) upon written request for copies of records: (i) make a copy available upon payment or offer to pay fees, if any, in accordance with this rule; or (ii) deny the request for copies of records in whole or in part and explain in writing the reasons for the denial;

(3) upon written request, certify that a record is a true copy; and

(4) upon failure to locate records pursuant to a written request, certify that: (i) the Board is not the custodian for such records; or (ii) the records of which the Board is a custodian cannot be found after diligent search.

**(b) Record location, availability, and use.** Records shall be available for public inspection and copying at the offices of the Board. Requests for public access to records shall be accepted and records produced during the hours of 10:00 a.m. - 4:00 p.m., Monday through Friday. The records access officer, or his or her designee, shall have the discretion to limit the number of records a requester may receive at any one time. No marks of any kind shall be made by a requester on any record provided for inspection. Inspection or copying of records shall be permitted only in the area designated by the records access officer for such purpose.

**(c) Requests for access.** Board staff may require a written request for access to records, but oral requests may be accepted when records are readily available. A response shall be given regarding any written request reasonably describing records sought within 5 business days of receipt of the request. A request shall reasonably describe the records sought. Whenever possible, a requester shall supply information regarding dates, file designations, or other information that may describe the records sought and enable the efficient location of the records. If the records access officer does not grant or deny access to records sought within 5 business days of receipt of a written request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date on which the request will be granted or denied. If circumstances prevent disclosure to the requester within 20 business days from the date of the acknowledgment of the receipt of the request, the Board shall state in writing the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted.

**(d) Denial of access.** Denial of access to records shall be made in writing stating the reason for the denial and advising the requester of the right to appeal. The Board's Executive Director or the Executive Director's designee shall hear appeals from denial of access to records. The time for deciding an appeal shall commence upon receipt of a dated written appeal, including: (1) the date of the denial of access; and (2) the name and return address of the requester. The Executive Director or the Executive Director's designee shall transmit to the Committee on Open Government copies of all appeals upon receipt. The Executive Director or the Executive Director's designee shall inform the requester and the Committee on Open Government of a decision on the appeal, in writing, within 10 business days of receipt of an appeal.

**(e) Fees.** The Board may charge 25 cents per page for photocopies not exceeding 9 inches by 14 inches or the actual cost of reproducing any other record. In determining the actual cost, the Board may include: (i) an amount equal to the hourly salary attributed to the lowest paid Board employee who has the necessary skill required to prepare a copy of the requested record, except that no fee shall be charged for staff time if less than two hours is needed to prepare a copy of the requested record; (ii) the actual cost of storage devices or media provided to the requester in complying with the request; and (iii) the actual cost to the Board of engaging an outside professional

service to prepare a copy of a record, where the Board's information technology equipment is inadequate to prepare a copy.

## Chapter 7 Campaign Finance Board

### Rule 7-01 Complaints and Investigations.

**(a) Initiation of proceeding.**

(i) A proceeding under subdivision four of §1136.1 of the Charter or under the Act may be commenced when: (1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter, Act or these Rules, or (2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter, Act or these Rules.

(ii) The following violations shall constitute infractions: (1) a limited and non-repetitive failure, not to exceed a total of three such failures, to comply with the contribution limitations or prohibitions contained in §§ 3-703(1)(f), (h), (k), and (l) of the Code, provided such contribution is promptly returned to the contributor upon notice from the Board of the acceptance of the contribution; and (2) a failure to file a complete and timely disclosure statement in a form and manner acceptable to the Board, provided such disclosure statement is promptly refiled in a form and manner acceptable to the Board, and provided, further, that this shall apply to only one disclosure statement per election cycle.

**(b) Service of complaints.** A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board, 40 Rector Street, 7th Floor, New York, New York 10006.

**(c) Contents of complaint.** A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter, Act or these Rules to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.

**(d) Initial complaint processing.**

(1) Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of subdivision (c), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint.

(2) If a complaint does not comply with the requirements of subdivision (c), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.

**(e) Opportunity to respond to complaint.** Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit a verified answer, which may set forth reasons why the Board should dismiss the complaint. If, based upon its review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.

**(f) Investigation.** Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter, Act or these Rules. In its investigation, the Board may use its investigative powers pursuant to §§3-708(5) and 3-710(1) of the Code. An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.

### Rule 7-02 Board Determinations.

**(a) Determination that complaint lacks merit.** Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter, Act and these Rules have not been substantiated and dismiss the complaint or terminate the investigation.

**(b) Participant not eligible for public funds.** Following an investigation, the Board may make a determination that a participant is ineligible to receive public funds. In the event of a determination of ineligibility, the Board will send written notification to the participant and the participant may request reconsideration of such determination pursuant to Rule 5-02(a).

**(c) Notice and opportunity to contest.**

(1) If the Board has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, and/or that a participant must repay public funds to the Board, the Board shall notify the candidate and treasurer in writing of the alleged violation and proposed civil penalty and/or of the amount of the alleged public funds repayment obligation. Such notice shall:

(i) set forth in detail the legal basis for the Board's reason to believe there is a violation of a law or rule over which the Board has jurisdiction and/or a repayment obligation;

(ii) notify the candidate and treasurer of the opportunity to submit information and documentation for the Board's consideration within a reasonable time period to be specified in such notice; and

(iii) notify the candidate and treasurer of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty and/or the alleged public funds repayment obligation.

(2) Unless specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board's sole discretion, be disregarded.

(3) The notice shall inform the candidate and treasurer that hearings are conducted in accordance with the requirements for adjudications contained in section 1046 of the Charter unless such procedures are waived by the candidate or principal committee.

(4) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred and/or the amount of public funds repayment obligation, and shall provide notice setting forth in detail the legal basis of the Board's determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action or, in the case of civil penalties, by deduction from any public funds otherwise due for any election.

**(d) Conciliation.**

(1) Upon review of respondent's submission, or if the Board otherwise has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, the Board may initiate conciliation procedures. For this purpose the Board may conduct a conciliation conference. Notice of the conference shall be served on those parties whose attendance the Board considers necessary.

(2) If terms of conciliation which are satisfactory to the parties are reached, a conciliation agreement shall be signed by the parties subject to its terms and by the Board's Executive Director, on the Board's behalf. This agreement may require payment of appropriate civil penalties for violations as determined by the Board. If the amounts to be paid as provided for in the agreement are not paid, they may be sought through appropriate enforcement action or by deduction from any public funds otherwise due for any election. Upon execution of such an agreement, the Board shall administratively close the case. Conciliation agreements shall be binding on all parties. In the event the Board has reason to believe that terms and conditions of the agreement have not been complied with, or if new facts are brought to the Board's attention, the Board may, in its discretion, re-open the case and/or bring an appropriate enforcement proceeding.

(3) Conciliation procedures are not part of the Board's standard practices, but may be appropriate to address novel issues and are conducted solely at the discretion of the Board.

**(e) Omitted.**

**(f) Adjudications in accordance with section 1046 of the Charter.**

(1) Adjudications pursuant to this rule shall be conducted by one or more hearing officers. The Board, at its sole discretion, may designate one or more members of the Board and/or an administrative law judge to act as hearing officers. One or more members of the Board's staff may provide legal and procedural advice to the hearing officer and to the Board, subject to the direction of the hearing officer(s).

(2) The Board shall commence an adjudication pursuant to this rule by serving a notice containing a statement of the nature of the proceeding, the legal authority and jurisdiction under which the hearing is to be held, and a short and plain statement of the matters to be adjudicated, including reference to the particular sections of the Charter, Act, and these Rules involved.

(3) The Board shall provide written notice of the time and place of the hearing to the candidate and treasurer.

(4) The candidate and treasurer must provide to the hearing officer(s) and Board staff a substantive written response to the notice stating the defense to the notice at least two weeks prior to the date of the hearing. The written response to the notice may include affidavits or affirmations, documentary exhibits, or other evidentiary material in rebuttal of the notice, and may also be accompanied by a memorandum of law.

(5) The names and contact information of all persons wishing to present testimony on the law or the facts at the hearing, including any witnesses to be examined, must be provided to the hearing officer(s) and Board staff at least five business days prior to the date of the hearing.

(6) The hearing officer(s) shall administer oaths, subpoena and examine witnesses, receive written and oral testimony, rule on the admissibility of evidence, and decide all other aspects of the conduct of the hearing. Findings of fact shall be based exclusively on the record of the proceeding as a whole. The hearing officer(s) shall make findings of fact and conclusions of law and shall forward a recommended final determination to the Board along with the record of the adjudication upon which the recommended determination is based. The Board may adopt, reject or modify any recommended determination.

(7) The candidate and treasurer shall be afforded due process of law, including the opportunity to be represented by counsel, to request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts. All witnesses shall testify under oath. Adherence to formal rules of evidence is not required.

(8) Testimony and argument on the law and facts shall be presented in the following order: Board staff, witnesses called by Board staff, if any, cross-examination, the candidate and/or treasurer and/or their counsel, witnesses called by the candidate and/or treasurer and/or their counsel, and cross-examination. Each party shall be afforded an opportunity to present rebuttal testimony, if deemed appropriate by the hearing officer.

(9) No ex parte communications relating to other than ministerial matters regarding a hearing shall be received by a hearing officer, including internal agency directives not published as rules.

(10) Testimony shall be transcribed and/or recorded, and a copy of the transcript and/or recording, or any part thereof, shall be made available to any party to the hearing upon request for a reasonable price.

(11) Affidavits or affirmations submitted as evidence must be signed and under penalties of perjury. Failure of the respondent to produce at a hearing any document either requested by the Board or required to

be maintained by the Board pursuant to the Act and these Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent.

(12) Once the hearing officer has issued the recommended final determination, each party shall have twenty days to submit written comments to the Board. The comments should raise any objections to the recommended determination, and objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be limited to the record of the adjudicatory proceeding. Comments shall be served upon all other parties, and shall be served upon the Board by the Office of the General Counsel. Upon application filed with the Office of the General Counsel, the Chair may shorten or extend the time for comments for good cause shown. No personal appearances shall be made before the Board unless the Board specifically requests that the parties appear.

(13) The Board shall provide a written determination within 30 days of the conclusion of the hearing if conducted by the full Board, or within 30 days of the conclusion of the written comments period if the hearing is conducted before (a) hearing officer(s), stating the basis for any assessed penalty or repayment obligation, including any findings of fact and conclusions of law, and shall notify the candidate of the commencement of the four-month period during which a special proceeding may be brought to challenge the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules. Determinations made by the Board pursuant to this rule may not be appealed to the Board unless the Board specifically provides otherwise in its determination.

**(g) Penalties for Disclosure Statement and Contribution Violations.** The Board shall publicize staff guidelines for presumptive penalties to be recommended for the late submission of a disclosure statement, the failure to file a disclosure statement, and the acceptance of an over-the-limit or a prohibited contribution, subject to consideration of aggravating and mitigating factors that will be considered in determining the appropriate penalty assessment for the violation.

**Rule 7-03 Review of Contributions and Expenditures.**

**(a) Determination of eligibility.** (1) Pursuant to §3-705(6) of the Code, the Board shall determine whether a limited participant or a non-participant has spent or contracted or become obligated to spend an amount which, in the aggregate, exceeds ten thousand dollars; (2) pursuant to §3-705(7)(a) of the Code, the Board shall determine whether a candidate has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office as provided by §3-706(1) of the Code; (3) pursuant to §3-706(3)(a) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-half the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; (4) pursuant to §3-706(3)(b) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; and (5) the Board shall verify the truthfulness of any certified signed statement submitted pursuant to §3-705(7)(b) of the Code and the Board shall determine whether supporting documentation submitted pursuant to §3-705(7)(b) of the Code demonstrates the existence of the condition or conditions described in such statement. For the purposes of making a determination pursuant to §3-705(7)(b)(1) of the Code, a non-participating or a limited participating candidate shall be presumed to have the ability to self finance when it is demonstrated through supporting documentation that such candidate has readily available funds in excess of one-fifth of the applicable expenditure limit and that such candidate can reasonably be expected to spend such funds for his or her nomination or election.

**(b) Generally.** To permit the Board to make these determinations in a timely, fair, and efficient manner, pursuant to the Act, it is expected that participants, limited participants, and non-participants will cooperate fully with Board requests for information and adhere to the procedures set forth in this rule and the requirements of New York Election Law Article 14 and State Board of Elections regulations.

**(c) Facial determinations.** The Board may find that a candidate's forms submitted to the Campaign Finance Board or to the Board of Elections provide on their face a sufficient basis for a determination pursuant to paragraph (a) above. The Board will presume that contributions and loans are accepted, disbursements are made, and liabilities are incurred by a candidate for his or her next following election. In the absence of evidence indicating otherwise, the Board will rely upon the date of contributions, loans, disbursements, and liabilities as they appear on forms submitted to the Campaign Finance Board or the Board of Elections. In addition, the Board will presume that cash on hand after an election consists of contributions that are available for expenditure in the next election.

**(d) Petitions.** The Board may make a determination pursuant to paragraph (a) above following the submission of a written petition, as provided in this rule. The written petition shall: (1) be sworn to or affirmed; (2) indicate the participant or limited participant on whose behalf it is submitted, if any; (3) specify the particular information contained in forms submitted to the Campaign Finance Board or the Board of Elections on behalf of the respondent that is alleged to be inaccurate, if any, and the particular information alleged to be omitted from those forms, if any (in the absence of these allegations, the Board will presume that any forms on file at the Campaign Finance Board or the Board of Elections at the time the petition is submitted are true and complete for the applicable reporting periods); (4) identify specific fund-raising and/or spending activities on behalf of the respondent that are alleged to have taken place after the close of the reporting period covered by the last such forms submitted on behalf of the respondent, if any; (5) include all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on behalf of the respondent, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on his or her behalf; and (6) contain information about statements reported to have been made by the respondent, his or her agents, or authorized representatives, and any other relevant information. The Board will not consider petitions submitted after the due date for the last disclosure statement required to be filed with the Campaign Finance Board by any candidate in the election for which the petition is filed.

**(e) Petitioner's burden.** The petitioner shall submit with the petition evidence that supports the allegations made in the petition, including but not limited to the information described in paragraph (d)(5). The petitioner has the burden of demonstrating a sufficient basis for a determination pursuant to paragraph (a). Failure by the respondent to file required disclosure forms may be a sufficient basis, and must be addressed in the respondent's response to the petition.

**(f) Notice of petition.** The Board shall send a copy of the petition to the respondent, any opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, any opposing limited participants. The notice shall specify: (1) the deadline for the respondent to submit a response, pursuant to subdivision (g); (2) the deadline for opposing participants or limited participants other than a respondent to submit petitions for consideration at any hearing referred to in the notice; and (3) the date and time at which the Board will conduct a hearing on the petition, if any, pursuant to subdivision (h).

**(g) Response to the petition.** The respondent shall submit a response in such manner as may be provided by the Board. The response shall:

(1) be sworn to or affirmed;

(2) either:

(i) acknowledge that fund-raising or spending on behalf of the respondent is sufficient to permit the Board to make a determination pursuant to paragraph (a), regardless of the merit of the petitioning participant's or limited participant's particular allegations; or

(ii) contend that a determination pursuant to paragraph (a) would be inappropriate and specify the allegations in the petition that are denied and those that are admitted;

(3) explain any failure to file any forms required in the election year; and

(4) be signed by the respondent or his or her treasurer. The respondent shall submit with the response evidence that supports the response, including, but not limited to, all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on his or her behalf, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on behalf of the respondent. A failure to submit a response may be deemed an admission that there is a sufficient basis for a determination pursuant to paragraph (a).

**(h) Hearing.**

(1) The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request the Board to conduct a hearing on the petition.

(2) If the Board determines to conduct a hearing, as requested or on its own initiative, the hearing date will be no earlier than 10 days after the petition is received, except: (i) for good cause shown; or (ii) for petitions received less than 30 days before the election, in which case the hearing date will be no earlier than 3 days after the petition is received.

(3) The respondent and each opposing participant or limited participant shall notify the Board no less than one day in advance whether they will be represented at the hearing and, if the petitioner or the respondent will not be represented, the reason for the absence. Representation of a party at a hearing must be by a person with knowledge of the facts at issue.

(4) At the hearing, testimony given may be under oath, recorded, and in the following order: (i) the petitioner; (ii) opposing participants and/or limited participants other than a respondent; (iii) the respondent; (iv) Board staff, if appropriate; and (v) an opportunity for each party to rebut, if deemed appropriate by the Board.

**(i) Notice of determination.** Following the review of disclosure forms, the submission of a petition and an opportunity for a response, and/or a hearing, the Board will decide whether there is a sufficient basis for a determination pursuant to paragraph (a). The Board shall provide written notice to the respondent, all opposing participants and limited participants other than a respondent, and the petitioner, if any, of a determination pursuant to paragraph (a) or a decision not to make such a determination, as requested by a petition, and the basis therefor.

**(j) New petitions.** A decision not to make a determination pursuant to paragraph (a) shall not be construed to preclude the subsequent submission of any petition for a determination respecting that candidate.

**(k) Reconsideration.** The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request that the Board reconsider the determination pursuant to paragraph (a) or the decision not to make such a determination. This request shall be made in writing no later than 10 days after the determination or decision. A request for reconsideration from a respondent must also include: (1) an affidavit of the respondent or his or her treasurer affirming that neither fund-raising nor spending on behalf of the respondent that has taken place after the close of the most recent reporting period is sufficient to permit the Board to make a determination pursuant to paragraph (a); and (2) an undertaking by the respondent or treasurer to notify the Board immediately in writing if and when either fund-raising or spending on behalf of the respondent becomes sufficient to permit the Board to make a determination pursuant to paragraph (a). The Board may consider a respondent's failure to respond to the petition, or the failure of the party requesting reconsideration to be represented at a hearing on the petition, to be a sufficient basis for denying a request for reconsideration. The Board shall notify the respondent, all opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, all opposing limited participants, and the petitioner on whether it will reconsider the determination pursuant to paragraph (a) or decision not to make such a determination, as the case may be. If the Board grants reconsideration and determines to conduct a hearing, the hearing shall be conducted in the manner described in paragraph (h)(4).

**(l) Submission of false information.** If the Board has reason to believe that a candidate or any other person has knowingly submitted false information or fabricated evidence or has knowingly withheld or concealed

information, relevant to a determination under paragraph (a), the Board shall refer the matter to the appropriate agency for criminal prosecution and may commence a civil action to recover public funds and/or civil penalties, if appropriate.

**Rule 7-04 Advisory Opinions.**

Upon the written request of a candidate or any other person, the Board shall issue advisory opinions interpreting the Act and these rules, or otherwise respond in writing to the request, within thirty days of receipt of such request, or within ten business days of receipt if such request is received less than thirty days before a covered election, to the extent practicable. The Board shall make public its advisory opinions and the questions of interpretation for which advisory opinions will be considered by the Board, including by publication on its Web site.

**Rule 7-05 Contribution and Expenditure Limit Adjustments.**

**(a) Adjustment of Contribution Limits.** Pursuant to §3-703(7) of the Code, not later than the first day of March in the year 2018, and every fourth year thereafter, the Board shall adjust the contribution limits in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

**(b) Adjustment of Expenditure Limits.** Pursuant to §3-706(1)(e) of the Code, not later than the first day of March in the year 2010, and every fourth year thereafter, the Board shall adjust the expenditure limits applicable pursuant to § 3-706(1) and (2) in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

**Rule 7-06 Ethical Guidelines.**

The Board has determined that the conduct of its members and staff should be guided by Ethical Guidelines. The Board recognizes that some of its members and staff may be lawyers and therefore subject to additional professional codes, such as the Lawyer's Code of Professional Responsibility. In addition, the standards set forth in the Act and Charter Chapters 46 and 68 are applicable to all Board members and staff. The purpose of the Guidelines is to state standards of behavior that go beyond legal and professional obligations in order to ensure the highest degree of public confidence in the work of the Board.

## Chapter 8 Public Petitions for Rulemaking

### Rule 8-01 Procedures for Submitting Petitions.

(a) Any person or entity may petition the Board to consider the adoption of a rule. The request must be sent to the Executive Director and contain the following information: (1) the rule to be considered, with proposed language for adoption; (2) a statement of the Board's authority to promulgate the rule and its purpose; (3) argument(s) in support of adoption of the rule; (4) the period of time the rule should be in effect; (5) the name, address, telephone number, and signature of the petitioner or his or her authorized representative.

(b) Any change in the information provided pursuant to subdivision (a) paragraph (5) must be communicated promptly in writing to the Executive Director.

(c) All requests should be typewritten, if possible, but handwritten petitions will be accepted, provided they are legible.

### Rule 8-02 Responses to Petitions.

Within 60 days from the date the petition was received, the Board shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Board's discretion. The Board's decision to grant or deny a petition is final.

## Chapter 9 Disclosure Statements Including Submissions In Electronic Media

### Rule 9-01 Submission in Electronic Medium.

**(a) Electronic Submission Generally.** Except as specifically permitted pursuant to Rule 9-02, disclosure statements shall be generated by using Candidate Software for Managing and Reporting Transactions (C-SMART) and submitted in such form and manner as shall be provided by the Board. Documentation, whether electronically scanned or in hard copy form, shall be submitted in a form and manner as prescribed by the Board.

**(b) C-SMART.**

(1) C-SMART shall be developed and issued by the Board, and may be issued in one or more stages; successive enhancements may modify and/or expand its uses. C-SMART may not be used, copied, or transferred except as authorized by the Board. Any version of C-SMART issued by the Board after January 1, 2008 shall enable candidates to meet their disclosure obligations under Article 14 of the Election Law, as amended by chapter 405 of the laws of 2005.

(2) The term "C-SMART" does not include campaign finance data stored on C-SMART by its users.

(3) C-SMART is a copyright of the New York City Campaign Finance Board.

### Rule 9-02 Electronic Medium Requirements.

**(a) Exceptions.**

(1) Any candidate who seeks to submit disclosure statements, or a portion thereof, in any format or manner other than that permitted by Rule 9-01 above, including but not limited to non-electronic formats and electronic formats not generated by C-SMART, shall submit a written request for authorization to the Board no later than four weeks before the filing date for the first disclosure statement for which the candidate desires an exception from Rule 9-01, or in the case of a special election, as soon as possible but no later than seven days before such disclosure statement filing date. Such written request shall be in a form and manner as prescribed by the Board. Small campaigns, as defined in Rule 3-02(f)(4), and other candidates who demonstrate that submission of disclosure statements in an electronic format would pose a substantial hardship, shall be permitted, upon request, to submit disclosure statements to the Board in non-electronic formats. Board authorization shall be in writing and shall apply only to the candidate, paper forms, and/or electronic submission form and manner specified therein. The authorization shall indicate whether it applies to one or more disclosure statements.

(2) State and Federal forms may not be submitted to the Board unless they are specifically permitted pursuant to subsection (1) above or §3-703(8) of the Code.

**(b) Enhancements.** The Board may, from time to time, provide enhancements, builds, patches, and/or upgrades to C-SMART and/or its user instructions. The Board shall provide candidates with as much advance notice of such enhancements as is reasonably possible. Following any such additions, candidates using C-SMART shall also use the most recent addition for any subsequent disclosure statement.

### Rule 9-03 Disclosure Statement Submission Requirements.

**(a) Verification.** The treasurer or candidate shall verify that the electronic submission is true and complete, to the best of his or her knowledge, information, and belief.

**(b) Deficient submissions; Legibility.** A submission is deficient and not in compliance with the disclosure requirements of the Act and these Rules if:

(1) the submission is not submitted in a form or manner authorized by the Board;

(2) the submission, or any part thereof, is in an electronic format that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board; or

(3) the submission, or any part thereof, is in a non-electronic format that is illegible, or not in blue or black ink.

**(c) Supplemental Paper Submissions.** Unless otherwise required by the Board, a submission made in an electronic format, whether generated using C-SMART or otherwise, shall be accompanied by a printed version of the electronic submission. The electronic submission shall be the official submission. Any printed version of the electronic submission shall be provided solely for informational purposes and shall be placed in the public file until the electronic submission accepted by the Board is available to the public.

## Chapter 10 Voter Education

**Rule 10-01 Definitions.**

Except as otherwise provided, the definitions set forth in Rule 1-02 apply in this chapter. In addition, for the purposes of this chapter, the following terms have the following meanings:

**Ballot proposal** means any proposition, referendum, or other question submitted to New York City voters pursuant to the Charter, the New York Municipal Home Rule Law, or any other law.

**Candidate print statement** means the document filed by a candidate containing biographical and other information requested by the Board, and a photograph of the candidate for inclusion in the printed and/or online primary and/or general election Voter Guide.

**Candidate video statement** means a video-recorded statement by the candidate for inclusion in the video edition(s) of the primary or general election Voter Guide.

**Election** means any primary or general election, other than a special election or runoff special election held to fill a vacancy, runoff primary, or election held pursuant to court order, for the office of mayor, public advocate, comptroller, borough president, or member of the City Council, or a general election in which a ballot proposal is on the ballot.

**Registered candidate** means a person who has registered or filed a certification with the Board pursuant to Administrative Code § 3-703(1)(c) or § 1-11 and/or § 2-01 of this title.

**Rule 10-02 Contents of the Voter Guide.**

**(a) Generally.** In addition to any information that the Board determines to be useful for promoting public awareness of the voting process, City government, and the candidates and ballot proposals in an election, the printed and online Voter Guides for an election shall contain:

(1) the date of the election;
(2) the hours during which the polls will be open;
(3) an explanation of the voter registration process, including deadlines to register for both the primary and general elections;
(4) an explanation of how to obtain and cast or mark an absentee ballot;
(5) an explanation of how to cast a vote, including write-in votes;
(6) information about the boundaries of City Council districts to aid voters in determining their appropriate district; and
(7) tables of contents, graphics, and other materials which the Board determines will make the Voter Guide easier to understand or more useful for the average voter.

**(b) Candidate statements.**

(1) Candidate print statements.

(i) Candidate print statements contain the following biographical information:

(A) the name of the candidate;

(B) the political party, if any, in which the candidate is enrolled, and on which party line or lines the candidate's name will appear on the ballot;

(C) the previous and current public offices held by the candidate;

(D) the current occupation and employer of the candidate;

(E) prior employment and positions held by the candidate;

(F) the experience the candidate has had in public service;

(G) the educational background of the candidate;

(H) a list of the candidate's major organizational affiliations;

(I) information about the candidate's principles, platform, or views, in a form prescribed by the Board; and

(J) such other information as may be determined by the Board and requested of the candidate.

(ii) The candidate print statement must be submitted in English.

(iii) The photograph of the candidate submitted as part of a candidate print statement must:

(A) be a recent photograph;

(B) have a plain background;

(C) show only the face or the head, neck, and shoulders of the candidate;

(D) not include the hands or anything held in the hands of the candidate;

(E) not show the candidate wearing any distinctive uniform, including but not limited to a judicial robe, or a military, police, or fraternal uniform; and

(F) not exceed the size and/or resolution requirements as determined by the Board.

(iv) Candidate print statements may not:

(A) contain profanity;

(B) make statements that libelous, slanderous, or defamatory, or assert facts that the candidate knows or should know to be false; or

(C) engage in the unauthorized use of copyrighted material or invasion of privacy.

(v) Candidate print statements that violate any of the requirements outlined in this chapter will not be included in the Voter Guide.

(vi) Timing of submission.

(A) In the election year, all registered candidates who intend to file designating petitions must submit their print statements on or before the submission deadline set by the Board.

(B) A candidate not named in a designating petition filed with the Board of Elections who intends to file an independent nominating petition for the general election must submit a candidate print statement on or before the "independent candidates" filing deadline set by the Board.

(C) All candidate print statements for the general election Voter Guide must be submitted prior to the publication of the primary election Voter Guide.

(2) Candidate video statements.

(i) Candidate video statements must contain information regarding the candidate's platform and candidacy, and may contain such other information as the candidate may choose; provided, however, that the candidate may not:

(A) use profanity or make statements or gestures, or display materials, that are obscene or pornographic;

(B) make statements that are libelous, slanderous, or defamatory, or assert facts that the candidate knows or should know to be false;

(C) engage in any commercial programming or advertising;

(D) display any literature, graphs, or props;

(E) engage in the unauthorized use of copyrighted material or invasion of privacy; or

(F) violate any city, state or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(ii) Candidates recording video statements may dress as they choose and are responsible for their own clothing, make-up and hairdressing; provided, however, that when recording a video statement, candidates may not:

(A) engage in full or partial nudity;

(B) wear any distinctive uniform, including but not limited to a judicial robe, or a military, police, or fraternal uniform; or

(C) violate any city, state or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(iii) Candidate video statement scripts must be submitted in advance of the candidate's scheduled recording session in order for the Board to determine that the script meets the requirements of this section. Candidates must follow their approved video statement script during the recording. Recorded statements will not be edited by the Board or any entity participating in the production of the video edition of the Voter Guide, except that candidate identification and other election information may be displayed.

(iv) Only the candidate may appear on camera, and only the candidate may record a candidate video statement.

(v) Candidates will be allowed to sit or stand while recording statements. Reasonable accommodations for candidates with special needs will be made.

(vi) Video statements must be recorded in English. Candidates may record a portion of their video statements in a language other than English; provided, however, that the script submitted for Board approval contains both the English and non-English text, and an English translation of all non-English text. No additional time will be allotted for statements recorded in multiple languages.

(vii) Candidate video statements that violate any of the requirements outlined in this chapter will not be included in the Voter Guide.

(viii) Timing of candidate video statement recordings. In the election year, the recording schedule for candidates' video statements will be provided to registered candidates in advance. The production schedule will permit candidates filing designating and/or independent nominating petitions to participate. Appointments for candidate video statement recordings must be made at a time within the prescribed production schedule. A candidate who fails to appear at his or her scheduled time will be deemed to have waived participation in the video edition of the Voter Guide.

(3) Inclusion of candidate statements in Voter Guide editions.

(i) Primary election editions. Candidate print and video statements will be included in primary election editions of the Voter Guide only for registered candidates who (A) have met the requirements set forth in this chapter, (B) are named in designating petitions filed with the Board of Elections, and (C) are on the ballot in a contested primary. In the case of printed editions of the Voter Guide, print statements of candidates anticipated to appear on the ballot in a contested primary on the date that the primary election print edition goes to press will be included, based on the Board's assessment of information available from the Board of Elections.

(ii) General election editions. Candidate print and video statements will be included in general election editions of the Voter Guide only for registered candidates who (A) have met the requirements set forth in this chapter, (B) are named in nominating petitions filed with the Board of Elections, and (C) are on the general election ballot. In the case of printed editions of the Voter Guide, print statements of candidates anticipated to appear on the general election ballot on the date that the general election print edition goes to press will be included, based on the Board's assessment of information available from the Board of Elections. Candidates running unopposed in the general election will be included in general election editions of the Voter Guide, except where the only election being covered is uncontested, in which case the Board will not produce or distribute print or video editions of the Voter Guide, but will produce an online Voter Guide.

(iii) If a candidate in the general election was included in the primary election Voter Guide, then that candidate's primary election Voter Guide statement will be included in the general election Voter Guide. No modifications or additions to the original statement will be accepted.

(iv) Candidates' print statements will be included in the primary and general election online editions in accordance with the rules set forth in subparagraphs (i), (ii), and (iii) of this paragraph.

(v) The Board shall not accept a candidate print or video statement unless it is submitted in a manner provided by the Board, includes any signatures or notarizations as may be required by the Board, and the candidate has verified that the contents of the form are true to the best of his or her knowledge. The Board may, at its discretion, reject any candidate print or video statement, or portions thereof, it deems to contain matter that is obscene, libelous, slanderous, defamatory, or otherwise in violation of the requirements set forth in this chapter.

(4) Candidate statements shall not exceed the length and space limitations provided by the Board. The Board may, at its discretion, require that candidate print statements follow a consistent format, and edit statements to achieve uniformity of presentation, conformance with length and space limitations, and consistency with existing law. Candidate video statements that exceed their allotted statement time of two minutes will be cut off.

(5) A candidate print statement or video script is a written instrument which, when filed, becomes part of the Board's records. Knowingly filing a written instrument that contains a false statement or false

information is a Class A misdemeanor under New York State Penal Law §175.30. A candidate may not include any false information in his or her candidate print statement or video script. The candidate shall verify that his or her candidate print statement and/or video script is true, to the best of his or her knowledge.

(6) With each candidate print statement, the Board shall publish one of the following notices:

(i) In the case of a participant: "Participant in the Campaign Finance Program" or language to like effect.

(ii) In the case of a limited participant: "Limited participant in the Campaign Finance Program" or language to like effect.

(iii) In the case of a non-participant: "Not a participant in the Campaign Finance Program" or language to like effect.

**(c) Omitted.**

**(d) Ballot proposals.** The print and online editions of the Voter Guide for a general election in which a city ballot proposal is anticipated to appear on the ballot shall contain:

(1) the form of each ballot proposal as it will appear on the ballot in the general election;

(2) a plain-language abstract of each ballot proposal; and

(3) to the extent feasible, the major arguments for and against the passage of each ballot proposal, clearly labeled as such. If feasible, the Board shall solicit and accept from the public statements for and against passage of each ballot proposal for possible inclusion in the Voter Guide for the general election. A statement shall not be accepted by the Board unless it:

(i) is submitted in a form and manner provided by the Board and includes any signatures required by the Board;

(ii) conforms to the length and space limitations provided by the Board;

(iii) identifies the organization, if any, on whose behalf the statement is made; and

(iv) clearly argues for or against passage of the proposal.

No person may submit more than one statement per ballot proposal pursuant to this paragraph.

**(e) Board determines whether to publish statements for and against ballot proposals.** With respect to statements for or against passage of ballot proposals, the Board, at its discretion, may determine:

(1) not to publish any such statements;

(2) not to publish any statements submitted pursuant to paragraph (d)(3);

(3) to publish all or any portion of a statement submitted pursuant to paragraph (d)(3); and

(4) to compose and publish such statements of arguments for and against passage of ballot proposals as it deems appropriate.

**(f) State Ballot Proposals.** The Board will include information about state ballot proposals in Voter Guides for a covered office or a city ballot proposal. At its discretion, the Board may produce an online Voter Guide to provide information about state ballot proposals during an election for which no print Voter Guide is produced.

**Rule 10-03 Publication and Distribution.**

(a) The Board will publish printed Voter Guides in English and Spanish, and in such other languages as may be required by law. The Voter Guide will be distributed by mail to each household in which there is at least one registered voter eligible to vote in the primary or general election, as the case may be, in the City.

(b) The Board will produce an online Voter Guide in English and make the translated versions of the printed editions available online.

(c) The Board will make all reasonable efforts to produce a video edition of the Voter Guide for citywide elections, and will seek partners for the production, marketing, and broadcasting of video editions of the Voter Guide. The Board will post online the scripts provided pursuant to § 10-02(b)(2)(iii), along with translations of those scripts into Spanish and such other languages as may be required by law.

(d) Any conflicts related to the submission or public release of candidate print or video statements will be decided by the Board's Executive Director or his or her designee.

(e) All decisions with respect to any edition of the Voter Guide, including resolution of conflicts, made by the Board, its Executive Director, or his or her designee are final.

(f) The Board retains ownership of, and distribution rights to, all Voter Guide content, including candidate statements. Unedited candidate statements may be republished or broadcast with the Board's permission.

**Rule 10-04 Elections Not Held as Scheduled.**

Notwithstanding any other provision of this chapter, the Board shall take such actions as are practicable to prepare, publish, and distribute a Voter Guide in a timely manner for an election that is not held as initially scheduled.

## Chapter 11 Transition and Inauguration Activities

**Rule 11-01 Scope.**

This chapter applies to every candidate elected to the office of mayor, public advocate, comptroller, borough president, and member of the City Council, regardless whether the elected candidate is a participant in the voluntary Campaign Finance Program. "Elected candidate" shall mean each such candidate. Except as otherwise provided, the definitions set forth in Rule 1-02 apply in this chapter.

**Rule 11-02 Registration.**

(a) Before any private funds are raised or spent for transition or inauguration into office, the elected candidate shall register each entity created and authorized to accept donations and loans, and make expenditures, for transition and/or inauguration into office on behalf of the elected candidate. The failure to make this registration in a timely manner is a violation of §3-802 of the Code, and subject to penalty thereunder.

(b) The registration shall be submitted in such form and manner as shall be provided by the Board and shall contain all information required by the Board, including: (i) the name and address of the elected candidate and of the entity, and the date the entity was created; (ii) the name, address, and employer of the treasurer (or other officer authorized to sign the registration) and of the liaison of the entity; (iii) information about the entity's bank accounts; and (iv) any signatures and notarizations as may be required by the Board; provided, however, that, to the extent that the Board permits an elected candidate to submit the registration in a non-electronic format, such registration will only be accepted by the Board if it contains an original notarized signature from both the elected candidate and the treasurer or other officer of the entity designated to sign the periodic disclosure reports required by Rule 11-03.

(c) The elected candidate shall file a separate registration for each separate entity authorized by the elected candidate to raise and spend private funds for transition or inauguration into office.

**Rule 11-03 Periodic Disclosure Reports.**

**(a) Forms.** The Board shall provide forms and instructions for the submission of periodic disclosure reports by entities registered under Rule 11-02. Except as otherwise provided in subdivision (b), disclosure reports shall be submitted on the forms provided by the Board and shall contain all information for the reporting period required by the Board, including: (1) the cash balance at the beginning and end of the reporting period; (2) total itemized and unitemized donations, loans, and other receipts accepted during the reporting period; (3) total itemized and unitemized expenditures made during the reporting period; (4) for each donation accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge; (5) the date of receipt and amount of each donation accepted or other receipt; (6) whether a donation was made in cash; (7) the date and amount of each donation returned to a donor; (8) each previously reported donation for which the check was returned unpaid; (9) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge; (10) the date and amount of each loan, guarantee, or other security for a loan accepted; (11) the date and amount of each loan payment made; (12) the amount of any portion of a loan which has been forgiven; (13) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement; (14) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred; and (15) such other information as the Board may require. All data reported in disclosure reports, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

**(b) Electronic submissions.** Disclosure report submissions shall follow the submission standards applicable to participants under Chapter 9 of these rules.

**(c) Bimonthly reports.**

(1) The first report is due on the fifth business day of January, March, May, July, September, or November, whichever occurs first after the election, provided that the closing date of the first report shall not be less than six weeks after the entity was registered.

(2) The first report shall cover a period of not less than six weeks from the day the entity was registered through the last day of the calendar month immediately preceding the month in which the report is due. Each subsequent report shall cover the next two calendar months, and shall be due on the fifth business day after the close of the later month.

(3) The final report shall cover the period from the day after the conclusion of the preceding report through the day the entity terminates its activities (by complete payment of all liabilities and complete disposition of funds), and shall include such information about the disposition of any funds remaining after all liabilities are paid as shall be required by the Board. The final report is due on the fifth business day after the entity terminates its activities.

(4) Disclosure reports that fail to comply substantially with the disclosure requirements described in the Code or these rules will not be accepted by the Board. Amendments to or resubmissions of disclosure reports are prohibited unless expressly authorized or requested by the Board.

(5) The disclosure report shall contain a verification from the elected candidate, treasurer, or other officer designated in the registration that the disclosure report is true and complete to the best of his or her knowledge, information, and belief, and shall contain such signatures as may be required by the Board; provided, however, that, to the extent the Board permits a candidate to submit a disclosure report in a non-electronic format pursuant to Rule 11-03(b) and Chapter 9 of these rules, such disclosure report will only be accepted by the Board if it contains an original signature from either the elected candidate, the treasurer, or another officer designated in the registration to sign the periodic disclosure reports required by this Rule 11-03.

**Rule 11-04 Restrictions.**

The following restrictions apply pursuant to §3-801 of the Code.

(a) An elected candidate shall not: (1) authorize or register a political committee to raise or spend funds for transition or inauguration into office; (2) use funds accepted by a political committee authorized by the candidate for transition or inauguration into office; (3) authorize or register a previously existing entity to raise or spend funds for transition or inauguration into office; (4) continue in existence an entity registered under Rule 11-02 after it has paid all liabilities it incurred for transition and inauguration into office and otherwise has disposed of all funds pursuant to paragraph (f) below; or (5) continue in existence an entity registered under Rule 11-02 after (i) April 30 in the year following the year of the election, or (ii) in the case of a special election, 60 days after inauguration.

(b) An entity authorized by an elected candidate to raise or spend funds for transition or inauguration into office shall not: (1) accept donations or other receipts from any political committee authorized by the elected candidate; (2) accept donations from a political committee that has not registered with the Board under §3-801(3) of the Code on a form that includes the information set forth in Rule 1-04(d)(1) (political committees registered for an election cycle pursuant to §3-707 of the Code shall be deemed registered for purposes of §3-801(3) of the Code with respect to transition and inauguration expenditures immediately following an election held in that cycle); (3) accept donations in excess of the donation limits set forth in §3-801(2)(b) of the Code; (4) incur liabilities or make expenditures for purposes other than transition or inauguration into office; (5) accept any donation in cash that exceeds $100 from a single donor; (6) incur liabilities or make expenditures after January thirty-first in the year following the election, except for (i) expenditures made to satisfy liabilities incurred prior to January thirty-first and (ii) routine and nominal expenditures associated with and necessary to satisfying such liabilities and terminating the entity, such as routine and nominal overhead costs, bank fees, taxes, and other reasonable expenses for compliance with applicable tax laws; (7) accept any donations after all liabilities are paid; or (8) accept any donations from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to §3-703(1)(l) of the Code or from any person whose name appears in the doing business database as of

the date of such donation; provided, however, that this limitation on donations shall not apply to any donation made by a natural person who has business dealings with the city to a transition or inaugural committee where such donation is from the candidate-elect, or from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

(c) In determining compliance with the donation limits of §§ 3-801(2)(b) and (d) of the Code, the Board shall total all donations from a single source to all transition and inauguration entities authorized by an elected candidate, using the standards for determining whether donations are from a single source that apply to contributions from a single source under Rule 1-04(h).

(d) Loans are deemed to be donations, subject to the limits and restrictions of the Code, to the extent the loan is not repaid by, or is made after, the date of the elected candidate's inauguration into office.

(e) (i) Unless permitted by paragraphs (b)(6) and (7) above, any expenditure, liability, or other disbursement, and any donation, loan, or other receipt, made, incurred, or received after January thirty-first in the year following the date of a regularly scheduled general election (or after 30 days following the date of the elected candidate's inauguration, in the case of a special election), by an entity authorized pursuant to §3-801 of the Code, shall be presumed to be made, incurred, or received for the first election in which the elected candidate is a candidate following the day that it is made, incurred, or received, and not made, incurred, or received for the purposes of transition or inauguration.

(ii) Incumbent elected candidates shall be presumed to have no transition expenses.

(f) If the entity has funds remaining after all liabilities have been paid, it shall return such funds to one or more of its donors, or if that is impracticable, to the Fund.

(g) An elected candidate may donate to his or her entity registered under Rule 11-02 with his or her personal funds or property, make in-kind donations to his or her entities with his or her personal funds or property, and make advances to such entity with his or her personal funds or property, without regard to the donation limits of §3-801(2)(b) of the Code. An elected candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

**Rule 11-05 Records and Audit.**

(a) Each entity required to be registered under Rule 11-02 must exercise reasonable care to keep records that enable the Board to verify the accuracy of disclosure reports and compliance with all requirements of §3-801 of the Code and this chapter. The records kept shall be clear, accurate, and sufficient to show an audit trail that demonstrates compliance. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board.

(b) The records to be kept shall include:

(1) Copies of all deposit slips.

(2) A photocopy of each check or other monetary instrument representing a donation or other monetary receipt.

(3) A record of all efforts made to ascertain each donor's residential address, employer, business address, and occupation and to identify fully the intermediary, if any, for each donation.

(4) For each in-kind donation, a receipt or other written record showing how the value of the donation was determined.

(5) Each bill for goods or services provided.

(6) Written documentation for each loan received, loan repayment, and loan forgiven.

(7) A monthly billing statement or customer receipt for each disbursement to a credit card or charge card account showing vendors underlying the disbursement.

(8) The following from banks and other depositories relating to accounts:

(i) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds; and

(ii) all returned and cancelled disbursement checks.

(c) All of the entity's records are subject to Board review and shall be made available to the Board upon its request, within such time as shall be specified by the Board.

(d) The entity may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the entity shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

(e) The entity shall retain all records and documents required to be kept for six years after the date of its registration.

## Chapter 12 Procedural Rules for Formal Adjudications

### Subchapter A – General Matters

**Rule 12-01 Definitions.**

As used in this chapter:

**Administrative law judge.** "Administrative law judge" shall mean the hearing officer assigned to preside over a case that is referred to the Office of Administrative Trials and Hearings.

**CAPA.** "CAPA" shall mean the City Administrative Procedure Act, §§ 1041 to 1047 of the New York City Charter ("Charter").

**Case.** "Case" shall mean an adjudication pursuant to CAPA, § 1046 of the Charter.

**Chief administrative law judge.** "Chief administrative law judge" shall mean the director of OATH appointed by the mayor.

**Electronic means.** "Electronic means" shall mean any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression (*e.g.*, facsimile transmission and e-mail).

**Filing.** "Filing" shall mean submitting papers to the hearing officer, whether in person, by mail, or by electronic means, for inclusion in the record of proceedings in a case.

**Hearing officer.** "Hearing officer" shall mean the person assigned to preside over a case.

**OATH.** "OATH" shall mean the Office of Administrative Trials and Hearings.

**Petition.** "Petition" shall mean a document filed by the Board, analogous to a complaint in a civil action, which states the claims to be adjudicated.

**Petitioner.** "Petitioner" shall mean the Board.

**Respondent.** "Respondent" shall mean a party against whom claims are asserted by the Board.

**Rule 12-02 Applicability.**

(a) This chapter shall apply solely to cases that are subject to CAPA, including hearings, pre-hearing and post-hearing matters, brought by the Board pursuant to the New York City Campaign Finance Act, Title 3 of the New York City Administrative Code (the "Administrative Code").

(b) In the event of any inconsistency between this chapter, other chapters of this title, and the rules of OATH, this chapter shall govern.

**Rule 12-03 Construction and Waiver.**

This chapter shall be liberally construed to promote just and efficient adjudication of cases. This chapter may be waived or modified on such terms and conditions as may be determined in a particular case to be appropriate by a hearing officer.

**Rule 12-04 Proceedings Before Designation of Hearing Officer.**

Proceedings before the case is referred to a hearing officer shall be governed by chapter 7 of the Board's Rules.

**Subchapter B – Pre-Hearing Matters**

**Rule 12-05 Designation of Hearing Officer.**

The Board shall designate, at its sole discretion, a hearing officer to preside over cases pursuant to this chapter. The designated hearing officer shall be: (i) one or more members of the Board; (ii) another person or persons assigned by the Board; or (iii) the chief administrative law judge of OATH or such administrative law judge as the chief administrative law judge may assign.

**Rule 12-06 Commencement of Proceedings and Pleadings.**

(**a) The Petition.**

(i) The Board shall institute proceedings pursuant to this chapter by serving a petition, sworn to or affirmed as to the truth thereof, on respondent(s). The petition shall include a short and plain statement of the matters to be adjudicated. It shall set forth the facts which, if proved, would constitute a violation of the City Charter, the Administrative Code, or the Board's Rules, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also set forth a statement of the relief requested. If applicable, the petition shall set forth the facts which, if proved, constitute a required payment or repayment of public funds.

(ii) The petition shall be accompanied by the following: notice of the respondent's right to file an answer, the deadline to file an answer, and the place(s) to serve and file an answer; notice that failure to serve and file a timely answer shall be deemed an admission of all allegations contained in the petition; notice of the respondent's right to representation by an attorney or other representative; and notice that a person representing the respondent must file a notice of appearance with the hearing officer.

**(b) Service of the Petition.**

(i) The Board shall serve the petition upon the respondent. Service of the petition shall be made by regular first-class mail to respondent's last known residential or business address (*e.g.*, address listed in the Filer Registration form, Certification form, or amendments to the Filer Registration or Certification provided by respondent as required by Rules 1-11 and 2-01). Service of the petition shall be complete upon mailing.

(ii) In the alternative, service of the petition may be made by electronic means to respondent's last known e-mail address (*e.g.*, listed in the Filer Registration form, Certification form, or amendments to the Filer Registration or Certification provided by respondent as required by Rules 1-11 and 2-01). Service of the petition by electronic means shall be complete on the date of transmission.

**(c) Answer.**

(i) The respondent shall file an answer to the petition with the hearing officer and serve the same answer on the Board.

(ii) If the petition was served on respondent by regular first-class mail, the answer shall be filed and served within twenty-six calendar days of the date the petition was postmarked. If the petition was

served on respondent by electronic means, the answer shall be filed and served within twenty-one calendar days.

(iii) The answer may include affidavits or affirmations, documentary exhibits, or other evidentiary material in rebuttal of the petition. The answer may be accompanied by a memorandum of law.

(iv) If respondent fails to serve and file a timely answer, all allegations of the petition shall be deemed admitted, and the case shall proceed as scheduled. If the answer fails to specifically address any allegation in the petition, such allegation shall be deemed admitted.

(v) The time to serve and file an answer may be extended only upon the consent of all parties or upon application to the hearing officer for good cause shown.

**(d) Amendment of Pleadings.**

Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the hearing officer.

**Rule 12-07 Filing of Papers.**

**(a) Generally.** The notice accompanying the petition shall notify the parties of the designated hearing officer(s) and of the place to file papers. Papers may be filed with the hearing officer in person, by mail or by electronic means.

**(b) Headings.** If an OATH index number has been assigned pursuant to Rule 12-08(d), the subject matter heading for each paper sent by personal service, mail or electronic means must indicate the OATH index number.

**(c) Means of service on adversary.** Submission of papers to the hearing officer by electronic means, mail, or personal delivery without providing equivalent method of service to all other parties shall be deemed to be an *ex parte* communication.

**(d) Proof of service.** Proof of service must be maintained by the parties for all papers filed with the hearing officer. Proof of service shall be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt by the person receiving the papers. A writing admitting service by the person served is adequate proof of service. Proof of service for papers served by electronic means, in addition to the foregoing, may be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

**Rule 12-08 Docketing the Case at OATH.**

(a) Only cases referred to OATH must be docketed.

(b) Only the Board may docket a case at OATH. Following service of the petition upon the respondent, the Board shall docket a case by delivering to OATH a completed intake sheet, with a petition and appropriate proof of service of the petition.

(c) When a case is docketed, OATH shall place it on the trial calendar, the conference calendar, or on open status. Cases involving the same respondent or respondents shall be scheduled for joint hearings or conferences.

(d) When a case is docketed, it shall be given an index number and assigned to an administrative law judge. Assignments shall be made and changed at the discretion of the chief administrative law judge of OATH or his or her designee, and motions concerning such assignments shall not be entertained except pursuant to Rule 12-09.

(e) After docketing the case at OATH or selecting a hearing date, the Board shall serve notice of hearing, if a hearing date has been selected, and a notice of conference, if a conference date has been selected, within five business days. The notice shall be served by first class mail or electronic means, and appropriate proof of service shall be maintained by the Board.

(f) A conference or hearing shall be scheduled for a date that is at least two weeks after the date the answer must be served and filed.

(g) The administrative law judge may determine that the case is not ready for a conference or hearing and may adjourn the conference or hearing, or may remove the case from the conference or hearing calendar and place it on open status.

**Rule 12-09 Disqualification of Hearing Officers**.

(a) A motion for disqualification of a hearing officer shall be addressed to that hearing officer, shall be accompanied by a statement of the reasons for such application, and shall be made as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.

(b) The hearing officer shall be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with § 14 of the Judiciary Law. In addition, a hearing officer may, *sua sponte* or on motion of any party, withdraw from any case, where in the hearing officer's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

(c) If the administrative law judge determines that his or her disqualification or withdrawal is warranted on grounds that apply to all of the existing administrative law judges, the administrative law judge shall state that determination, and the reasons for that determination, in writing or orally on the record, and may recommend to the chief administrative law judge that the case be assigned to a special administrative law judge to be appointed temporarily by the chief administrative law judge. The chief administrative law judge shall either accept that recommendation, or, upon a determination and reasons stated in writing or orally on the record, reject that recommendation. A special administrative law judge shall have all of the authority granted to administrative law judges under this chapter.

**Rule 12-10 Conferences.**

(a) Only cases referred to OATH are eligible for conferences.

(b) Conferences may be held for the formulation and simplification of issues, the possibility of obtaining admissions or stipulations of fact and of admissibility and authenticity of documents, the order of proof and of witnesses, discovery issues, legal issues, pre-hearing applications, scheduling, and settlement of the case.

(c) In the discretion of the administrative law judge, and whether or not a case has been placed on the OATH conference calendar, conferences may be scheduled on the application of either party or *sua sponte*. In the discretion of the administrative law judge, conferences may be conducted by telephone.

(d) All parties are required to attend conferences as scheduled unless timely application is made to the administrative law judge. Participants shall be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case.

(e) If settlement is to be discussed at the conference, each party shall have an individual possessing authority to settle the matter either present at the conference or readily accessible. During settlement discussions, upon notice to the parties, the administrative law judge or other person conducting the conference may confer with each party and/or representative separately.

(f) All settlement offers, whether or not made at a conference, shall be confidential and shall be inadmissible in any future hearing.

(g) A settlement shall be reduced to writing, or, in the discretion of the administrative law judge, placed on the record. In the event that a settlement is reached other than at a conference, the hearing officer shall be notified immediately pursuant to Rule 12-12(f). Copies of all written settlement agreements shall be sent promptly to the hearing officer.

(h) In the event that the case is not settled at the conference, outstanding pre-hearing matters, including discovery issues, shall be raised during the conference. In the event that the case is not settled at the conference, a hearing date may be set, if such a date has not already been set. The parties shall be expected to know their availability and the availability of their witnesses for a hearing.

**Rule 12-11 Notice of Conference of Hearing.**

(a) When a case is placed on either the conference calendar or the trial calendar, the Board shall serve respondent with notice of the following: the date, time and place of the conference or hearing; each party's right to representation by an attorney or other representative at the conference or hearing; the requirement that a person representing a party at the conference or hearing must file a notice of appearance prior to the conference or hearing; and, in a notice of a hearing served by the Board, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default and waiver of the right to a hearing, or other disposition, against the respondent.

(b) The notice of conference or hearing shall be served by first class mail or electronic means, and appropriate proof of service shall be maintained. A copy of the notice of conference, with proof of service, shall be filed with the administrative law judge at or before the commencement of the conference. A copy of the notice of hearing, with proof of service, shall be filed with the hearing officer at or before the commencement of the hearing.

(c) When multiple petitions against a single respondent, or petitions against multiple respondents, are placed on the conference or trial calendar for a joint conference or hearing pursuant to Rule 12-08, notice of hearing or notice of conference pursuant to this section shall include notice of such joinder.

**Rule 12-12 Adjournments.**

(a) Applications for adjournments of conferences or hearings shall be governed by this section and by Rule 12-14 or Rule 12-27. Conversion of a hearing date to a conference date, or from conference to hearing, shall be deemed to be an adjournment.

(b) Applications to adjourn conferences or hearings shall be made to the hearing officer as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed to the discretion of the hearing officer, and shall be granted only for good cause. Although consent of all parties to a request for an adjournment shall be a factor in favor of granting the request, such consent shall not by itself constitute good cause for an adjournment. Delay in seeking an adjournment shall militate against grant of the request.

(c) If a party selects a hearing or conference date without consulting with or obtaining the consent of another party, an application for an adjournment of such date by that other party, especially if such application is based upon a scheduling conflict, shall be decided with due regard to the *ex parte* nature of the case scheduling.

(d) Counsel shall file an affirmation of actual engagement prior to a ruling on an adjournment sought on that basis. Such affirmation shall state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date that the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the engagement.

(e) Approved adjournments, other than adjournments granted on the record, shall be promptly confirmed in writing by the applicant, to all parties and to the administrative law judge.

(f) Withdrawal of a case from the calendar by the petitioner shall not be subject to the "good cause" requirement of subdivision (b) of this section. However, such withdrawal, other than pursuant to settlement agreement or other final disposition of the case, shall be permitted only upon application to the hearing officer, who may grant or deny the application, either in full or upon stated terms and conditions.

(g) If the administrative law judge determines that a case is not ready for hearing or conference and that an adjournment is inappropriate he or she may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively closed if the parties do not restore the matter to the calendar within 30 days.

**Rule 12-13 Discovery.**

(a) Requests for production of documents, for identification of hearing witnesses, and for inspection of real evidence to be introduced at the hearing may be directed by any party to any other party without leave of the hearing officer.

(b) Depositions shall only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, shall not be permitted except upon agreement among the parties or upon motion for good cause shown. Resort to such extraordinary discovery devices shall not generally be cause for adjournment of a conference or hearing.

(c) Discovery shall be requested and completed promptly, so that each party may reasonably prepare for the hearing. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at the hearing shall be made not less than twenty days before the hearing, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request shall be made within fifteen days of receipt of the request. An objection to a discovery request shall be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the hearing officer for good cause. Notwithstanding the foregoing time periods, where the notice of the hearing is served less than twenty-five days in advance of the hearing, discovery shall proceed as quickly as possible, and time periods may be fixed by consent of the parties or by the hearing officer.

(d) Any discovery dispute shall be presented to the hearing officer sufficiently in advance of the hearing to allow a timely determination. Discovery motions are addressed to the discretion of the hearing officer. The timeliness of discovery requests and responses, and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties shall be among the factors in the hearing officer’s exercise of discretion.

(e) In ruling upon a discovery motion, the hearing officer may deny the motion, order compliance with a discovery request, order other discovery, or take other appropriate action. The hearing officer may grant or deny discovery upon specified conditions, including payment by one party to another of stated expenses of the discovery. Failure to comply with an order compelling discovery may result in imposition of appropriate sanctions upon the disobedient party, attorney or representative, the preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the case, or declaration of default.

**Rule 12-14 Pre-Hearing Motions.**

(a) Pre-hearing motions shall be consolidated and addressed to the hearing officer as promptly as possible, and sufficiently in advance of the hearing to permit a timely decision to be made. Delay in presenting such a motion may, in the discretion of the hearing officer, weigh against the granting of the motion, or may lead to the granting of the motion upon appropriate conditions.

(b) The hearing officer may in his or her discretion permit pre-hearing motions to be made in writing, by electronic means, or orally, including by telephone. The hearing officer may require the parties to submit legal briefs

on any motion. Parties are encouraged to make pre-hearing motions, or to conduct preliminary discussions and scheduling of such motions, by conference telephone call or by electronic means to the hearing officer.

(c) Motion papers shall state the grounds upon which the motion is made and the relief or order sought. Motion papers shall include notice to all other parties of their time pursuant to subdivision (d) of this section to serve papers in opposition to the motion. Motion papers and papers in opposition shall be served on all other parties, and proof of service shall be filed with the papers. The filing of motion papers or papers in opposition by a representative who has not previously appeared shall constitute the filing of a notice of appearance by that representative, and shall conform to the requirements of Rule 12-15(b).

(d) Unless otherwise directed by the hearing officer upon application or *sua sponte,* the opposing party shall file and serve responsive papers no later than eight days after service of the motion papers if service of the motion papers was by personal delivery or electronic means, and no later than thirteen days after service if service of the motion papers was by mail.

(e) Reply papers shall not be filed unless authorized by the hearing officer, and oral argument shall not be scheduled except upon the direction of the hearing officer.

(f) Nothing in this section shall limit the applicability of other provisions to specific pre-hearing motions.

**Subchapter C – Rules of Conduct**

**Rule 12-15 Appearances at OATH.**

(a) A party may appear in person, by an attorney, or by a duly authorized representative. A person appearing for a party, including by telephone conference call, is required to file a notice of appearance with OATH. Docketing of a case by an attorney or representative of a party shall be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared shall constitute the filing of a notice of appearance by that person, and shall conform to the requirements of subdivisions (b) and (d) of this Rule. Participation in a telephone conference call on behalf of a party by an attorney or representative of the party shall be deemed an appearance by the attorney or representative. Nonetheless, upon making such an appearance, the attorney or representative shall file a notice of appearance in conformity with subdivisions (b) and (d) of this section.

(b) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "attorney for (petitioner or respondent)", and the appearance of any other person shall be indicated by the designation "representative for (petitioner or respondent)".

(c) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance.

(d) A person may not file a notice of appearance or appear on behalf of a party unless he or she has been retained by that party to represent the party before OATH. Filing a notice of appearance or making an appearance constitutes a representation that the person appearing has been so retained. Filing a notice of appearance constitutes a representation that the person appearing has read and is familiar with the rules of this subchapter.

**Rule 12-16 Ex Parte Communications.**

No *ex parte* communications, other than those related to ministerial matters regarding a conference or hearing, shall be received by a hearing officer.

**Subchapter D – Hearings**

**Rule 12-17 Role of the Hearing Officer.**

In the conduct of an adjudication, a hearing officer may:

(a) administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive written and oral testimony, and oversee and regulate discovery procedures;

(b) upon the request of any party, or upon the hearing officer's discretion, subpoena the attendance of witnesses and the production of books, records, or other information;

(c) regulate the course of the hearing in accordance with Rule 12-21;

(d) dispose of procedural requests or similar matters;

(e) make recommended or final findings of fact or decisions, determinations or orders, as authorized by law; and

(f) take any other action authorized by law or agency rule consistent therewith.

**Rule 12-18 Consolidation; Separate Hearings.**

All or portions of separate cases may be consolidated for the hearing, or portions of a single case may be severed for separate hearings, in the discretion of the hearing officer. Consolidation or severance may be ordered on motion or *sua sponte*, in furtherance of justice, efficiency or convenience.

**Rule 12-19 Witnesses and Documents.**

The parties shall have all of their witnesses available on the hearing date. A party intending to introduce documents into evidence shall bring to the hearing copies of those documents for the hearing officer, the witness, and the other parties. Repeated failure to comply with this section may be cause for sanctions. Such sanctions may include formal admonishment or reprimand, assessment of costs or imposition of a fine, exclusion of the offending person from the proceedings, exclusion or limitation of evidence, adverse evidentiary inference, adverse disposition of the case, in whole or in part, or other sanctions as the hearing officer may determine to be appropriate.

**Rule 12-20 Subpoenas.**

(a) A subpoena *ad testificandum* requiring the attendance of a person to give testimony prior to or at a hearing or a subpoena *duces tecum* requiring the production of documents or things at or prior to a hearing may be issued only by the hearing officer upon application of a party or *sua sponte*.

(b) A request by a party that the hearing officer issue a subpoena shall be deemed to be a motion, and shall be made in compliance with Rule 12-14 or 12-27, as appropriate; provided, however, that such a motion shall be made on 24 hours notice by electronic means or personal delivery of papers, including a copy of the proposed subpoena, unless the hearing officer directs otherwise. For cases before OATH, the proposed subpoena may be prepared by completion of a form subpoena available from OATH. The making and scheduling of requests for issuance of subpoenas by telephone conference call to the hearing officer or by electronic means is encouraged.

(c) Subpoenas shall be served in the manner provided by § 2303 of the Civil Practice Law and Rules, unless the hearing officer directs otherwise.

(d) In the event of a dispute concerning a subpoena after the subpoena is issued, informal resolution shall be attempted with the party who requested issuance of the subpoena. If the dispute is not thus resolved, a motion to

quash, modify or enforce the subpoena shall be made to the hearing officer.

**Rule 12-21 Order of Proceedings.**

Testimony and argument on the law and facts shall be presented in the following order: petitioner, witnesses called by the petitioner, if any, cross-examination, the respondent(s) and/or their counsel, witnesses called by respondent(s) and/or their counsel, cross-examination, and closing statements. Each party shall be afforded an opportunity to present rebuttal testimony, if deemed appropriate by the hearing officer. Closing statements, if any, shall be made first by petitioner. The order of proceedings may be modified at the discretion of the hearing officer.

**Rule 12-22 Interpreters.**

The hearing officer will make reasonable efforts to provide language assistance services to a party or their witnesses who are in need of an interpreter to communicate at a hearing or conference.

**Rule 12-23 Failure to Appear.**

All parties, counsel and other representatives are required to be present at the hearing and prepared to proceed at the time scheduled for commencement of the hearing. Commencement of the hearing, or of any session of the hearing, shall not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the hearing officer. Absent a finding of good cause, and to the extent permitted by the law applicable to the claims asserted in the petition, the hearing officer may direct that the hearing proceed in the absence of any missing party or representative, render a disposition of the case adverse to the missing party, or take other appropriate measures, including the imposition of appropriate sanctions. Relief from the direction of the hearing officer may be had only upon motion brought as promptly as possible pursuant to Rule 12-14 or 12-27. The hearing officer may grant or deny such a motion, in whole, in part, or upon stated conditions.

**Rule 12-24 Evidence at the Hearing.**

(a) Compliance with technical rules of evidence, including hearsay rules, shall not necessarily be required. Principles of civil practice and rules of evidence may be applied to ensure an orderly proceeding and a clear record, and to assist the hearing officer in the role as trier of fact. The order of proceedings may be altered by the hearing officer for convenience of the parties, attorneys, witnesses, or OATH, where substantial prejudice will not result.

(b) The hearing officer may limit examination, the presentation of testimonial, documentary or other evidence, and the submission of rebuttal evidence. Objections to evidence offered, or to other matters, will be noted in the transcript, and exceptions need not be taken to rulings made over objections. The hearing officer may call witnesses, may require any party to clarify confusion, fill gaps in the record, or produce witnesses, and may question witnesses directly.

(c) In the discretion of the hearing officer, closing statements may be made orally or in writing. On motion of the parties, or *sua sponte*, the hearing officer may direct written post-hearing submissions, including legal briefing, proposed findings of fact and conclusions of law, or any other pertinent matter.

(d) Evidence pertaining to penalty or relief. A separate hearing shall not be held as to the penalty to be imposed or the relief to be granted in the event that the petition is sustained in whole or in part.

**Rule 12-25 Official Notice.**

(a) In reaching a decision, the hearing officer may take official notice, before or after submission of the case for decision, on request of a party or *sua sponte* on notice to the parties, of any fact which may be judicially noticed by the courts of this state. Matters of which official notice is taken shall be noted in the record, or appended thereto. The parties shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other regulations, directives, guidelines, and similar documents that are lawfully applicable to the parties, provided that any such materials that are unpublished are filed with the hearing officer sufficiently before commencement of the hearing to enable all parties to address at the hearing any issue as to the applicability or meaning of any such materials.

**Rule 12-26 Public Access to Proceedings.**

(a) Other than conferences, all proceedings shall be open to the public, unless the hearing officer finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law. Witnesses may be excluded from proceedings other than their own testimony in the discretion of the hearing officer.

(b) No person shall make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or otherwise, except upon application to the hearing officer. Except as otherwise provided by law (*e.g.*, N.Y. Civil Rights Law, § 52), such application shall be addressed to the discretion of the hearing officer, who may deny the application or grant it in full, in part, or upon such conditions as the hearing officer deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(c) Transcripts of proceedings made a part of the record by the administrative law judge shall be the official record of proceedings at OATH, notwithstanding the existence of any other transcript or recording, whether or not authorized under the previous subdivision of this section.

**Rule 12-27 Hearing Motions.**

Motions may be made during the hearing orally or in writing. Hearing motions made in writing shall satisfy the requirements of Rule 12-14. The hearing officer may, in his or her discretion, require that any hearing motion be briefed or otherwise supported in writing. In cases referred to a hearing officer for disposition by report and recommendation to the Board's Chair, motions addressing the sufficiency of the petition or the sufficiency of the petitioner's evidence shall be reserved until closing statements.

**Rule 12-28 The Transcript.**

Hearings shall be stenographically or electronically recorded, and the recordings shall be transcribed, unless the hearing officer directs otherwise. In the discretion of the hearing officer, matters other than the hearing may be recorded and such recordings may be transcribed. Transcripts shall be made part of the record, and shall be made available upon request as required by law.

**Rule 12-29 Decision Made on the Record.**

The hearing officer may conclude a case by making a decision or report and recommendation on the record.

**Subchapter E – Proceedings After Issuance of Report and Recommendation**

**Rule 12-30 Written Comments.**

Once the hearing officer has issued a recommended final determination, each party shall have twenty days to submit written comments to the Board. The comments should raise any objections to the recommended determination, and objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be limited to the record of the adjudicatory proceeding. Comments shall be served upon all other parties. Upon application filed with the Board's General Counsel, the Board's Chair may shorten or extend the time

for comments for good cause shown. No personal appearances shall be made before the Board unless the Board specifically requests that the parties appear.

**Rule 12-31 Final Determination.**

The Board shall provide a final determination affirming, rejecting, or modifying the hearing officer's recommended final determination within 30 days of the conclusion of the written comments period. The final determination shall notify the candidate of the commencement of the four-month period during which a special proceeding may be brought to challenge the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules. If the Board affirms the hearing officer's recommended final determination in its entirety, it shall notify respondent that the hearing officer's recommended final determination was affirmed by the Board. If the Board rejects or modifies the hearing officer's recommended final determination, the Board shall provide a written determination stating the basis for any assessed penalty or public funds determination, including any findings of fact and conclusions of law. Determinations made by the Board pursuant to this chapter may not be appealed to the Board unless the Board specifically provides otherwise in its determination.

## Chapter 13 Disclosure of Independent Expenditures

**Rule 13-01 Definitions**.

Except as otherwise provided, the definitions set forth in Rule 1-02 apply in this chapter. In addition, the following terms shall have the following meanings:

**"Ballot proposal"** means a municipal ballot proposal, initiative, measure, or referendum. Activities associated with ballot proposals initiated by petition include the circulation of petitions to place the proposal on the ballot. Activities associated with ballot proposals not initiated by petition include those conducted after the measure or language is filed with the City Clerk.

**"Clearly identified"** means: (1) the name of the candidate or ballot proposal appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot proposal is otherwise apparent by unambiguous reference.

**"Contribution"** means any monetary gift made to an entity. Contributions do not include membership dues paid by an individual or revenue from goods and services.

**"Covered communication"** means an express advocacy communication or electioneering communication.

**"Covered election"** means a covered election as defined in Charter § 1052(a)(15)(a)(iii).

**"Covered expenditure"** means an expenditure directly related to the design, production, or distribution of a covered communication. An expenditure made during the ordinary conduct of business in connection with covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer, or producer), website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a covered expenditure.

**"Electioneering communication"** means a communication that: (1) is disseminated by means of a radio, television, cable, or satellite broadcast, a paid advertisement such as in a periodical or on a billboard, or a mass mailing; (2) is disseminated within 30 days of a covered primary or special election, or within 60 days of a covered general election; and (3) refers to one or more clearly identified ballot proposals and/or candidates for a covered election. Electioneering communication shall not include a candidate-related communication made by an organization operating and remaining in good standing under Section 501(c)(3) of the Internal Revenue Code of 1986.

**"Entity"** means an entity as defined in Charter § 1052(a)(15)(a)(ii).

**"Express advocacy communication"** means a communication that contains a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "[Candidate] for [elected office]," "vote against," "defeat," "reject," or "sign the petition for," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot proposals and/or candidates in a covered election, and is disseminated by means of: (1) radio, television, cable, or satellite broadcast; (2) telephone communication; (3) mass mailing; (4) other printed material; or (5) any other form of paid electoral advertising. Paid electoral advertising shall not include communications over the Internet, except for: (1) communications placed for a fee on another individual or entity's website; or (2) websites formed primarily for, or whose primary purpose is, the election, passage, or defeat of a candidate in a covered election or of a ballot proposal.

**"Fair market value"** means: (1) for goods, the price of those goods at the time received in the market in which they ordinarily would have been purchased; and (2) for services, other than those provided by an unpaid volunteer, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

**"Independent expenditure"** means an independent expenditure as defined in Charter § 1052(a)(15)(a)(i).[1]

**"Independent spender"** means an individual or entity that makes an independent expenditure.

**"Mass mailing"** means a mailing by United States mail, common carrier, or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

**"Principal owner"** means an individual or entity that owns or controls ten percent or more of an entity, including stockholders and partners.

**"Telephone communication"** means 500 or more telephone calls, whether live or recorded, of an identical or substantially similar nature within any 30-day period.

**Rule 13-02 Disclosure Statements**.

Each disclosure statement shall consist of the following information:

**(a) Filer Information.**

(1) All independent spenders shall provide their:

(i) name, mailing address, telephone number, email address, and employer information;

(ii) authorized liaison's name, mailing address, email address, telephone number, and employer information; and

(iii) other similar information that may be required by the Board.

(2) Independent spenders that are entities must also provide their:

(i) website URL;

(ii) treasurer name, mailing address, email address, telephone number, and employer information;

(iii) type of organization;

(iv) name(s) of principal owners, and employer information for any such owners who are individuals; and

(v) name and employer information of board members and officers or their equivalents.

(3) Independent spenders that are individuals must also provide their occupation and employer information.

**(b) Communications**.

When an independent spender makes covered expenditures aggregating $1,000 or more during an election cycle for communications that refer to a specific candidate or ballot proposal, it must report these

[1] Pursuant to Local Law No. 15 of 2013, this definition was amended to exclude any communication by a labor or other membership organization aimed at its members, or by a corporation aimed at its stockholders. Expenditures related to such communications, if made on or after March 13, 2013, are not subject to the requirements contained in this chapter.

communications and each future communication associated with an expenditure of $100 or more that refers to that candidate or ballot proposal. Expenditures of less than $100 shall not be covered expenditures for the purposes of this subdivision. Each communication shall be disclosed in the reporting period in which it is first published, aired, or otherwise distributed, except that no communication is required to be disclosed before the $1,000 threshold has been reached. For each communication, the independent spender shall provide:

(1) The type of communication;

(2) Its distribution date;

(3) The names of the candidates and/or ballot proposals referred to in the communication;

(4) For a printed communication, an electronic or paper copy of the communication as it was distributed to the public;

(5) For a broadcast or Internet communication, an audio, video, or source file of the communication as it was distributed to the public, except that if a source file is not available for an audio communication then a script will be accepted; and

(6) Such other similar information as the Board may require.

**Omitted.**

**(c) Expenditures**.

(1) When a covered communication has been reported, each covered expenditure of $100 or more associated with that communication must be reported. If the communication refers to more than one candidate or ballot proposal, only those expenditures for candidates or ballot proposals that have met the $1,000 threshold need be reported. Each expenditure shall be disclosed in the reporting period in which the expenditure is incurred, except that no expenditure is required to be disclosed prior to the reporting of its associated communication. For each expenditure, the independent spender shall provide:

- The names of the candidates or ballot proposals referred to by the associated communication;
- The name of the vendor;
- The date, amount, and purpose;
- The names of the individuals or entities paying for the expenditure, if not the independent spender
- An invoice detailing the expenditure, when it becomes available; and
- Such other similar information as the Board may require.

**(2) Valuation.** All expenditures shall be reported at their fair market value. If it is not practicable to obtain an invoice, the independent spender shall use a reasonable estimate of fair market value and shall provide a written record supporting the estimate.

**(3) Apportionment.** For reporting purposes, an expenditure associated with a communication that refers to more than one candidate or ballot proposal shall be apportioned among the candidates or ballot proposals based on the following factors:

(i) The focus of the communication;

(ii) The geographic distribution or location of the communication;

(iii) The subject matter of the communication;

(iv) The relative prominence of references to and/or the appearance of a candidate or ballot proposal in the communication, including the size and location of references to the candidate or ballot proposal and any photographs of the candidate;

(v) The timing of the communication; and

(vi) Other circumstances surrounding the communication.

**(d) Contributions**.

**(1)** When an independent spender that is an entity makes covered expenditures of $100 or more aggregating $5,000 or more in the twelve months preceding the election for communications that refer to any single candidate, it is required to report:

(i) All contributions accepted from other entities since the first day of the calendar year preceding the year of the covered election; and

(ii) All contributions aggregating $1,000 or more accepted from an individual during the 12 months preceding the election.

(2) Each contribution shall be disclosed in the reporting period in which it was received. For each contribution, the independent spender shall provide:

(i) For each contribution accepted from another entity, the entity's name, address, and type of organization and the names of the entity's principal owners, partners, board members and officers, or their equivalents, or, if no natural persons exist in any such role, the name of at least one natural person who exercises control over the activities of such entity;

(ii) For each entity from which contributions aggregating $50,000 or more have been accepted in the 12 months preceding the election (the "major contributor"), (A) the name, address, and type of each entity that contributed $25,000 or more to the major contributor in the 12 months preceding the election; and (B) the name, residential address, occupation, and employer of each individual who contributed $25,000 or more to the major contributor in the 12 months preceding the election;

(iii) For each contribution accepted from an individual, the individual's name, residential address, occupation, and employer;

(iv) The date of receipt and amount of each such contribution accepted by the independent spender or the major contributor; and

(v) Such other similar information as the Board may require.

**(3) Exemption for earmarked contributions.** Contributions to independent spenders or major contributors that are earmarked for an election that is not a covered election, or for an explicitly stated non-electoral purpose, are not required to be reported; provided, however that records of such contributions to independent spenders must be maintained and may be requested by the Board to verify their qualification for this exemption.

**(e) Verification**.

Each independent spender filing a disclosure statement shall verify that each reported expenditure referring to a candidate was not authorized, requested, suggested, fostered, or cooperated in by such candidate, an agent of such candidate, an opponent of such candidate, or an agent of such opponent. The independent spender shall verify that the disclosure statement is true and complete to the best of the filer's knowledge, information, and belief. The disclosure statement shall contain such signatures or notarizations as may be required by the Board.

**(f) Format**.

All disclosure statements shall be submitted electronically as specified by the Board. Supporting documents shall be submitted electronically, by hand, or by common carrier.

**Rule 13-03 Disclosure Dates**.

**(a) Filing dates.** The Board shall publish a schedule of disclosure statement filing dates and reporting periods based on the following:

**(1) Primary and general elections**.

(i) Disclosure statements are due on January 15, March 15, May 15, and July 15 of the election year.

(ii) Additional disclosure statements are due:

(A) For a primary election: 32 and 11 days before and 10 days after the election.

(B) For a general election: 32 and 11 days before and 27 days after the election.

(C) For a runoff election: 10 days after the election.

(iii) During the 14 days before a primary or general election, or a related runoff election, an independent spender shall submit a disclosure statement to the Board within 24 hours of distributing any reportable communication, making any reportable expenditure, or receiving any reportable contribution.

**(2) Special elections**.

(i) Disclosure statements are due 32 and 11 days before and 27 days after the election.

(ii) For a runoff special election, a disclosure statement is due 27 days after the election.

(iii) During the 14 days before a special or runoff special election, an independent spender shall submit a disclosure statement to the Board within 24 hours of distributing any reportable communication, making any reportable expenditure, or receiving any reportable contribution.

**(3) Ballot proposals**.

(i) Disclosure statements for ballot proposals shall be made in accordance with paragraph (1) of this section.

(ii) For ballot proposals anticipated to be voted on at a special election, additional disclosure statements are due on January 15 and July 15 of the year prior to the year of the election.

(4) An independent spender that has not distributed any reportable communications, made any reportable expenditures, or received any reportable contributions within a reporting period is not required to file a disclosure statement for that period. The Board's published schedule of disclosure statement filing dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, submission shall be considered timely if made on the next business day.

**(b) Reporting periods**.

(1) The reporting period for the first disclosure statement containing communications and/or expenditures related to candidates in a primary or general election shall begin on the first day of the election cycle. The reporting period for the first disclosure statement in a special election, or containing communications and/or expenditures related to ballot proposals, shall begin when the first communication is distributed or expenditure is made.

(2) The reporting period for each subsequent disclosure statement shall begin on the third day before the deadline for the submission of the previous disclosure statement.

(3) The reporting period for all disclosure statements shall conclude on and include the fourth day before the deadline for the submission of that disclosure statement.

(4) The Board's published schedule of reporting period dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the reporting period will conclude on and include the fourth day before the next business day.

**Rule 13-04 Identification of Communications**.

(a) When an independent spender makes covered expenditures of $100 or more aggregating $1,000 or more during an election cycle, the communication associated with the expenditure that meets the $1,000 threshold and all subsequent communications, regardless of dollar value, shall include the following:

(1) For printed material, the words "Paid for by" must appear, followed by (i) the name of the independent spender; (ii) if the spender is an entity: (A) the name of any individual or entity that owns or controls more than 50% of the independent spender, (B) the name of the independent spender's chief executive officer or equivalent, if any, and (C) the independent spender's top donors as described in subdivision (b) of this section; and (iii) the words "Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney." Such words must appear in a conspicuous size and style and must be enclosed in a box within the borders of the communication.

(2) For television, internet videos, or other types of video communications, the words "Paid for by" followed by the name of the independent spender must be clearly spoken at the beginning or end of the communication in a pitch and tone substantially similar to the rest of the communication. Additionally, simultaneous with the spoken disclosure, in a conspicuous size and style and enclosed in a box, the words "Paid for by" must appear followed by: (i) the name of the independent spender; (ii) if the spender is an entity, the spender's top donors as described in subdivision (b) of this section; and (iii) the words "Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney".

(3) For radio, internet audio, or automated telephone calls, the words "Paid for by" followed by (i) the name of the independent spender; (ii) if the spender is an entity, the spender's top donors as described in subdivision (b) of this section; and (iii) the words "Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney", must be clearly spoken at the end of the communication in a pitch and tone substantially similar to the rest of the communication. For radio and internet audio communications of 30 seconds in duration or shorter, subparagraph (ii) of this paragraph may be omitted.

(4) For non-automated telephone calls lasting longer than ten seconds, the words "This call is paid for by" followed by the name of the independent spender and the words "Not authorized by any candidate or candidate committee. More information is available at nyc.gov/FollowTheMoney" must be clearly spoken during the call in a pitch and tone substantially similar to the rest of the call.

(b) Identification of an independent spender's top donors in a communication shall be as follows:

(1) A spender's top donors are its largest aggregate contributors during the 12 months preceding the election, in descending order by aggregate amount, who have contributed at least $5,000.

(2) If there are at least three such donors:

(i) Printed identification shall be the words "Top Three Donors" followed by the names of such donors;

(ii) Video identification shall be the words "The top three donors to the organization responsible for this advertisement are" followed by the names of such donors;

(iii) Audio identification shall be the words "with funding provided by" followed by the names of such donors;

(iv) If the third largest donor has donated the same amount as the fourth largest donor, the independent spender may choose which three donors to include, so long as no donor is included that has donated less than any other donor that is not included.

(3) If there are only two such donors, the words "Top Donors" must replace "Top Three Donors."

(4) If there is only one such donor, the words "Top Donor" must replace "Top Three Donors."

(5) If there are no such donors, all references to donors must be removed from the identification.

(c) All written or spoken identification required by this rule must be in the primary language of the communication, except that the web address nyc.gov/FollowTheMoney, if required to be written or spoken in the identification, must be in English.

(d) The requirements of this section may be modified by the Board concerning items upon which disclosures cannot be reasonably printed, pursuant to §1052(a)(15)(c)(i) of the Charter or any other items whose disclosures are not otherwise provided for in §1052(a)(15)(c) of the Charter.

(e) This section shall not apply to communications required to include a disclosure pursuant to § 3-703(16) of the Code.

**Rule 13-05 Non-Independent Expenditures**.

An expenditure by an individual or entity referring to a candidate, that was authorized, requested, suggested, fostered by, or cooperated in by such candidate or the opponent of such candidate, or their agents, is not

an independent expenditure and is not governed by this Chapter. Factors used by the Board to determine whether an expenditure is independent or non-independent are referenced in Rule 1-08(f)**.**

**Rule 13-06 Guidance for Independent Spenders**.

Prior to dissemination of a communication, an individual or entity may seek guidance regarding whether the communication would be subject to the rules of this chapter by submitting a written request in the form and manner prescribed by the Board, including a description or sample of the proposed communication and a description of its proposed dissemination. If the request is received more than 14 days before the election, guidance shall be provided within seven days, and if such request is received during the 14 days prior to the election, guidance shall be provided within 24 hours. Such guidance applies only to the communication exactly as submitted and disseminated exactly as described, and constitutes neither approval nor disapproval of the content, appropriateness, or accuracy of the communication.

**Rule 13-07 Document Retention**.

Independent spenders must maintain for three years after the date of the election to which they apply: (1) records that enable the Board to verify the accuracy of disclosure statements, including bills for goods or services used to produce and disseminate a communication, as well as records of all contributions received by independent spenders that are entities; and (2) copies of all advertisements, pamphlets, circulars, flyers, brochures, and other printed communications disseminated, and a schedule of all radio or television time purchased, and scripts used therein or the audio or video source files. Documents previously provided to and received by the Board do not need to be maintained by the independent spender.

**Rule 13-08 Complaints and Investigations; Board Determinations**.

**(a)** The following procedures shall apply for complaints and investigations regarding potential violations of Charter § 1052(a)(15):

**(1) Initiation of proceeding.** A proceeding pursuant to Charter § 1052(a)(15)(e) may be commenced when: (1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter or this chapter, or (2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter or this chapter.

**(2) Service of complaints.** A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board.

**(3) Contents of complaint.** A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter or this Chapter to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.

**(4) Initial complaint processing.** Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of paragraph (3), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint. If a complaint does not comply with the requirements of paragraph (3), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.

**(5) Opportunity to respond to complaint.** Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit an answer sworn to or affirmed, which may set forth reasons why the Board should dismiss the complaint. If, based upon its

review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.

**(6) Investigation.** Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter or this Chapter. In its investigation, the Board may use its investigative powers pursuant to Charter § 1052(a)(5). An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.

**(b)** The following procedures shall apply to determinations regarding potential violations of Charter § 1052(a)(15):

**(1) Determination that complaint lacks merit.** Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter and this chapter have not been substantiated and dismiss the complaint or terminate the investigation.

**(2) Notice and opportunity to contest**.

(i) If the Board has reason to believe that a violation of Charter § 1052(a)(15) or this chapter has occurred, the Board shall notify the individual or entity in writing of the alleged violation and proposed civil penalty. Such notice shall:

(A) Set forth in detail the legal basis for the Board's reason to believe there is a violation of Charter § 1052(a)(15) or this chapter;

(B) Notify the individual or entity of the opportunity to submit information and documentation for the Board's consideration within a reasonable time period to be specified in such notice;

(C) If sent prior to the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty; and

(D) If sent after the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing, or to appear before a hearing officer, to contest the alleged violation and proposed civil penalty. Adjudications conducted after an election shall meet the requirements set forth in Charter § 1046 unless such procedures are waived by the individual or entity.

(ii) Unless the individual or entity is specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board's sole discretion, be disregarded.

(iii) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred, and shall provide notice setting forth in detail the legal basis of the Board's determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action.

**Rule 13-09 Implementation**.

This chapter shall not apply to communications or expenditures made, or contributions received, prior to the effective date of this chapter.

**Rule 13-10 Penalties.**

Any independent spender who violates any provision of this chapter, and any agent of an independent spender who commits such a violation, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

**Appendix A**

**Ethical Guidelines**
**for the**
**New York City Campaign Finance Board**

The New York City Campaign Finance Board has determined that the conduct of its members and staff should be guided by the Ethical Guidelines that follow. In establishing guidelines, the Board recognizes that some of its members and staff may be subject to additional professional codes, such as the Lawyer's Code of Professional Responsibility. In addition, the standards set forth in the New York City Campaign Finance Act (Admin. Code §§ 3-701, et seq.) and in New York City Charter Chapters 46 and 68 are applicable to all Board members and staff. To give greatest effect to its mandate as a non-partisan entity, treating all candidates equally, operating without regard to party affiliation or relationship to any candidate or appointing authority, and to deflect external partisan pressures, these Guidelines establish standards of behavior that go beyond legal and professional obligations in order to ensure the highest degree of public confidence in the work of the Board.

**Definitions**

- Except as otherwise provided, "candidate" means a candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president, or member of the City Council.
- Except as otherwise provided, "elected official" means a person holding office as mayor, public advocate, comptroller, borough president, or member of the City Council.
- "Family member" means parent, child, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, or the spouse of any of these persons.
- "Gift" shall have the same meaning as the term "valuable gift," as used in New York City Charter §2605(b)(5) and defined by rule of the Conflicts of Interest Board (53 RCNY §1-01).

**General Guidelines**

1. Full time Board staff shall not engage in the private practice of their professions, including the practice of law, unless specifically authorized to do so by the Chairman of the Board.
2. Board members and staff shall not accept or agree to accept any gift from any person whose interests might reasonably be expected to be affected by the official actions of the Board.

**Political Conduct**

3. Board members and staff shall not:
    a. serve as officers of political parties, including members of the national or state committee of a political party, assembly district leader, or chair or officer of the county committee or county executive committee of a political party, or as candidates.
    b. make contributions to, or directly or indirectly request any person to make or pay any political assessment, subscription or contribution for, any candidate for an elective office of the city or for any elected official who is a candidate for any elective office.
    c. either directly or indirectly, voluntarily or for compensation, assist, counsel, advise, or otherwise perform work for any candidate, or any agent of such candidate, except for purposes of implementing the requirements of the New York City Campaign Finance Act and New York City Charter Chapter 46 in the course of his or her official duties at the Campaign Finance Board.

d. sign a designating or nominating petition for any candidate.

**Recusal**

4. Board members and staff must recuse themselves from matters under consideration by the Board in which:
    a. they have any financial or business interest or relationship, or any other interest or relationship, that might impair the conscientious performance of their duties;
    b. any other circumstance is present, including personal bias or prejudice, that raises an impediment to the conscientious performance of their duties.

**Disclosure**

5. Board members and staff must disclose to the Board:
    a. Any direct or indirect relationship to or interest in any matter under consideration by the Board.
    b. Any current or past relationship with a candidate, witness, lawyer, or other party involved in any matter under consideration by the Board.
    c. Any interest or relationship he or she knows of concerning any matter under consideration by the Board, or concerning a candidate, witness, or other party involved in any such matter, of a spouse, family member, or person residing in his or her household, including, but not limited to:
        1. a business or social relationship with a candidate or an agent of a candidate;
        2. accepting any gift from any person whose interests might reasonably be expected to be affected by the official actions of the Board; and
        3. making contributions to or performing work for any candidate or an agent of a candidate.
    d. Any New York City, local government, or political party office he or she currently holds or seeks, or is appointed or nominated to, or held or sought by a spouse, family member, or person residing in his or her household and any such office to which such person is appointed or nominated.
    e. Any relationship or interest that is likely to create an appearance of impropriety in connection with the Board's work, including, but not limited to:
        1. any current or previous business or social relationship with a candidate or any agent of a candidate;
        2. membership in a political club;
        3. holding office or serving as a member of any committee in any partisan political organization or association or serving as a delegate to any political convention;
        4. intent to attend and attendance at any event, party, or other gathering sponsored by a political party, political committee, or political club; and
        5. intent to attend and attendance at any event, party, or other gathering that he or she knows or has reason to believe is intended to directly or indirectly aid or defeat a candidate including, but not limited to events, parties, or gatherings at which funds are solicited or collected, rallies, election day events, campaign worker events, and inauguration events. Disclosure of attendance at non-partisan political events or inaugurations is not required.
6. Disclosure will be deemed made when given in writing to the Executive Director.
7. All matters subject to disclosure will be filed in a manner to be established by the Ethical Guidelines Committee at the Board and available to the general public, except insofar as disclosure would compromise the confidentiality of a pending investigation or would violate basic principles of fairness to those involved in the matter, in which case disclosure shall be made only to the Chairman and such other Board members and staff as the Chairman determines.

**Confidentiality**

8. Board members and staff shall not disclose confidential information acquired during the course of the Board's work without approval of the Board.

**Exemptions**

9. The Ethical Guidelines Committee, consisting of the Chairman of the Board, a second Board member designated by the Chairman, and a staff member designated by the Chairman, shall have the power to grant exemptions from provisions of the Ethical Guidelines if in the judgment of the Committee such exemptions will not compromise the work of the Board, and imposition of the provisions of the Ethical Guidelines would otherwise pose an unreasonable hardship. A record shall be kept of any exceptions granted, the reasons therefore, and protective measures, if any, that the Ethical Guidelines Committee determines must be taken to ensure that the purposes of the Ethical Guidelines are fulfilled.

April 1, 2017

Frederick P. Schaffer, Chair
Gregory T. Camp
Art C. Chang
Richard J. Davis

Naomi B. Zauderer