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AICPA professional standards: Code of conduct, Bylaws, as of June 1, 1990

American Institute of Certified Public Accountants

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AICPA PROFESSIONAL STANDARDS

**Code of Conduct
Bylaws**

As of June 1, 1990

AICPA

American Institute of Certified Public Accountants

AICPA PROFESSIONAL STANDARDS

**Code of Conduct
Bylaws**

As of June 1, 1990

AICPA

American Institute of Certified Public Accountants

Published for the
American Institute of
Certified Public Accountants
by

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HOW TO USE THIS VOLUME

Scope of This Volume . . .

This volume, which is a reprint of the Code of Conduct and By-laws sections of volume 2 of the looseleaf edition of *AICPA Professional Standards*, contains Principles of Professional Conduct, Rules of Conduct, Interpretations of Rules of Conduct, Ethics Rulings, and the Bylaws of the American Institute of Certified Public Accountants.

How This Volume Is Arranged . . .

The contents of this volume are arranged as follows:

Code of Professional Conduct

Introduction

Principles of Professional Conduct

Rules: Applicability and Definitions

Independence, Integrity, and Objectivity

General Standards, Accounting Principles

Responsibilities to Clients

Responsibilities to Colleagues

Other Responsibilities and Practices

Bylaws

Definitions

Name and Purpose

Admission to, and Retention of, Membership and Association
Organization and Procedure

Financial Management and Controls

Meetings of Institute and Council

Election of Council, Board of Directors, and Officers of the
Institute

Termination of Membership and Disciplinary Sanctions

Amendments

General

How To Use This Volume . . .

The arrangement of material in this volume is indicated in the general table of contents at the front of the volume. There is a detailed table of contents covering the material within each major division.

CODE OF CONDUCT

The Rules of Conduct, Interpretations of Rules of Conduct, and Ethics Rulings related to the same subjects have been assembled within the major divisions of the Code of Conduct part of the Volume. For example, Rule 101—*Independence*, ET section 101, is followed by the first Ethics Interpretation under Rule 101, ET section 101-1, *Interpretation of Rule 101*. Ethics Rulings for this section appear at ET section 191.

A topical index is provided for this division and is identified as ET Topical Index.

BYLAWS

The Bylaws of the AICPA and the related Implementing Resolutions of Council are assembled within the major divisions by section numbers. For example, BL section 230, *Requirements for Retention of Membership*, is followed by BL section 230R, *Implementing Resolutions Under Section 2.3, Requirements for Retention of Membership*.

In BL section 900, *General*, the following sections are included:

Mission Statement of the American Institute of Certified Public Accountants

A Description of the Professional Practice of Certified Public Accountants

A topical index is provided for this division and is identified as BL Topical Index.

The topical indexes use the key word method to facilitate reference to the pronouncements. The indexes are arranged alphabetically by topic and refer the reader to major divisions, sections, and paragraph numbers.

CODE OF PROFESSIONAL CONDUCT

As Adopted January 12, 1988

INTRODUCTION

Composition, Applicability, and Compliance

The Code of Professional Conduct of the American Institute of Certified Public Accountants consists of two sections—(1) the Principles and (2) the Rules. The Principles provide the framework for the Rules, which govern the performance of professional services by members. The Council of the American Institute of Certified Public Accountants is authorized to designate bodies to promulgate technical standards under the Rules, and the bylaws require adherence to those Rules and standards.

The Code of Professional Conduct was adopted by the membership to provide guidance and rules to all members—those in public practice, in industry, in government, and in education—in the performance of their professional responsibilities.

Compliance with the Code of Professional Conduct, as with all standards in an open society, depends primarily on members' understanding and voluntary actions, secondarily on reinforcement by peers and public opinion, and ultimately on disciplinary proceedings, when necessary, against members who fail to comply with the Rules.

Other Categories

Interpretations of Rules of Conduct consist of interpretations which have been adopted, after exposure to state societies, state boards, practice units and other interested parties, by the professional ethics division's executive committee to provide guidelines as to the scope and application of the Rules but are not intended to limit such scope or application. A member who departs from such guidelines shall have the burden of justifying such departure in any disciplinary hearing. *Interpretations* which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

Ethics Rulings consist of formal rulings made by the professional ethics division's executive committee after exposure to state societies, state boards, practice units and other interested parties. These rulings summarize the application of Rules of Conduct and Interpretations to a particular set of factual circumstances. Members who depart from such rulings in similar circumstances will be requested to justify such departures. *Ethics Rulings* which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

Publication of an Interpretation or Ethics Ruling in *The Journal of Accountancy* constitutes notice to members. Hence, the effective date of the pronouncement is the last day of the month in which the pronouncement is published in *The Journal of Accountancy*. The professional ethics division will take into consideration the time that would have been reasonable for the member to comply with the pronouncement.

A member should also consult, if applicable, the ethical standards of his state CPA society, state board of accountancy, the Securities and Exchange Commission, and any other governmental agency which may regulate his client's business or use his report to evaluate the client's compliance with applicable laws and related regulations.

ET Section 50

PRINCIPLES OF PROFESSIONAL CONDUCT

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56	Article V—Due Care01-.05
57	Article VI—Scope and Nature of Services01-.03

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ET Section 51

Preamble

.01 Membership in the American Institute of Certified Public Accountants is voluntary. By accepting membership, a certified public accountant assumes an obligation of self-discipline above and beyond the requirements of laws and regulations.

.02 These Principles of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.

[The next page is 4291.]

ET Section 52**Article I—Responsibilities**

In carrying out their responsibilities as professionals, members should exercise sensitive professional and moral judgments in all their activities.

.01 As professionals, certified public accountants perform an essential role in society. Consistent with that role, members of the American Institute of Certified Public Accountants have responsibilities to all those who use their professional services. Members also have a continuing responsibility to cooperate with each other to improve the art of accounting, maintain the public's confidence, and carry out the profession's special responsibilities for self-governance. The collective efforts of all members are required to maintain and enhance the traditions of the profession.

[The next page is 4301.]

ET Section 53**Article II—The Public
Interest**

Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism.

.01 A distinguishing mark of a profession is acceptance of its responsibility to the public. The accounting profession's public consists of clients, credit grantors, governments, employers, investors, the business and financial community, and others who rely on the objectivity and integrity of certified public accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on certified public accountants. The public interest is defined as the collective well-being of the community of people and institutions the profession serves.

.02 In discharging their professional responsibilities, members may encounter conflicting pressures from among each of those groups. In resolving those conflicts, members should act with integrity, guided by the precept that when members fulfill their responsibility to the public, clients' and employers' interests are best served.

.03 Those who rely on certified public accountants expect them to discharge their responsibilities with integrity, objectivity, due professional care, and a genuine interest in serving the public. They are expected to provide quality services, enter into fee arrangements, and offer a range of services—all in a manner that demonstrates a level of professionalism consistent with these Principles of the Code of Professional Conduct.

.04 All who accept membership in the American Institute of Certified Public Accountants commit themselves to honor the public trust. In return for the faith that the public reposes in them, members should seek continually to demonstrate their dedication to professional excellence.

[The next page is 4311.]

ET Section 54**Article III—Integrity**

To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity.

.01 Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.

.02 Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.

.03 Integrity is measured in terms of what is right and just. In the absence of specific rules, standards, or guidance, or in the face of conflicting opinions, a member should test decisions and deeds by asking: "Am I doing what a person of integrity would do? Have I retained my integrity?" Integrity requires a member to observe both the form and the spirit of technical and ethical standards; circumvention of those standards constitutes subordination of judgment.

.04 Integrity also requires a member to observe the principles of objectivity and independence and of due care.

[The next page is 4321.]

ET Section 55**Article IV—Objectivity and Independence**

A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A member in public practice should be independent in fact and appearance when providing auditing and other attestation services.

.01 Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services.

.02 Members often serve multiple interests in many different capacities and must demonstrate their objectivity in varying circumstances. Members in public practice render attest, tax, and management advisory services. Other members prepare financial statements in the employment of others, perform internal auditing services, and serve in financial and management capacities in industry, education, and government. They also educate and train those who aspire to admission into the profession. Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment.

.03 For a member in public practice, the maintenance of objectivity and independence requires a continuing assessment of client relationships and public responsibility. Such a member who provides auditing and other attestation services should be independent in fact and appearance. In providing all other services, a member should maintain objectivity and avoid conflicts of interest.

.04 Although members not in public practice cannot maintain the appearance of independence, they nevertheless have the responsibility to maintain objectivity in rendering professional services. Members employed by others to prepare financial statements or to perform auditing, tax, or consulting services are charged with the same responsibility for objectivity as members in public practice and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with members in public practice.

[The next page is 4331.]

ET Section 56**Article V—Due Care**

A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability.

.01 The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public.

.02 Competence is derived from a synthesis of education and experience. It begins with a mastery of the common body of knowledge required for designation as a certified public accountant. The maintenance of competence requires a commitment to learning and professional improvement that must continue throughout a member's professional life. It is a member's individual responsibility. In all engagements and in all responsibilities, each member should undertake to achieve a level of competence that will assure that the quality of the member's services meets the high level of professionalism required by these Principles.

.03 Competence represents the attainment and maintenance of a level of understanding and knowledge that enables a member to render services with facility and acumen. It also establishes the limitations of a member's capabilities by dictating that consultation or referral may be required when a professional engagement exceeds the personal competence of a member or a member's firm. Each member is responsible for assessing his or her own competence—of evaluating whether education, experience, and judgment are adequate for the responsibility to be assumed.

.04 Members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.

.05 Due care requires a member to plan and supervise adequately any professional activity for which he or she is responsible.

[The next page is 4341.]

ET Section 57

Article VI—Scope and Nature of Services

A member in public practice should observe the Principles of the Code of Professional Conduct in determining the scope and nature of services to be provided.

.01 The public interest aspect of certified public accountants' services requires that such services be consistent with acceptable professional behavior for certified public accountants. Integrity requires that service and the public trust not be subordinated to personal gain and advantage. Objectivity and independence require that members be free from conflicts of interest in discharging professional responsibilities. Due care requires that services be provided with competence and diligence.

.02 Each of these Principles should be considered by members in determining whether or not to provide specific services in individual circumstances. In some instances, they may represent an overall constraint on the nonaudit services that might be offered to a specific client. No hard-and-fast rules can be developed to help members reach these judgments, but they must be satisfied that they are meeting the spirit of the Principles in this regard.

.03 In order to accomplish this, members should

- Practice in firms that have in place internal quality-control procedures to ensure that services are competently delivered and adequately supervised.
 - Determine, in their individual judgments, whether the scope and nature of other services provided to an audit client would create a conflict of interest in the performance of the audit function for that client.
 - Assess, in their individual judgments, whether an activity is consistent with their role as professionals (for example, Is such activity a reasonable extension or variation of existing services offered by the member or others in the profession?).
-

ET Section 90**RULES: APPLICABILITY
AND DEFINITIONS**

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ET Section 91***Applicability***

As adopted
January 12, 1988

.01 The bylaws of the American Institute of Certified Public Accountants require that members adhere to the Rules of the Code of Professional Conduct. Members must be prepared to justify departures from these Rules.

.02 **Interpretation Addressing the Applicability of the AICPA Code of Professional Conduct.** For purposes of the Applicability Section of the Code, a "member" is a member or international associate of the American Institute of CPAs.

1. The Rules of Conduct that follow apply to all professional services performed except (a) where the wording of the rule indicates otherwise and (b) that a member who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein as long as the member's conduct is in accord with the rules of the organized accounting profession in the country in which he or she is practicing. However, where a member's name is associated with financial statements under circumstances that would entitle the reader to assume that United States practices were followed, the member must comply with the requirements of Rules 202 and 203.
2. A member may be held responsible for compliance with the rules by all persons associated with him or her in the practice of public accounting who are either under the member's supervision or are the member's partners or shareholders in the practice.
3. A member shall not permit others to carry out on his or her behalf, either with or without compensation, acts, which if carried out by the member, would place the member in violation of the rules.

[Paragraph added, August, 1989, effective November 30, 1989.]

[The next page is 4381.]

ET Section 92

Definitions

As adopted
January 12, 1988

[Pursuant to its authority under the bylaws (BL § 360.01) to interpret the Code of Professional Conduct, the Professional Ethics Executive Committee has issued the following definitions of terms appearing in the code effective November 30, 1989.]

.01 Client. (This replaces the previous definition of "Client" at paragraph .01.) A client is any person or entity, other than the member's employer, that engages a member or a member's firm to perform professional services or a person or entity with respect to which professional services are performed. The term "employer" for these purposes does not include those entities engaged in the practice of public accounting.

.02 Council. The Council of the American Institute of Certified Public Accountants.

.03 Enterprise. (This replaces the previous definition of "Enterprise" at paragraph .03.) For purposes of the Code, the term "enterprise" is synonymous with the term "client."

.04 Financial statements. Statements and footnotes related thereto that purport to show financial position which relates to a point in time or changes in financial position which relate to a period of time, and statements which use a cash or other incomplete basis of accounting. Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position, and statements of changes in owners' equity are financial statements.

Incidental financial data included in management advisory services reports to support recommendations to a client and tax returns and supporting schedules do not, for this purpose, constitute financial statements; and the statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

.05 Firm. A proprietorship, partnership, or professional corporation or association engaged in the practice of public accounting, including individual partners or shareholders thereof.

.06 Institute. The American Institute of Certified Public Accountants.

.07 Interpretations of rules of conduct. Pronouncements issued by the division of professional ethics to provide guidelines concerning the scope and application of the rules of conduct.

.08 Member. A member, associate member, or international associate of the American Institute of Certified Public Accountants.

.09 Practice of public accounting. (This replaces the previous definition of "Practice of public accounting" at paragraph .09.) The practice of public accounting consists of the performance for a client, by a member or a

member's firm, while holding out as CPA(s), of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated by bodies designated by Council, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Management Advisory Services, Statements of Governmental Accounting Standards, Statement on Standards for Attestation Engagements, and Statement on Standards for Accountants' Services on Prospective Financial Information.

However, a member or a member's firm, while holding out as CPA(s), is not considered to be in the practice of public accounting if the member or the member's firm does not perform, for any client, any of the professional services described in the preceding paragraph.

.10 Professional services. (This replaces the previous definition of "Professional services" at paragraph .10.) Professional services include all services performed by a member while holding out as a CPA.

.11 Holding out. In general, any action initiated by a member that informs others of his or her status as a CPA or AICPA-accredited specialist constitutes holding out as a CPA. This would include, for example, any oral or written representation to another regarding CPA status, use of the CPA designation on business cards or letterhead, the display of a certificate evidencing a member's CPA designation, or listing as a CPA in local telephone directories.

ET Section 100

INDEPENDENCE, INTEGRITY, AND OBJECTIVITY

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ET Section 101

Independence

.01 Rule 101—Independence. A member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council.

[As adopted January 12, 1988.]

Interpretations under Rule 101—Independence

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 101-1—Interpretation of Rule 101. Independence shall be considered to be impaired if, for example, a member had any of the following transactions, interests, or relationships:

- A. During the period of a professional engagement or at the time of expressing an opinion, a member or a member's firm
 - 1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise.
 - 2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.
 - 3. Had any joint, closely held business investment with the enterprise or with any officer, director, or principal stockholders thereof that was material in relation to the member's net worth or to the net worth of the member's firm.
 - 4. Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise. This proscription does not apply to the following loans from a financial institution when made under normal lending procedures, terms, and requirements:
 - a. Loans obtained by a member or a member's firm that are not material in relation to the net worth of such borrower.
 - b. Home mortgages.
 - c. Other secured loans, except loans guaranteed by a member's firm which are otherwise unsecured.
- B. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, a member or a member's firm
 - 1. Was connected with the enterprise as a promoter, underwriter or voting trustee, as a director or officer, or in any

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capacity equivalent to that of a member of management or of an employee.

2. Was a trustee for any pension or profit-sharing trust of the enterprise.

The above examples are not intended to be all-inclusive.

[Paragraph added by adoption of the Code of Professional Conduct on January 12, 1988.]

.03 101-1 [to be renumbered]—Honorary directorships and trustee-ships. Members are often asked to lend the prestige of their names to not-for-profit organizations that limit their activities to those of a charitable, religious, civic or similar nature by being named as a director or a trustee. A member who permits his name to be used in this manner and who is associated with the financial statements of the organization would not be considered lacking in independence under Rule 101 so long as (1) his position is purely honorary, (2) it is identified as honorary in all letterheads and externally circulated materials in which he is named as a director or trustee, (3) he restricts his participation to the use of his name, and (4) he does not vote or otherwise participate in management functions.

It is presumed that organizations to which members lend only the prestige of their names will have sufficiently large boards of directors or trustees to clearly permit the member to limit his participation consistent with the foregoing restriction. [Formerly paragraph .02, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

.04 101-2—Former practitioners and firm independence. For purposes of this interpretation, a former practitioner is defined as a proprietor, partner, shareholder, or equivalent who leaves by resignation, termination, retirement, or sale of all or part of the practice.

For purposes of determining a firm's compliance with Rule 101 and its interpretations, a former practitioner is not included in the term "a member or a member's firm" (see Ethics Interpretation 101-9, ET section 101.11) provided that

1. Payment of the amounts due to the former practitioner for his or her interest in the firm and for unfunded, vested retirement benefits according to the payment schedule in effect should be such that they do not cause a substantial doubt about the firm's ability to continue as a going concern for a reasonable period of time. In addition, such amounts including all retirement benefits should be fixed, both as to the amount and payment dates. Such amounts due a former practitioner may be paid over a reasonable period of time, and a reasonable rate of interest may be paid on any unpaid balances. Retirement benefits may be adjusted only for inflation.

2. The former practitioner does not participate in the firm's business or professional activities whether or not compensated for such participation. This proscription does not apply to consultations on an advisory basis for a reasonable period of time during the transition period upon leaving the firm.

3. The former practitioner does not appear to participate in the activities of or be associated with his or her former firm. An appearance of participation or association results from such actions as inclusion of the former practitioner's name under the firm's name in an office building directory, inclusion of the former practitioner's name as a member of the firm in membership lists of business, professional or civic organizations, or inclusion of the former practitioner's name in the firm's internal directory without being designated as

retired. The former practitioner will not be considered as participating or associating with his or her former firm solely because the former practitioner is provided an office, either in the firm's suite or in a separate location, and related office amenities such as secretarial and telephone services. (However, see 4. below for restrictions regarding office space and amenities for a former practitioner who accepts a position of significant influence with a client.)

4. A former practitioner in a position of significant influence with the client must no longer be provided with office space and related amenities by his or her former firm.

[Replaces previous Interpretation 101-2, *Retired Partners and Firm Independence*, August, 1989, effective August 31, 1989.]

.05 101-3—Accounting services. Members in public practice are sometimes asked to provide manual or automated bookkeeping or data processing services to clients who are of insufficient size to employ an adequate internal accounting staff. Computer systems design and programming assistance are also rendered by members either in conjunction with data processing services or as a separate engagement. Members who perform such services and who are engaged in the practice of public accounting are subject to the bylaws and Rules of Conduct.

On occasion members also rent “block time” on their computers to their clients but are not involved in the processing of transactions or maintaining the client's accounting records. In such cases the sale of block time constitutes a business rather than a professional relationship and must be considered together with all other relationships between the member and his client to determine if their aggregate impact is such as to impair the member's independence.

When a member performs manual or automated bookkeeping services, concern may arise whether the performance of such services would impair his audit independence—that the performance of such basic accounting services would cause his audit to be lacking in a review of mechanical accuracy or that the accounting judgments made by him in recording transactions may some-

how be less reliable than if made by him in connection with the subsequent audit.

Members are skilled in, and well accustomed to, applying techniques to control mechanical accuracy, and the performance of the record-keeping function should have no effect on application of such techniques. With regard to accounting judgments, if third parties have confidence in a member's judgment in performing an audit, it is difficult to contend that they would have less confidence where the same judgment is applied in the process of preparing the underlying accounting records.

Nevertheless, a member performing accounting services for an audit client must meet the following requirements to retain the appearance that he is not virtually an employee and therefore lacking in independence in the eyes of a reasonable observer.

1. The CPA must not have any relationship or combination of relationships with the client or any conflict of interest which would impair his integrity and objectivity.

2. The client must accept the responsibility for the financial statements as his own. A small client may not have anyone in his employ to maintain accounting records and may rely on the CPA for this purpose. Nevertheless, the client must be sufficiently knowledgeable of the enterprise's activities and financial condition and the applicable accounting principles so that he can reasonably accept such responsibility, including, specifically, fairness of valuation and presentation and adequacy of disclosure. When necessary, the CPA must discuss accounting matters with the client to be sure that the client has the required degree of understanding.

3. The CPA must not assume the role of employee or of management conducting the operations of an enterprise. For example, the CPA shall not consummate transactions, have custody of assets or exercise authority on behalf of the client. The client must prepare the source documents on all transactions in sufficient detail to identify clearly the nature and amount of such transactions and maintain an accounting control over data processed by the CPA such as control totals and document counts. The CPA should not make changes in such basic data without the concurrence of the client.

4. The CPA, in making an examination of financial statements prepared from books and records which he has maintained completely or in part, must conform to generally accepted auditing standards. The fact that he has processed or maintained certain records does not eliminate the need to make sufficient audit tests.

When a client's securities become subject to regulation by the Securities and Exchange Commission or other federal or state regulatory body, responsibility for maintenance of the accounting records, including accounting classification decisions, must be assumed by accounting personnel employed by the client. The assumption of this responsibility must commence with the first fiscal year after which the client's securities qualify for such regulation. [Formerly paragraph .04, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

[.06] [101-4]—[Deleted] [Formerly paragraph .05, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

.07 101-5—The Meaning of Certain Terminology Used in Interpretation 101-A-4 [ET section 101.02]. This interpretation defines certain terms used in Interpretation 101-A-4 of the Institute's ethics code. The rule

prohibits loans to a member from his client, except for certain specified kinds of loans from a client financial institution when made under "normal lending procedures, terms, and requirements."

TERMINOLOGY

For purposes of Interpretation 101-A-4, the following are defined:

Loan

A loan is considered to be a financial transaction, the characteristics of which generally include, but are not limited to, an agreement that provides for repayment terms and a rate of interest.

Financial Institution

A financial institution is considered to be an entity that, as part of its normal business operations, makes loans to the general public.

Normal Lending Procedures, Terms, and Requirements

"Normal lending procedures, terms, and requirements" relating to a member's loan from a financial institution are defined as lending procedures, terms, and requirements that are reasonably comparable with those relating to loans of a similar character committed to other borrowers during the period in which the loan to the member is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under "normal lending procedures, terms, and requirements," the member should consider all the circumstances under which the loan was granted, including—

1. The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the member or the member's firm.
2. Repayment terms.
3. Interest rate, including "points."
4. Requirement to pay closing costs in accordance with the lender's usual practice.
5. General availability of such loans to the public.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission. [Formerly paragraph .06, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References revised to reflect issuance of AICPA Code of Professional Conduct on January 12, 1988.]

[Revised, November 30, 1987, by the Professional Ethics Executive Committee.]

.08 101-6—The effect of actual or threatened litigation on independence. Rule 101 and its interpretations prohibit the expression of an opinion on financial statements of an enterprise unless a member and his firm are independent with respect to the enterprise. In some circumstances, independence may be considered to be impaired as a result of litigation or the expressed intention to commence litigation.

Litigation between client and auditor

In order for the auditor to fulfill his obligation to render an informed, objective opinion on the client company's financial statements, the relationship between the management of the client and the auditor must be characterized by complete candor and full disclosure regarding all aspects of the client's

business operations. In addition, there must be an absence of bias on the part of the auditor so that he can exercise dispassionate professional judgment on the financial reporting decisions made by the management. When the present management of a client company commences, or expresses an intention to commence, legal action against the auditor, the auditor and the client management may be placed in adversary positions in which the management's willingness to make complete disclosures and the auditor's objectivity may be affected by self-interest.

For the reasons outlined above, independence may be impaired whenever the auditor and his client company or its management are in threatened or actual positions of material adverse interests by reason of actual or intended litigation. Because of the complexity and diversity of the situations of adverse interests which may arise, however, it is difficult to prescribe precise points at which independence may be impaired. The following criteria are offered as guidelines:

1. The commencement of litigation by the present management alleging deficiencies in audit work for the client would be considered to impair independence.
2. The commencement of litigation by the auditor against the present management alleging management fraud or deceit would be considered to impair independence.
3. An expressed intention by the present management to commence litigation against the auditor alleging deficiencies in audit work for the client is considered to impair independence if the auditor concludes that there is a strong possibility that such a claim will be filed.
4. Litigation not related to audit work for the client (whether threatened or actual) for an amount not material to the member's firm¹ or to the financial statements of the client company would not usually be considered to affect the relationship in such a way as to impair independence. Such claims may arise, for example, out of disputes as to billings for services, results of tax or management services advice or similar matters.

Litigation by security holders

The auditor may also become involved in litigation ("primary litigation") in which he and the client company or its management are defendants. Such litigation may arise, for example, when one or more stockholders bring a stockholders' derivative action or a so-called "class action" against the client company or its management, its officers, directors, underwriters and auditors under the securities laws. Such primary litigation in itself would not alter fundamental relationships between the client company or its management and auditor and therefore should not be deemed to have an adverse impact on the auditor's independence. These situations should be examined carefully, however, since the potential for adverse interests may exist if cross-claims are filed against the auditor alleging that he is responsible for any deficiencies or if the auditor alleges fraud or deceit by the present management as a defense. In assessing the extent to which his independence may be impaired under these conditions, the auditor should consider the following additional guidelines:

¹ Because of the complexities of litigation and the circumstances under which it may arise, it is not possible to prescribe meaningful criteria for measuring materiality; accordingly, the member should consider the nature of the controversy underlying the litigation and all other relevant factors in reaching a judgment.

1. The existence of cross-claims filed by the client, its management, or any of its directors to protect a right to legal redress in the event of a future adverse decision in the primary litigation (or, in lieu of cross-claims, agreements to extend the statute of limitations) would not normally affect the relationship between client management and auditor in such a way as to impair independence, unless there exists a significant risk that the cross-claim will result in a settlement or judgment in an amount material to the member's firm² or to the financial statements of the client.
2. The assertion of cross-claims against the auditor by underwriters would not usually impair independence if no such claims are asserted by the company or the present management.
3. If any of the persons who file cross-claims against the auditor are also officers or directors of other clients of the auditor, the auditor's independence with respect to such other clients would not usually be impaired.

Other third-party litigation

Another type of third-party litigation against the auditor may be commenced by a lending institution, other creditor, security holder or insurance company who alleges reliance on financial statements of the client examined by the auditor as a basis for extending credit or insurance coverage to the client. In some instances, an insurance company may commence litigation (under subrogation rights) against the auditor in the name of the client to recover losses reimbursed to the client. These types of litigation would not normally affect the auditor's independence with respect to a client who is either not the plaintiff or is only the nominal plaintiff, since the relationship between the auditor and client management would not be affected. They should be examined carefully, however, since the potential for adverse interests may exist if the auditor alleges, in his defense, fraud, or deceit by the present management.

If the real party in interest in the litigation (e.g., the insurance company) is also a client of the auditor ("the plaintiff client"), the auditor's independence with respect to the plaintiff client may be impaired if the litigation involves a significant risk of a settlement or judgment in an amount which would be material to the member's firm² or to the financial statements of the plaintiff client. If the auditor concludes that such litigation is not material to the plaintiff client or his firm and thus his independence is not impaired, he should nevertheless ensure that professional personnel assigned to the audit of either of the two clients have no involvement with the audit of the other.

Effects of impairment of independence

If the auditor believes that the circumstances would lead a reasonable person having knowledge of the facts to conclude that the actual or intended litigation poses an unacceptable threat to the auditor's independence he should either (a) disengage himself to avoid the appearance that his self-interest would affect his objectivity, or (b) disclaim an opinion because of lack of independence. Such disengagement may take the form of resignation or cessation of any audit work then in progress pending resolution of the issue between the parties.

² See footnote 1.

Termination of impairment

The conditions giving rise to a lack of independence are usually eliminated when a final resolution is reached and the matters at issue no longer affect the relationship between auditor and client. The auditor should carefully review the conditions of such resolution to determine that all impairments to his objectivity have been removed.

Actions permitted while independence is impaired

If the auditor was independent when his report was initially rendered, he may re-sign such report or consent to its use at a later date while his independence is impaired provided that no post-audit work is performed by such auditor during the period of impairment. The term "post-audit work", in this context, does not include inquiries of subsequent auditors, reading of subsequent financial statements, or such procedures as may be necessary to assess the effect of subsequently discovered facts on the financial statements covered by his previously issued report. [Formerly paragraph .07, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

[.09] [101-7]—[Deleted] [Formerly paragraph .08, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

.10 101-8—Effect on independence of financial interests in non-clients having investor or investee relationships with a member's client.

Introduction

Interpretation 101-1 under Rule 101, *Independence* [ET section 101.02], provides in part that "A member or a firm of which he is a partner or shareholder shall not express an opinion on financial statements of an enterprise unless he and his firm are independent with respect to such enterprise. Independence will be considered to be impaired if for example, (A) . . . during the period of his professional engagement, or at the time of expressing his opinion, he or his firm . . . had or was committed to acquire any direct or material indirect financial interest in the enterprise . . . (B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, he or his firm . . . was connected with the enterprise . . . in any capacity equivalent to that of a member of management . . ."

This interpretation deals with the effect on the appearance of independence of financial interests in nonclients that are related in various ways to a client. Some of the relationships discussed herein result in a financial interest in the client, while others would place the member in a capacity equivalent to that of a member of management.

Situations in which the nonclient investor is a partnership are not covered in this interpretation because the interests of the partnership are ascribed directly to the partners. A member holding a direct financial interest in a partnership that invests in his client has, as a result, a direct financial interest in the client, which impairs his independence.

Terminology

The following specially identified terms are used in this Interpretation as indicated:

1. *Client.* The enterprise with whose financial statements the member is associated.

2. *Member.* In this Interpretation the term "member" means those individuals identified in the term "he and his firm" as defined in Interpretation 101-9 [section 101.11].
3. *Investor.* In this Interpretation the term "investor" means (a) a parent or (b) another investor (including a natural person but not a partnership) that holds an interest in another company ("investee"), but only if the interest gives such other investor the ability to exercise significant influence over operating and financial policies of the investee. The criteria established in paragraph 17 of Accounting Principles Board Opinion Number 18 [AC section I82.104] shall apply in determining the ability of an investor to exercise such influence.
4. *Investee.* In this Interpretation, the term "investee" means (a) a subsidiary or (b) an entity that is subject to significant influence from an investor. A limited partnership in which a client-investor holds a limited partnership interest would not be considered an "investee" subject to this interpretation unless the limited partner were in a position to exercise significant influence over operating and financial policies of the limited partnership.
5. *Material Investee.* An investee is presumed to be material if:
 - (a) the investor's aggregate carrying amount of investment in and advances to the investee exceeds 5% of the investor's consolidated total assets, or
 - (b) the investor's equity in the investee's income from continuing operations before income taxes exceeds 5% of the investor's consolidated income from continuing operations before income taxes.

When the investor is a nonclient and its carrying amount of investments in and advances to the client investee is not readily available, the investor's proportionate share of the client investee's total assets may be used in the calculation described in (a) above.

If the income of an investor or investee from continuing operations before income taxes of the most recent year is clearly not indicative of the past or expected future amounts of such income, the reference point for materiality determinations should be the average of the incomes from continuing operations before income taxes of the preceding 3 years.

If a member has a financial interest in more than one nonclient investee of a client investor, the investments in and advances to such investees, and the equity in the income from continuing operations before income taxes of all such investees must be aggregated for purposes of determining whether such investees are material to the investor.

The 5% guidelines for identifying a material investee are to be applied to financial information available at the beginning of the engagement. A minor change in the percentage resulting from later financial information, which a member does not and could not be expected to anticipate at the beginning, may be ignored.

6. *Material financial interest.* A financial interest is presumed to be material to a member if it exceeds 5% of the member's net worth. If the member has financial interests in more than one investee of one investor, such interests must be aggregated for purposes of deter-

mining whether the member has a material financial interest as described in the preceding sentence.

Interpretation

Where a nonclient investee is material to a client investor, any direct or material indirect financial interest of a member in the nonclient investee would be considered to impair the member's independence with respect to the client. Likewise, where a client investee is material to a nonclient investor, any direct or material indirect financial interest of a member in the nonclient investor would be considered to impair the member's independence with respect to the client.

The remainder of this Interpretation discusses whether, in the other situations listed below, a member's financial interest in nonclient investor or nonclient investee of an audit client will impair the member's independence.

These situations are discussed in the following sections:

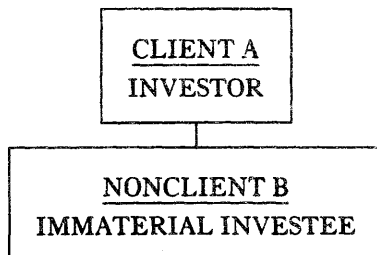
- (1) Nonclient investee is not material to client investor.
- (2) Client investee is not material to nonclient investor.

Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The member should make a reasonable inquiry to determine whether such relationships exist, and where they do, careful consideration should be given to whether the financial interests in question would lead a reasonable observer to conclude that the specified relationships pose an unacceptable threat to the member's independence.

In general, in brother-sister common control situations, an immaterial financial interest of a member in the nonclient investee would not impair the independence of a member with respect to the client investee provided the member could not significantly influence the nonclient investor. In like manner in a joint venture situation, an immaterial financial interest of a member in the nonclient investor would not impair the independence of the member with respect to the client investor provided that the member could not significantly influence the nonclient investor.

If a member does not and could not reasonably be expected to have knowledge of the financial interests or relationships described in this interpretation, such lack of knowledge would preclude an impairment of independence.

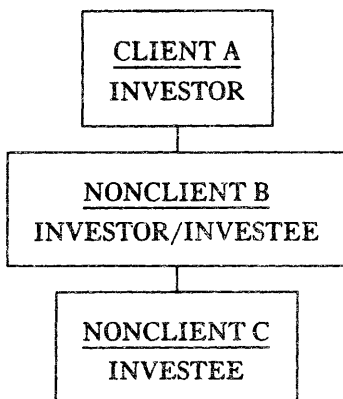
**(1) NONCLIENT INVESTEE IS NOT MATERIAL
TO CLIENT INVESTOR**



An immaterial financial interest of a member in Nonclient B (investee) would not be considered to impair the member's independence with respect to Client A (investor). A material financial interest of a member in Nonclient B

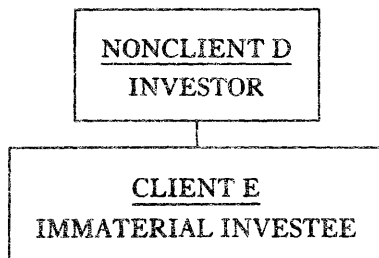
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would be considered to impair the member's independence with respect to Client A. The reason for this is that through its ability to influence Nonclient B, Client A could enhance or diminish the value of the member's financial interest in Nonclient B by an amount material to the member's net worth without a material effect on its own financial statements. As a result, the member would not appear to be independent when reporting on the financial statements of Client A.



If Nonclient B (investee of Client A) had an investee, Nonclient C, the determination as to whether a financial interest in Nonclient C would be considered to impair the member's independence would be based on the same rules as above for Nonclient B, except that the materiality of Nonclient C is measured in relation to Client A, rather than to Nonclient B.

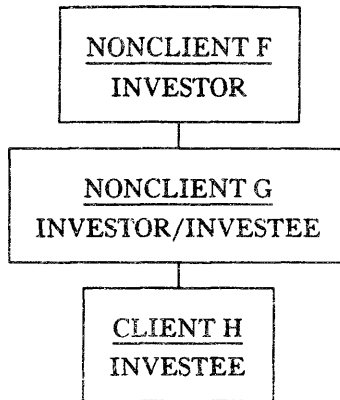
(2) CLIENT INVESTEE IS NOT MATERIAL TO NONCLIENT INVESTOR



Except as indicated in the next paragraph, a financial interest of a member in Nonclient D (investor) would not be considered to impair the member's independence with respect to Client E (investee) even if the financial interest in Nonclient D were material to the member's net worth. The reason for this is that, since Client E is immaterial to Nonclient D, the member would not appear to be in a position to enhance his investment in Nonclient D.

If the member's financial interest in Nonclient D (investor) is sufficiently large to allow the member to significantly influence the actions of Nonclient D, the member's independence would be considered to be impaired. The reason for this is that a financial interest sufficient to allow the member to significantly influence the actions (operating and financial policies, intercompany transactions, etc.) of the investor could permit the member to exercise a degree

of control over the client that would place the member in a capacity equivalent to that of a member of management. Such relationship would be considered to impair independence under Interpretation 101(B) (1) [ET section 101.02].



If Client H were an investee of nonclient G, who was an investee of another investor, Nonclient F, the determination as to whether a financial interest in Nonclient F would be considered to impair the member's independence would be based on the same rules as above for Nonclient G, except that the materiality of Client H is measured in relation to Nonclient F, rather than to Nonclient G. [Formerly paragraph .09, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

[Revised, December 31, 1983, by the Professional Ethics Executive Committee. References changed to reflect the issuance of the AICPA Code of Professional Conduct on January 12, 1988.]

.11 101-9—**The meaning of certain independence terminology and the effect of family relationships on independence.** This interpretation defines certain terms used in Interpretation 101-1 [ET section 101.02] and, in doing so, also explains how independence may be impaired through certain family relationships.

TERMINOLOGY

He and His Firm

For purposes of Interpretation 101-1 [ET section 101.02], "he and his firm" includes—

1. An individual member performing professional services requiring independence.
2. The proprietor or all partners or shareholders.
3. All full- and part-time professional employees* participating in the engagement.
4. All full- and part-time managerial employees* located in an office participating in a significant portion of the engagement.
5. Any entity (for example, partnership, corporation, trust, joint venture, pool, and so forth) whose operating, financial, or accounting

* Refers to employees irrespective of their functional classification (for example, audit, tax, management advisory services).

policies can be “significantly influenced” (as discussed below) by one of the persons described in (1) through (4) or by two or more of such persons if they choose to act together.

For purposes of Interpretation 101-1B [ET section 101.02], “he and his firm” does not include an employee solely because he was formerly associated with the client in any capacity described in Interpretation 101-1B [ET section 101.02] if such employee has disassociated himself from the client and does not participate in the engagement for the client covering any period of his association with the client.

Likewise, for the purposes of Interpretation 101-1B [ET section 101.02], “he and his firm” includes a professional employee who is associated with the client in any capacity described in Interpretation 101-1B [ET section 101.02] if the professional employee is located in an office participating in a significant portion of the engagement.

Managerial Employee

A managerial employee is a professional employee who either—

1. Has a position generally similar to that of a partner, including an employee having the final authority to sign, or give final approval to the issuance of, reports in the firm’s name or
2. Has a management position, in contrast with a nonmanagement position, with the firm.

The organizations of firms vary; therefore, whether an employee has a management position depends on his normal responsibilities and how he or the position itself is held out to clients and third parties. The following are some, but not necessarily all, of the responsibilities that suggest that an employee has a management position:

1. Continuing responsibility for the overall planning and supervision of engagements for specified clients.
2. Authority for determining that an engagement is complete subject to final partner approval if required.
3. Responsibility for client relationships (for example, negotiating and collecting fees for engagements, marketing the firm’s services).
4. Responsibility for such administrative functions as assignment of personnel to engagements, hiring, and training of personnel.
5. Existence of profit sharing as a significant feature of total compensation.

Significant Influence

A person or entity can exercise significant influence over the operating, financial, or accounting policies of another entity if, for example, the person or entity—

1. Is connected with the entity as a promoter, underwriter, or voting trustee.
2. Is connected with the entity in a policy-making position related to the entity’s primary operating, financial, or accounting policies, such as chief executive officer, chief operating officer, chief financial officer, chief accounting officer, and the key assistants who can influence their decisions.
3. Is connected with the entity in a capacity equivalent to that of a general partner.

4. Is connected with the entity as a director other than honorary.
5. Meets the criteria established in paragraph 17 of Accounting Principles Board Opinion No. 18 [AC section I82.104], *The Equity Method of Accounting for Investments in Common Stock*, to determine the ability of an investor to exercise such influence.
6. Holds 20 percent or more of the limited partnership interests if the entity is a limited partnership.

The foregoing examples are not necessarily all-inclusive.

EFFECT OF FAMILY RELATIONSHIPS

Spouses and Dependent Persons

The term "he and his firm" includes spouses (whether or not dependent) and dependent persons (whether or not related) for all purposes of complying with Rule 101 subject to the following exception.

The exception is that the independence of the member and his firm will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" (as discussed above) over the client's operating, financial, or accounting policies. However, if such employment is in a position where the person's activities are "audit sensitive" (even though not a position of significant influence), the member should not participate in the engagement.

Generally, a person's activities would be considered audit sensitive if such activities are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all-inclusive, would normally be considered audit sensitive (even though not positions of significant influence): cashier, internal auditor, general accounting clerk, purchasing agent, or inventory warehouse supervisor.

Nondependent Close Relatives

The term "he and his firm" excludes nondependent close relatives of the persons described in (1) through (4) of that definition. Nevertheless, in circumstances discussed below, the independence of a member or a firm can be impaired because of a nondependent close relative.

Close relatives are nondependent children, stepchildren, brothers, sisters, grandparents, parents, parents-in-law, and their respective spouses.

The independence of a member and his firm is impaired with respect to the enterprise if—

1. A proprietor, partner, shareholder, or professional employee, any of whom are participating in the engagement, has a close relative who (a) can exercise significant influence over the operating, financial, or accounting policies of the client; (b) is otherwise employed in a position where the person's activities are "audit sensitive"; or (c) has a financial interest in the client that is material to the close relative and of which the proprietor, partner, shareholder, or professional employee has knowledge.
2. A proprietor, partner, shareholder, or managerial employee, any of whom are located in an office participating in a significant portion of the engagement, has a close relative who can exercise significant influence over the operating, financial, or accounting policies of the client.

OTHER CONSIDERATIONS

Members must be aware that it is impossible to enumerate all circumstances wherein the appearance of a member's independence might be questioned by third parties because of family or dependent person relationships. In situations involving assessment of the association of any relative or dependent person with a client, members must consider whether the strength of personal and business relationships between the member and the relative or dependent person, considered in conjunction with the specified association with the client, would lead a reasonable person aware of all the facts, and taking into consideration normal strength of character and normal behavior under the circumstances, to conclude that the situation poses an unacceptable threat to the member's objectivity and appearance of independence. [Formerly paragraph .10, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References changed to reflect the issuance of the AICPA Code of Professional Conduct on January 12, 1988.]

[Revised, December 31, 1986, by the Professional Ethics Executive Committee.]

.12 101-10—The effect on independence of relationships proscribed by Rule 101 and its interpretations with nonclient entities included with a member's client in the financial statements of a governmental reporting entity. Rule 101 and its interpretations provide, in part, the following: "A member or a firm of which he is a partner or shareholder shall not express an opinion on financial statements of an enterprise unless he and his firm are independent with respect to such enterprise. Independence will be considered to be impaired if, for example: (A) During the period of his professional engagement, or at the time of expressing his opinion, he or his firm . . . had or was committed to acquire any direct or material indirect financial interest in the enterprise . . . (B) During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, he or his firm . . . was connected with the enterprise . . . in any capacity equivalent to that of a member of management. . . ."

This interpretation deals with the effect on the appearance of independence of members having a relationship of a type specified in Rule 101 with nonclients that are related in various ways to clients in the state and local governmental sector.*

Under Statement 3, "Defining the Governmental Reporting Entity," by the National Council on Governmental Accounting (NCGA), financial statements should be issued for the governmental reporting entity, which consists of the combined financial statements of an oversight entity and one or more component unit entities. The basic criterion for including an entity as a component unit in a governmental reporting entity for general-purpose financial statements is the exercise of oversight responsibility for such units by the oversight entity. Oversight responsibility is derived from the oversight entity's significant influence on the component unit and includes, but is not limited to, financial interdependency, selection of governing authority, designation of management, ability to significantly influence operations, and accountability for fiscal matters.

Since the provisions of NCGA Statement 3 indicate that it need not be applied to immaterial items, it is presumed, for purposes of this interpretation, that all component units included in the governmental reporting entity's

[The next page is 4419-9.]

* As set forth under Section 91 of the Code entitled "Applicability," nothing in this interpretation should inhibit a member from performing his/her statutory duties as a governmental auditor.

financial statements were included because they are material to the reporting entity, unless the member can demonstrate otherwise.

Therefore, because the oversight entity can exercise significant influence over the component units included in the reporting entity financial statements, Rule 101 is applicable and requires a member issuing a report on the combined financial statements of a governmental reporting entity to be independent of the oversight entity and of each component unit included in the reporting entity financial statements.

Similarly, a member who is the auditor of a material component unit, but is not the auditor of the oversight entity, should be independent of the oversight entity and each of the other component units because of the significant influence of the oversight entity over all the component units.

However, a member who is the auditor of an immaterial component unit need be independent of only that component because it is immaterial to the reporting entity. If this same member also audited other immaterial component units which, when aggregated, are material to the reporting entity, the member should be independent of the oversight entity and of the component units that the member audits and all other component units included in the financial statements of the reporting entity.

A member expressing an opinion on the financial statements of a governmental reporting entity should take reasonable steps to seek satisfaction concerning the independence of auditors of component units. (See AU section 543.) [Formerly paragraph .11, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References changed to reflect the issuance of the AICPA Code of Professional Conduct on January 12, 1988.]

.13 101-11—Independence and attest engagements.

Introduction

Rule 101, *Independence*, provides that “a member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council.” The Statement on Standards for Attestation Engagements [AT section 100] requires independence in the performance of engagements covered by that Statement.

[Definitions]

Assertion. Any declaration, or a set of related declarations taken as a whole, by a party responsible for it.

Asserter. The person(s) or entity responsible for an assertion.

Attest Engagement. An engagement in which a practitioner is engaged to issue or does issue a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party.

Attest Engagement Team. Includes proprietors, partners, and shareholders who participate in the acceptance or performance of the attest engagement and full- or part-time professional employees who participate in the acceptance or the performance of the attest engagement, including individuals who provide consultation or supervisory services for the attest engagement.

[Applicability]

This interpretation does not apply to attest engagements covered by Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Accountants' Services on Prospective Financial Information, and such other pronouncements as may be

determined from time to time by the Professional Ethics Executive Committee.

Interpretation

Independence will be considered to be impaired if, during the period of the attest engagement or at the time the written conclusion is issued—

1. An individual on the attest engagement team or his or her spouse, dependent or firm¹ has a relationship with the asserter that is proscribed by interpretation 101-1 of rule 101 [ET section 101.02].
2. An individual on the engagement team has a nondependent close relative² who has either a position of significant influence with, or a financial interest material to the close relative in the asserter.
3. An owner, partner, or shareholder of the firm who is located in an office participating in a significant portion of the attest engagement, or the spouse or dependent of such an owner, partner, or shareholder, has either a position of significant influence with, or a financial interest material to such person in the asserter.
4. The firm, an individual on the attest engagement team (or his or her spouse or dependent), or an owner, partner, or shareholder in an office performing a significant portion of the engagement, contributed to the development of the subject matter of the assertion (the subject) or stands to gain financially directly from the success of the subject.
5. An individual on the attest engagement team knows or could reasonably be expected to know that any owner, partner, or shareholder located in other offices of the firm (a) contributed to the development of the subject or stands to gain financially directly from the success of the subject, or (b) has a position of significant influence with the asserter.

In determining whether a relationship with an asserter is one that is proscribed under interpretation 101-1 [ET section 101.02], the following guidance is provided:

- Interpretation 101-6, "The Effect of Actual or Threatened Litigation on Independence [ET section 101.08]," is not applicable unless the litigation relates to the attest engagement or is material to the firm or to the financial statements of the asserter.
- Interpretation 101-9, "The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence [ET section 101.11]," is not applicable because the applicability of this interpretation is stated herein.

[Effective February 28, 1990.]

¹ For the purpose of this interpretation, *firm* shall mean the sole proprietorship, partnership, or professional corporation of which an individual on the attest engagement team is an owner, partner, shareholder, or employee; it does not include owners, partners, shareholders, or employees as individuals.

² For the purpose of this interpretation, this term shall mean the same as in interpretation 101-9, "The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence [ET section 101.11]."

ET Section 102

Integrity and Objectivity

.01 Rule 102—Integrity and objectivity. In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

[As adopted January 12, 1988.]

Interpretation under Rule 102—Integrity and Objectivity

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 102-1—Knowing misrepresentations in the preparation of financial statements or records. A member who knowingly makes, or permits or directs another to make, false and misleading entries in an entity's financial statements or records shall be considered to have knowingly misrepresented facts in violation of rule 102.

.03 102-2—Conflicts of Interest. A conflict of interest may occur if a member performs a professional service for a client or employer and the member or his or her firm has a significant relationship with another person, entity, product, or service that could be viewed as impairing the member's objectivity. If this significant relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, the rule shall not operate to prohibit the performance of the professional service. When making the disclosure, the member should consider Rule 301, "Confidential Client Information."

Certain professional engagements require independence. Independence impairments under Rule 101 and its interpretations cannot be eliminated by such disclosure and consent.

[Effective August 31, 1989.]

[The next page is 4431.]

ET Section 191***Ethics Rulings on Independence,
Integrity and Objectivity***

Ethics Rulings and Interpretations which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

1. Acceptance of a Gift

.001 *Question*—Would the independence of a member's firm be considered to be impaired if an employee or partner accepts a gift or other unusual consideration from a client?

.002 *Answer*—If an employee or partner accepts more than a token gift from a client, even with the knowledge of the member's firm, the appearance of independence may be lacking.

2. Association Membership

.003 *Question*—If a member joined a trade association which is a client, would the independence of the member's firm be considered to be impaired with respect to the association?

.004 *Answer*—Independence of the member's firm would not be considered to be impaired provided he did not serve in any capacity equivalent to that of a member of management.

3. Member as Cosigner of Checks

.005 *Question*—A member has been requested to accept the responsibility in emergency situations of cosigning checks with a designated employee of a client. Would the independence of the member's firm be considered to be impaired under these circumstances?

.006 *Answer*—Independence of the member's firm would be considered to be impaired since such activities are management functions.

4. Payroll Preparation Services

.007 *Question*—A member's firm performs payroll preparation services for its clients. A single bank account in the firm's name is used to clear all checks. Individual employee checks are cosigned by a member of the firm as well as by an officer of each of the respective clients. The clients reimburse the firm for the net amount of the payrolls. Would the independence of the member's firm be considered to be impaired with respect to clients who avail themselves of this service?

.008 *Answer*—Independence of the member's firm would be considered to be impaired because the service does not conform to the requirements of Interpretation 101-3.

5. Member as Bookkeeper

.009 *Question*—A client plans to process receipts, disbursements, and other documents of original entry and to transmit this raw data to a member's firm for further processing, either on a computer or manually, into a general

ledger and other statistical reports. Would the independence of the member's firm be considered to be impaired under these circumstances?

.010 Answer—If the services performed conform to the requirements of Interpretation 101-3, independence of the member's firm would not be considered to be impaired.

6. Member's Spouse as Bookkeeper of Client

.011 Question—The spouse of a member is employed as a bookkeeper by an audit client. Would the independence of the member's firm be considered to be impaired under these circumstances?

.012 Answer—Independence of the member's firm would not necessarily be considered to be impaired. The performance of write-up work within the requirements of Interpretation 101-3, would not necessarily impair his independence if done by the member himself. Therefore, the spouse of a member could perform the same functions as the member without impairing the independence of the member's firm. If, however, the spouse's scope of responsibilities or activities extends beyond the bookkeeping function into areas of accounting or management decisions, independence of the member's firm would be considered to be impaired.

7. Member as Contract Bookkeeper

.013 Question—A member proposes to enter into contract with a client to supervise office personnel on a monthly fee basis, approve vouchers for payment, and prepare monthly and quarterly operating reports. Would the independence of the member's firm be considered to be impaired with respect to the client?

.014 Answer—Independence of the member's firm would be considered to be impaired since management functions are being performed.

8. Member Providing Accounting and Management Advisory Services

.015 Question—A member has provided extensive accounting and management advisory services for a client. In that connection, the member has attended board meetings, interpreted financial statements, forecasts and other analyses, counseled on potential expansion plans, and counseled on negotiations with bankers. Would the independence of the member's firm be considered to be impaired under these circumstances?

.016 Answer—The services described are those often provided by members for clients. If the services performed conform to the requirements of Interpretation 101-3, independence of the member's firm would not be considered to be impaired.

9. Member as Representative of Creditors' Committee

.017 Question—A member had been asked to perform the following functions for a creditors' committee in control of a debtor corporation which will continue to operate under its existing management subject to extension agreements:

- a. Cosign checks issued by the debtor corporation.
- b. Cosign purchase orders in excess of established minimum amounts.
- c. Exercise general supervision to insure compliance with budgetary controls and pricing formulas established by management, with the consent of the creditors, as part of an overall program aimed at the liquidation of deferred indebtedness.

Would the independence of the member's firm be considered to be impaired with respect to the debtor corporation?

.018 Answer—Independence of the member's firm would be considered to be impaired under each of the three situations described since these are management functions.

10. Member as Legislator

.019 Question—A member is an elected legislator in a local government. The city manager, who is responsible for all administrative functions, is also an elected official. Would the independence of the member's firm be considered to be impaired with respect to the governmental entity?

.020 Answer—Independence of the member's firm would be considered to be impaired if the member served as an elected legislator in a municipal body at the same time his firm is engaged as auditor for the body, even though the city manager is an elected official rather than an appointee of the legislature.

11. Member as Executor or Trustee

.021 Question—A member has been asked to serve as an executor and trustee of the estate of an individual who owns the majority of the stock of a closely held corporation. Would the independence of the member's firm be considered to be impaired under these circumstances?

.022 Answer—The mere designation of a member to become executor or trustee would not impair independence of the member's firm. Actual service in either capacity, however, would impair independence.

12. Member as Trustee

.023 Question—A tax exempt charitable foundation is the sole beneficiary of the estate of the foundation's deceased organizer. If a member becomes a trustee of the foundation, would the independence of the member's firm be considered to be impaired with respect to (1) the foundation and (2) the estate?

.024 Answer—If a member accepted the invitation to become a trustee of the foundation, independence of the member's firm would be considered to be impaired with respect to both the foundation and the estate.

13. Member as Bank Stockholder

.025 Question—A member in public practice holds a stock interest in a bank. Would the independence of the member's firm be considered to be impaired with respect to a client which has borrowings with the bank?

.026 Answer—The member's stock ownership in the bank creates an indirect financial interest with respect to the bank's customers. To the extent that such an indirect financial interest is not material, independence of the member's firm would not be considered to be impaired.

14. Member on Board of Directors of United Fund

.027 Question—A member serves as a director and assistant treasurer of a local United Fund, which operates as a federated fund-raising organization from which the Boy Scouts and the Legal Aid Society receive funds. Would the independence of the member's firm be considered to be impaired with respect to the local Boy Scout council and Legal Aid Society?

.028 Answer—Independence of the member's firm would not be considered to be impaired provided that the United Fund does not exercise managerial control over the independent groups participating in the fund-raising organization.

15. Retired Partner as Director

.029 Question—A member has withdrawn from his firm after an association of several years and has become an officer and director of several corporations audited by the firm. The member proposes to maintain an office in the firm's suite, to receive phone calls through the switchboard and to perform services for the firm for which he would be compensated on an hourly basis. Would the independence of the member's former firm be considered to be impaired with respect to the clients in which the member is an officer and director?

.030 Answer—Independence of the member's former firm would be considered to be impaired since it appears the member is still closely associated with the firm.

16. Member on Board of Directors of Nonprofit Social Club

.031 Question—A member serves on the board of directors of a nonprofit social club. Would the independence of the member's firm be considered to be impaired with respect to the club?

.032 Answer—Independence of the member's firm would be considered to be impaired since the board of directors has the ultimate responsibility for the affairs of the club. The exception in Interpretation 101-1 was intended primarily to cover those situations in which a member lends his name to some worthy cause without assuming important administrative or financial responsibilities.

17. Member as Stockholder in Country Club

.033 Question—A member belongs to a country club in which membership requirements involve the acquisition of a pro rata share of equity or debt securities. Would the independence of the member's firm be considered to be impaired with respect to the country club?

.034 Answer—Independence of the member's firm would not be considered to be impaired since membership in such a club is essentially a social matter. Accordingly, such equity or debt ownership is not considered to be a direct financial interest within the meaning of Rule 101. However, the member should not take part in the management of the club.

18. Member as City Council Chairman

.035 Question—A member is the chairman of a city council. Would the independence of the member's firm be considered to be impaired with respect to state governmental agencies and other governments within the state?

.036 Answer—Independence of the member's firm would not be considered to be impaired with respect to any governmental unit except those under the council's control.

19. Member on Deferred Compensation Committee

.037 Question—A member has been invited by a client to serve on a committee which administers the client's deferred compensation program. Service on this committee will entail general supervisory services but will not involve participation in company management. Would the independence of the member's firm be considered to be impaired under these circumstances?

.038 Answer—Independence of the member's firm would be considered to be impaired since service on a committee of this type would be participation, even though minor, in management functions. The member could render helpful consulting assistance without joining the committee.

20. Member Serving on Governmental Advisory Unit

.039 Question—A member serves on a citizens' committee which is studying possible changes in the form of a county government he audits. The member also serves on a committee appointed to make a study of the financial status of a state. Would the independence of the member's firm be considered to be impaired with respect to a county which is in that state?

.040 Answer—Independence of the member's firm would not be considered to be impaired with respect to the county through the member's service on either committee.

21. Member as Director and Auditor of the Entity's Profit-Sharing Trust

.041 Question—A member has been asked to serve in the dual capacity of director of an enterprise and auditor of the financial statements of that enterprise's profit-sharing and retirement trust. Would the independence of the member's firm be considered to be impaired with respect to the trust?

.042 Answer—Independence of the member's firm would be considered to be impaired with respect to the enterprises's profit-sharing and retirement trust since as director of the enterprise, the member would be involved in management functions.

22. Family Relationship, Brother

.043 Question—A brother of a member is a stockholder and one of three vice presidents of a closely held corporation. The member is a partner in a CPA firm in the same locale. Would the independence of the member's firm be considered to be impaired with respect to this corporation because of the member's relationship with its officer-stockholder?

.044 Answer—The appearance of independence is lacking since the relationships between the member and his brother are presumed to be so close as to suggest that the member may not be objective in his examination.

23. Family Relationship, Uncle by Marriage

.045 Question—The wife of a member has an uncle by marriage. Personal contacts with the uncle are infrequent (approximately once a year). The uncle owns one-third of a company and serves as one of its officers. Would the independence of the member's firm be considered to be impaired with respect to the company?

.046 Answer—In the absence of special circumstances, the appearance of independence would not be lacking since the family relationship is sufficiently remote.

24. Family Relationship, Father

.047 Question—The father of a member serves on a school board. Would the independence of the member's firm be considered to be impaired with respect to the school district?

.048 Answer—The appearance of independence would be lacking with respect to any period during which the member's father served on the school board since the relationship between father and son is presumed to be so close as to suggest that the member may not be objective in his examination.

25. Family Relationship, Son

.049 Question—The son of a member is a director of a savings and loan association. The member's firm has been asked to audit the financial statements of the association. The son is a practicing attorney, and there is no

financial relationship between father and son. Would the independence of the member's firm be considered to be impaired under these circumstances?

.050 Answer—The appearance of independence would be lacking with respect to any period during which the member's son served as a director of a client since the relationship between father and son is presumed to be so close as to suggest that the member may not be objective in his examination.

26. Family Relationship, Son

.051 Question—A member purchased stock in a client public corporation and created a trust as an educational fund for his minor son. The trust securities were not material to the member, but were material in relation to the son's personal net worth. Would the independence of the member's firm be considered to be impaired with respect to the client corporation?

.052 Answer—Independence of the member's firm would be considered to be impaired since the stock would be considered a direct financial interest and, consequently, materiality is not a factor.

27. Family Relationship, Spouse as Trustee

.053 Question—The spouse of a member is a trustee of certain trusts. Would the independence of the member's firm be considered to be impaired with respect to an audit client if the trust purchased shares of that client?

.054 Answer—The control of the trust by a spouse has consistently been imputed to the other spouse for purposes of the independence rule. Accordingly, purchase by the trust of shares in an audit client would cause the independence of the member's firm to be considered to be impaired.

28. Cash Account with Brokerage Client

[.055-.056] [Superseded by Ethics Ruling No. 59.]

29. Member as Bondholder

.057 Question—A member's firm audits the financial statements of a municipal authority. The outstanding bonded indebtedness of this municipal authority amounts to \$2,500,000. Members of the CPA firm own \$25,000 of the bonds. Would the independence of the member's firm be considered to be impaired with respect to the authority?

.058 Answer—Independence of the member's firm would be considered to be impaired since the members have a direct financial interest in that authority. Because the interest is direct, materiality is not an issue.

[30.]

[.059-.060] [Deleted]

31. Financial Interest in a Cooperative, Condominium Association, Planned Unit Development, Homeowners Association, Timeshare Development, or Other Common Interest Realty Association

.061 Question—Would the independence of a member of his or her firm be considered impaired with respect to an engagement to perform services for a cooperative, condominium association, planned unit development, homeowners association, timeshare development, or other common interest realty association if the member or the member's firm owned a unit in such an entity?

.062 Answer—Independence of the member and his or her firm would be considered to be impaired under the circumstances, pursuant to Rule 101 and its interpretations, because the member or the member's firm's ownership of a unit would be a direct financial interest in the cooperative, condominium

association, planned unit development, homeowners association, timeshare development, or other common interest realty association.

(This ruling takes effect on August 31, 1990; however, earlier application is encouraged.)

[Replaces previous Ruling No. 31, Financial Interest in Co-Op Apartment, effective August 31, 1989.]

32. Mortgage Loan to Member's Corporation

.063 Question—A member is president and substantial stockholder of a company which is indebted to a savings and loan association on a loan secured by a first mortgage on a company building. Would the independence of the member's firm be considered to be impaired with respect to the savings and loan association?

.064 Answer—Independence of the member's firm would not be considered to be impaired provided the mortgage loan was made under normal lending procedures and requirements of the savings and loan association. However, the member is cautioned that state and federal agencies regulating the savings and loan association may have regulations to the contrary.

33. Retirement Plan Offer

.065 Question—A member has been offered the opportunity to join in a client employee benefit plan. Would the independence of the member's firm be considered to be impaired under these circumstances?

.066 Answer—Independence of the member's firm would be considered to be impaired if he accepted the "employee" designation for the purpose of entering the client's employee benefit plan.

34. Member as Auditor of Common Trust Funds

.067 Question—A large bank having a number of common trust funds has requested a member's firm to audit the financial statements of one of the funds. Would the independence of the member's firm be considered to be impaired with respect to the fund if (1) a partner had an immaterial financial equity interest in the bank or (2) the firm had a revolving loan agreement with the bank pursuant to which seasonal financings were made?

.068 Answer—(1) The audit of the common trust funds of the bank would involve auditing the trusteeship and custodianship activities and responsibilities of the bank. With respect to independence, no significant difference exists between the bank and the common trust funds which it maintains. Therefore, if a partner of the firm owns stock in the bank, he and the firm would have a direct financial interest in the bank and independence would be considered to be impaired with respect to the bank's common trust funds without regard to materiality of the equity interest.

(2) Whether under the revolving loan agreement the independence of the member's firm would be considered to be impaired would be determined by the criteria set forth in Interpretation 101-1 A.3 (section 101.02) of the Code of Professional Conduct.

35. Stockholder in Mutual Funds

.069 Question—A member owns shares in a regulated mutual investment fund which holds shares of stock in clients of the member's firm. Would the independence of the member's firm be considered to be impaired with respect to the client enterprises whose stock is held by the fund?

.070 Answer—Securities of the member's clients held by the mutual fund in question represent indirect financial interests of the member in securities of his clients. However, this indirect interest through ownership of mutual fund securities by a member would not normally be considered to impair the independence of the member's firm since investment decisions are management functions of the mutual fund over which the member has no influence. If the portfolio of the mutual fund was heavily invested in a client's securities, such indirect financial interest of the member could become material and impair the independence of the member's firm.

36. Stockholder in Investment Club

.071 Question—A member owns a one-tenth interest in an investment club. Would the independence of the member's firm be considered to be impaired with respect to a client in which the investment club holds shares?

.072 Answer—Independence of the member's firm would be considered to be impaired since the ownership of stock in a client through an investment club is considered a direct financial interest. Under these circumstances materiality is not an issue.

[37.]

[.073-.074] [Deleted]

38. Member as Co-Fiduciary with Client Bank

.075 Question—A member serves with a client bank in a cofiduciary capacity with respect to an estate or trust. Would the independence of the member's firm be considered to be impaired with respect to the bank or its trust department?

.076 Answer—Independence of the member's firm would not be considered to be impaired provided the assets in the estate or trust were not material in relation to the total assets of the bank and/or trust department.

39. Member as Stock Transfer Agent and/or Registrar

.077 Question—Would the independence of a member's firm be considered to be impaired with respect to an audit client for whom the member serves as an officially appointed stock transfer agent and/or registrar?

.078 Answer—Independence of the member's firm would be considered to be impaired under Interpretation 101-1 B.1 (section 101.02) since the functions performed by the member as transfer agent and/or registrar would be considered equivalent to that of a member of management or of an employee. Functions such as distribution of dividends and warrants and the legal transfer of the shares of outstanding capital stock would cause the independence of the member's firm to be considered to be impaired.

[40.]

[.079-.080] [Deleted]

41. Member as Auditor of Mutual Insurance Company

.081 Question—A member's firm has been asked to serve as auditors for a mutual insurance company which has been funding a retirement plan for the firm's employees. Contributions made by the firm are invested and managed by the insurance company in a pooled separate account for this and similar contracts. Would the independence of the member's firm be considered to be impaired under these circumstances?

.082 *Answer*—Independence of the member's firm would not be considered to be impaired if such funds held for the benefit of their employees are not material in relation to the net worth of the insurance company.

42. Members as Life Insurance Policy Holders

.083 *Question*—A member's firm has been asked to serve as auditors for a stock life insurance company which underwrites group term life insurance policies for the firm's partners, payable to the designated beneficiaries, not the firm. The proceeds would very likely constitute a significant part of each partner's estate. Would the independence of the member's firm be considered to be impaired under these circumstances?

.084 *Answer*—The firm's independence would not be considered to be impaired so long as the amount at risk is not material to the insurance company's underwriting activities.

43. Member's Employee as Treasurer of a Client

.085 *Question*—Would the independence of a member's firm be considered to be impaired if an employee serves as treasurer of a client which is a charitable organization?

.086 *Answer*—Independence of the member's firm would be considered to be impaired since management functions are involved.

44. Past Due Billings

[.087-.088] [Superseded by Ethics Ruling No. 52.]

45. Past Due Billings: Client in Bankruptcy

.089 *Question*—A client in bankruptcy had not met his obligations in regard to amounts due the member's firm for services rendered prior to the effective date of the bankruptcy. Would the independence of the member's firm be considered to be impaired with respect to the client as "debtor in possession" or as a trustee in bankruptcy because of the existing claims against the bankrupt estate?

.090 *Answer*—Independence of the member's firm would not be considered to be impaired with respect to the client as "debtor in possession" or as the trustee since, under these circumstances, the member's claim against the client for unpaid fees is fixed as of the date of filing of the petition of bankruptcy.

46. Member as General Counsel

[.091-.092] [Superseded by Ethics Ruling No. 51.]

47. Member as Auditor of Mutual Fund and Shareholder of Investment Adviser/Manager

.093 *Question*—A member is a shareholder of a mutual fund's investment adviser/manager. Would the independence of the member's firm be considered to be impaired with respect to the mutual fund?

.094 *Answer*—Independence of the member's firm would be considered to be impaired with respect to the mutual fund because the investment adviser, though usually a separate business entity, is responsible under contract for various management functions of the fund. Further, its fees are normally a function of fund net asset value. Conversely, if the member is a shareholder in the mutual fund, the independence of the member's firm would not be considered to be impaired with respect to the fund's investment adviser since the value of the fund is dependent upon the investment management advice of the adviser, not on his financial position.

48. Faculty Member as Auditor of a Student Fund

.095 *Question*—A tenured member on the faculty of a university is asked to audit the financial statements of the Student Senate Fund. The university has the following connections with this fund.

1. The basic faculty-administration-student relationship.
2. It acts as a collection agent for student fees and remits them to the Student Senate.
3. It requires that a member of the administration approve Student Senate checks by signing them.

Would the independence of the member's firm be considered to be impaired under these circumstances? Would independence be considered to be impaired if the member was in public practice and served as a part-time faculty member?

.096 *Answer*—Under either situation posed, independence of the member's firm would be considered to be impaired with respect to the Student Senate Fund since the member would be auditing several of the management functions performed by the university, his employer.

49. Investor and Investee Companies

[.097-.098] [Superseded by Interpretation No. 101-8.]

[50.]

[.099-100] [Deleted.]

51. Member Providing Legal Services

.101 *Question*—A member in public practice who is also an attorney has been asked to provide legal services to a client for whom he also serves as auditor. Would the independence of the member be considered to be impaired with respect to the client?

.102 *Answer*—Rule of Conduct 101 and related pronouncements prohibit a member from expressing an opinion on the financial statements of a client the member also serves in any capacity having the appearance of being equivalent to any management function. The rule thus prohibits an auditor from serving as an officer, director or employee regardless of the actual responsibility of those positions. Independence of the member would be considered to be impaired if the legal services rendered result in undue identification with the management of the client or involvement with a client's affairs to such a degree as to place him virtually in the position of being an employee. Further, since the designation "general counsel" would appear to describe an ongoing state of such prohibited management equivalency to an objective observer, a member identified as "general counsel" cannot be considered to be independent.

52. Past Due Fees

.103 *Question*—A member's client has been unable to meet his current obligations. As a result, substantially all amounts due the member's firm for the preceding year are unpaid and past due. Would the independence of the member's firm be considered to be impaired with respect to the client for the current year?

.104 *Answer*—Independence of the member's firm may be impaired if more than one year's fees due from a client for professional services remain unpaid for an extended period of time. Such amounts, when they are long past due according to a firm's normal billing terms, take on some of the characteris-

tics of a loan within the meaning of Rule 101. Under these conditions, it may appear that the practitioner is providing working capital for his client and that the collection of past due amounts may depend on the nature of the auditor's report on the client's financial statements.

At the time a member issues a report on a client's financial statements, the client should not be indebted to the member for more than one year's fees. Accordingly, unless the amounts involved are clearly insignificant to both the client and the member, independence is considered to be impaired if fees for all professional services rendered for prior years are not collected before the issuance of the member's report for the current year.

53. Member as Auditor of Employee Benefit Plan and Sponsoring Company

.105 Question—A member has been asked to examine the financial statements of an employee benefit plan established for the employees of an audit client company. Would the independence of the member's firm with respect to the employee benefit plan be considered to be impaired by reason of his relationship as auditor of the sponsoring company?

.106 Answer—Independence of the member's firm with respect to the employee benefit plan would not be considered to be impaired by reason of his serving as auditor of the sponsoring company.

54. Member Providing Actuarial Services

.107 Question—If a member's firm renders actuarial services to a client, may the member also express an opinion on the client's financial statements?

.108 Answer—Even though the member's firm provides actuarial services (the results of which are incorporated in the client's financial statements), if all of the significant matters of judgment involved are determined or approved by the client and the client is in a position to have an informed judgment on the results, the member's independence would not be impaired by such activities.

55. Independence During MAS Systems Implementation

.109 Question—A member's firm has been requested by an audit client to perform a non-recurring engagement involving the implementation of an information and control system. In setting up the new system and only during the period of conversion to the system, the member's firm will arrange interviews for client's hiring of new personnel, and instruct and oversee the training of current client personnel. Would the independence of the member's firm be considered to be impaired with respect to the client if it performs this engagement?

.110 Answer—Independence of the member's firm would not be considered impaired under these circumstances provided the client makes all significant management decisions related to the hiring of new personnel and the implementation of the system. The member's firm must also take reasonable precautions to restrict his supervisory activities to initial instruction and training of personnel, and he should avoid direct supervision of the actual operation of the system or any related activities that would constitute undue involvement in or identification with management functions.

56. Executive Search

.111 Question—A member's firm's audit client is establishing a new operation in another locality. The client has asked the member's firm to recruit and hire for the company a controller and a cost accountant for its new

operation. Would the independence of the member's firm be impaired with respect to the client by virtue of performing this engagement?

.112 Answer—Independence of the member's firm would be considered impaired under Interpretation 101-1 B.1 (section 101.02) since decisions as to employment of personnel are considered a management function. However, a member's firm may perform services consisting of recommending a position description and candidate specifications, searching for and initially screening candidates, and recommending qualified candidates to the client. Such consulting assistance would not impair independence provided client management is responsible for any ultimate hiring decision.

57. MAS Engagement to Evaluate Service Bureaus

.113 Question—A member's firm has been asked by a client to evaluate various commercial service bureaus and recommend a particular service bureau for processing the client's accounting records. Several partners in the member's firm have a material financial interest in a service bureau which would be one of the potential vendors. Does acceptance of this engagement create possible violations of the Code of Professional Ethics?

.114 Answer—There would be a possible violation of Rule 102. A recommendation by the firm that the client use the outside service bureau in which partners have a material financial interest raises a serious question as to whether the firm appears to have subordinated its judgment to those partners having a financial interest in the service bureau.*

58. Member as Lessor

.115 Question—A member owns a building and leases a portion of the space to a client. Would the independence of the member be impaired with respect to the client lessee?

.116 Answer—The leasing of property to a client creates a commercial business relationship beyond the normal professional relationship, resulting in an indirect financial interest in that client. Interpretation 101-1 A1 (section 101.02) provides that independence would be considered impaired if the member's indirect financial interest in a client is material to the member.

[59.]

[.117—.118] [Deleted]

60. Employee Benefit Plans—Member's Relationships with Participating Employer(s)

.119 Question—A member has been asked to audit and to report on the financial statements of an employee benefit plan. A plan may have one or more participating employers. Must the member maintain his independence with respect to each participating employer in order to be considered independent of the plan?

.120 Answer—Except as described below, in order to be considered independent with respect to an employee benefit plan the member must remain independent within the provisions of Rule 101 with respect to the employer who is the sole sponsor of the plan, or, in the case of a multi-employer plan, with respect to any employer on whom the plan has material financial impact.

The exceptions referred to above are:

* Consult Rule of Conduct 505 and Interpretation 505-1 for possible application.

1. A financial interest, direct or indirect, in a non-client employer will not impair the member's independence with respect to the plan if:

- a. The financial interest is not large enough to permit the member to exercise significant influence over operating and financial policies of the employer, and
- b. The financial interest is not material in relation to the net worth of the member or his firm.

The result is the same whether the financial interest is held by the member, ascribed to him under Interpretation 101-9 (dealing with family relationships), or held by a trust or estate of which the member is a trustee, executor or administrator.

2. A loan to or from a non-client employer or any of its officers, directors or principal stockholders will not impair the member's independence with respect to the plan if the loan is not material in relation to the net worth of either the borrower or the lender.

[Reference changed December 31, 1983, by issuance of Interpretation 101-9.] (See section 101.11.)

61. Participation of Member's Spouse in Employee Stock Ownership Plan of Client

.121 Question—The spouse of a member is employed by a client of the firm with whose financial statements the firm is associated. The position is one that would not, in itself, impair independence. The spouse participates in the client's employee stock ownership plan. Would the independence of the member's firm be considered to be impaired with respect to such client by virtue of the spouse's participation in the stock ownership plan?

.122 Answer—Impairment of independence does not arise unless the member is (1) a partner or shareholder of his firm or (2) a full or part-time managerial employee located in an office participating in a significant portion of the engagement or (3) a full or part-time professional employee participating in the engagement.

Until the right of possession with respect to the shares exists, the interest in the plan is deemed to be an indirect financial interest in the client, ascribed to the member; accordingly, until such right exists independence will not be impaired unless the indirect financial interest is material to the member's net worth.

When the right to possession occurs, the interest in the plan is ascribed to the member as a direct financial interest in the client; accordingly, independence is impaired unless the spouse disposes of such shares.

[As modified, February 1986, to reflect the guidance contained in Interpretation 101-9.] (See section 101.11.)

62. Member and Client Are Limited Partners in a Limited Partnership

(As used in this ruling, the term "client" means any client with whose financial statements the member or his firm is associated)

.123 Question—A member owns a limited partnership interest in a limited partnership in which a client (and/or an officer, director or principal stockholder thereof) also owns a limited partnership interest. The interest of the member is material to his net worth. Is the member's interest considered to be a "joint closely held business investment," as that term is used in Interpretation 101-1.A.2 (section 101.02)?

.124 Answer—A limited partnership interest of a member in a limited partnership in which a client also owns a limited partnership interest would not be considered to be a “joint closely held business investment” if the following conditions are met:

1. The member and all investor client(s) are and remain passive investors and take no active role in the formation or management of the limited partnership. They make no decisions and have no voice in the conduct of its affairs except in remote circumstances, such as dissolution of the partnership or the appointment of new general partners.
2. The aggregate interest in the limited partnership of the member and his firm represents less than 20 percent of the interest of all limited partners in the partnership.
3. The aggregate interest in the limited partnership of any investor client (and/or its officers, directors or principal stockholders) represents less than 20 percent of the interest of all limited partners in the partnership.
4. If a member owns a limited partnership interest in a limited partnership in which two or more clients (and/or their officers, directors or principal stockholders) own limited partnership interests, the aggregate interest in the limited partnership of the member and his firm, and all investor clients (and/or their officers, directors or principal stockholders), shall represent less than 50 percent of the interest of all limited partners in the partnership. Under the above circumstances, the value of the member’s interest would not be dependent upon any action of his client (or clients). Accordingly, the member’s independence would not be considered to be impaired.

If a member does not and could not reasonably be expected to have knowledge of the limited partnership/client relationship, such lack of knowledge would preclude an impairment of independence.

63. Review of Prospective Financial Information—Member’s Independence of Promoters

.125 Question—Are a member and his or her firm considered to be independent for the purpose of compiling or examining an issuer’s prospective financial information to be used in connection with an offering or placement of securities or financial interests if the member or the member’s firm is not independent with respect to each related promoter?

.126 Answer—A member or firm would not be considered to be independent for this purpose unless the member and his or her firm are independent with respect to each promoter and the issuer itself.

.127 Definition of “promoter”—For purposes of the Rules of Conduct, a promoter is any person or entity that, acting alone or in conjunction with one or more persons or entities, directly or indirectly takes initiative in organizing a venture or enterprise or that, in connection with organizing a venture or enterprise, directly or indirectly will receive, in consideration of services or property or both, 10 percent or more of the proceeds of investments in the venture or enterprise. Whether or not an individual or entity is an investor or is otherwise in a position to exercise continuing significant influence over the venture or enterprise (for example, as a general partner) is not significant in deciding whether such an individual or entity is a promoter. On the other hand, an individual or entity that acts only as a broker or sales agent of

financial interests in the entity and does not otherwise take part in organizing the entity is not a promoter.

64. Member as Director of Agency for Which Client Raises Funds

.128 Question—May a member perform an audit of a fund-raising foundation that functions solely to raise funds for an agency if the member serves on the board of directors of the agency?

.129 Answer—A member's independence would be considered to be impaired with respect to a fund-raising foundation if the member serves on the board of directors of the entity for whose sole benefit the foundation exists. However, if the position is purely honorary and the member restricts participation to the use of the member's name, independence would not be considered impaired in accord with Interpretation 101-1 [section 101.03].

65. Use of CPA Designation by Member Not in Public Practice

.130 Question—A member who is not in public practice wishes to use the CPA designation in connection with financial statements and correspondence of the member's employer.* The member also wishes to obtain business cards which indicate both the member's title and CPA designation. Would such use of the CPA designation violate the Code of Ethics?

.131 Answer—The use of the CPA designation by a member who is not in public practice in a manner to imply that the member is independent of the employer will be considered a knowing misrepresentation of fact. Therefore, such a member may use the CPA designation in connection with financial statements issued for internal and external distribution provided that—

- a. Such CPA designation appears on the employer's letterhead; and,
- b. The member's employment status or title is clearly indicated; and,
- c. The member neither makes reference to an examination, nor to generally accepted auditing standards, nor states that the member has reviewed the financial statements. When a member states that the financial statements have been compiled, the member should specifically make reference to a lack of independence.

The correspondence of a member who is not in public practice may contain the member's CPA designation provided that the correspondence appears on or with the employer's letterhead and the member's employment status or title is clearly indicated.

Business cards of a member who is not in public practice that indicate the member's CPA designation should clearly display the member's employer and the member's employment status or title.

66. Member's Retirement or Savings Plan Has Financial Interest in Client

.132 Question—A member has been engaged to perform a service requiring independence for a client company. The member has established a retirement or savings plan through which the member has a financial interest in the client company. Would the member's independence be considered impaired because of this financial interest?

.133 Answer—Any direct or material indirect financial interest owned by a member's retirement or savings plan in a client company would be consid-

* As set forth under section 91 of the Code entitled "Applicability," nothing in this interpretation should inhibit a member from performing his or her statutory duties as a governmental auditor.

ered to be a direct or material indirect financial interest of the member in that client and would therefore impair the member's independence with respect to that client pursuant to Interpretation 101-1-A-1 section 101.02). (See Ethics Ruling No. 35 under ET Section 191 [ET section 191.069—.070].)

67. Servicing of Loan

.134 Question—A member provides a service requiring independence for a financial institution. Would the mere servicing of a member's loan that is proscribed by Interpretation 101-1-A-3 [ET section 101.02] by the client financial institution impair the member's independence with respect to the client?

.135 Answer—The mere servicing of a member's loan by a client financial institution would not impair the member's independence with respect to that client as long as there was no risk of material loss to the client with respect to the loan being serviced.

68. Blind Trust

.136 Question—A member has a direct financial interest in an enterprise for which the member has been engaged to perform a service requiring independence. Would the independence of the member be considered impaired if the member transfers the direct financial interest into a blind trust?

.137 Answer—The independence of the member would be considered impaired under Interpretation 101-1 [ET section 101.02] whether or not the financial interest is placed in a blind trust.

69. Joint Investment With a Promoter and/or General Partner

.138 Question—A private, closely held entity functions as a promoter of nonpublic, closely held real estate limited partnerships and continues to be associated with Limited Partnership A as the general partner. A member's firm has been asked to provide a service requiring independence for a new related Limited Partnership B with the same promoter and/or general partner. The member's firm does not audit the private, closely held entity or Limited Partnership A. The member or the member's firm has a material (to member's or the firm's net worth) limited partnership interest in Limited Partnership A. Would the member's firm be independent for purposes of providing services to Limited Partnership B?

.139 Answer—For the purposes of Rule 101 and its interpretations, the member's or the member's firm's financial interest in Limited Partnership A would be considered a "joint closely held business investment" with the general partner of Partnerships A and B. The member's or the member's firm's financial interest in Limited Partnership A is material to the member's or the firm's net worth; consequently, the firm's independence would be considered to be impaired with respect to Limited Partnership B pursuant to Rule 101 and its interpretations.

See Ruling No. 63 under ET Section 191 [ET section 191.125—.127] for a definition of the term "promoter."

70. Member's Depository Relationship With Client Financial Institution

.140 Question—A member maintains checking accounts or has savings accounts, certificates of deposit or money market accounts at a financial institution for which the member provides a service requiring independence. Would the member's checking accounts or savings accounts, certificates of deposit or money market accounts impair the member's and his firm's inde-

pendence with respect to the financial institution under Rule 101 and its interpretations?

.141 Answer—The member's and his firm's independence would not be considered to be impaired with respect to the financial institution provided that the checking accounts, savings accounts, certificates of deposit or money market accounts were fully insured by the appropriate state or federal government deposit insurance agencies. Checking accounts, savings accounts, certificates of deposit and money market accounts not fully insured by state or federal government deposit insurance agencies would not impair independence provided that the uninsured amounts are not material to the member or the member's firm.

71. Use of Nonindependent CPA Firm on an Engagement

.142 Question—Firm A is not independent with respect to an entity. Partners, shareholders, or professional employees of Firm A are participating on Firm B's engagement team for that entity. Would Firm B's independence be considered to be impaired?

.143 Answer—Yes. The use by Firm B of partners, shareholders, or professional employees from Firm A as part of the engagement team will impair Firm B's independence with respect to that engagement.

However, use of the work of such individuals in a manner similar to internal auditors is permissible provided that there is compliance with the Statements on Auditing Standards. Applicable literature contained in the Statements on Auditing Standards should be consulted.

[Effective August 31, 1989.]

72. Member on Advisory Board of Client

.144 Question—A member has agreed to serve on the advisory board of a client. Would service on the advisory board impair the member's or the member's firm's independence with respect to the client?

.145 Answer—The member's services on the advisory board would impair the member's and the member's firm's independence unless all the following criteria are met: (1) the responsibilities of the advisory board are in fact advisory in nature; (2) the advisory board has no authority to make nor does it appear to make management decisions on behalf of the client; and (3) the advisory board and those having authority to make management decisions (including the board of directors or its equivalent) are distinct groups with minimal, if any, common membership.

[Effective November 30, 1989.]

73. Meaning of the Period of a Professional Engagement

.146 Question—Under Rule 101 and its interpretations, a member's independence is considered to be impaired if the member has certain financial interests in or management roles with the client during the "period of a professional engagement." What is the period of a professional engagement?

.147 Answer—The period of a professional engagement starts when the member begins to perform professional services requiring independence and ends with the notification of the termination of that professional relationship either by the member or by the client.

[Effective February 28, 1990.]

74. Audits, Reviews, or Compilations and a Lack of Independence

.148 *Question*—If a member in public practice is not independent with respect to a client, is it permissible under Rule 101 for the member to issue an audit, review, or compilation report for the client?

.149 *Answer*—A member may not issue an audit opinion or review report if the member is not independent with respect to the client. A member may issue a compilation report for a client with respect to which the member is not independent. However, the member must specifically disclose his or her lack of independence without giving reasons for the impairment.

[Effective February 28, 1990.]

ET Section 200

GENERAL STANDARDS

ACCOUNTING PRINCIPLES

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ET Section 201

General Standards

.01 Rule 201—General standards. A member shall comply with the following standards and with any interpretations thereof by bodies designated by Council.

- A. *Professional Competence.* Undertake only those professional services that the member or the member's firm can reasonably expect to be completed with professional competence.
- B. *Due Professional Care.* Exercise due professional care in the performance of professional services.
- C. *Planning and Supervision.* Adequately plan and supervise the performance of professional services.
- D. *Sufficient Relevant Data.* Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

[As adopted January 12, 1988.]

Interpretations under Rule 201—General Standards

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 201-1—Competence. A member who accepts a professional engagement implies that he has the necessary competence to complete the engagement according to professional standards, applying his knowledge and skill with reasonable care and diligence, but he does not assume a responsibility for infallibility of knowledge or judgment.

Competence in the practice of public accounting involves both the technical qualifications of the member and his staff and his ability to supervise and evaluate the quality of the work performed. Competence relates both to knowledge of the profession's standards, techniques and the technical subject matter involved, and to the capability to exercise sound judgment in applying such knowledge to each engagement.

The member may have the knowledge required to complete an engagement professionally before undertaking it. In many cases, however, additional research or consultation with others may be necessary during the course of the engagement. This does not ordinarily represent a lack of competence, but rather is a normal part of the professional conduct of an engagement.

However, if a CPA is unable to gain sufficient competence through these means, he should suggest, in fairness to his client and the public, the engagement of someone competent to perform the needed service, either independently or as an associate.

[.03] [201-2]—[Deleted]

[.04] [201-3]—[Deleted]

.05 201-4—Definition of the term engagement as used in rule 201—general standards. The term “engagement” as used in Rule 201 includes (1) any engagement during which a member is required to issue or does issue a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, (2) any engagement that requires a member to comply with a statement on auditing standards in the performance of that engagement, or (3) any engagement involving prospective financial statements that are, or reasonably might be, expected to be used by another (third) party in which a member either (a) submits such statements that he has assembled or assisted in assembling to his client or others or (b) reports on such statements.

To assure compliance with the General Standards A through D in Rule 201, a member who performs an engagement of the type described in (1) above should follow the Statement on Standards for Attestation Engagements. Similarly, a member who performs an engagement of the type described in (2) above should follow the applicable Generally Accepted Auditing Standards and the related Statements on Auditing Standards. To assure compliance with General Standards A through D in Rule 201, a member who performs an engagement described in (3) above should follow the Statement on Standards for Accountants' Services on Prospective Financial Information.

[The next page is 4571.]

ET Section 202***Compliance With Standards***

.01 Rule 202—Compliance with standards. A member who performs auditing, review, compilation, management advisory, tax, or other professional services shall comply with standards promulgated by bodies designated by Council.

[As adopted January 12, 1988.]

Interpretation under Rule 202—Compliance With Standards

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

[.02] [202-1]—[Deleted]

[The next page is 4581.]

ET Section 203

Accounting Principles

.01 Rule 203—Accounting principles. A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by Council to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the member can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the member can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

[As adopted January 12, 1988.]

Interpretations under Rule 203—Accounting Principles

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 203-1—Departures from established accounting principles. Rule 203 was adopted to require compliance with accounting principles promulgated by the body designated by Council to establish such principles. There is a strong presumption that adherence to officially established accounting principles would in nearly all instances result in financial statements that are not misleading.

However, in the establishment of accounting principles it is difficult to anticipate all of the circumstances to which such principles might be applied. This rule therefore recognizes that upon occasion there may be unusual circumstances where the literal application of pronouncements on accounting principles would have the effect of rendering financial statements misleading. In such cases, the proper accounting treatment is that which will render the financial statements not misleading.

The question of what constitutes unusual circumstances as referred to in Rule 203 is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle would be regarded generally by reasonable men as producing a misleading result.

Examples of events which may justify departures from a principle are new legislation or the evolution of a new form of business transaction. An unusual degree of materiality or the existence of conflicting industry practices are examples of circumstances which would not ordinarily be regarded as unusual in the context of Rule 203.

.03 203-2—**Status of FASB interpretations.** Council is authorized under Rule 203 to designate a body to establish accounting principles and has designated the Financial Accounting Standards Board as such body. Council also has resolved that FASB Statements of Financial Accounting Standards, together with those Accounting Research Bulletins and APB Opinions which are not superseded by action of the FASB, constitute accounting principles as contemplated in Rule 203.

In determining the existence of a departure from an accounting principle established by a Statement of Financial Accounting Standards, Accounting Research Bulletin or APB Opinion encompassed by Rule 203, the division of professional ethics will construe such Statement, Bulletin or Opinion in the light of any interpretations thereof issued by the FASB.

[.04] [203-3]—[Deleted]

[The next page is 4601.]

ET Section 291

Ethics Rulings on General and Technical Standards

Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

1. Association of Name with Unaudited Statements when Member Is Not Independent

.001 Question—A member in the practice of public accounting is a minority stockholder, officer, and director of a corporation for which his firm performs management and accounting services. As a corporate officer, the member has prepared financial statements for the corporation for presentation to a bank. The accounting firm was paid for the member's services in connection with the preparation of the statements, and the bank was made aware that the statements were not audited. What are the ethical considerations?

.002 Answer—When a CPA submits to his client or another unaudited financial statements which he has prepared, he is deemed to be associated with the statements. This association is deemed to exist even though the CPA does not append his name to the financial statements.

The member, as an officer, can prepare the statements for the corporation. But because he is also engaged in public practice and the corporation is a client of his firm, he should disclaim an opinion as he is lacking in independence.

[2.] Opinion by Member Not in Public Practice

[.003—.004] [Superseded by Ethics Ruling No. 65 Under Section 191.]

3. Controller, Preparation of Financial Statements

.005 Question—A corporation which employs a member as controller is audited by a firm of CPAs. The controller examines the financial statements of a subsidiary corporation. Can the outside firm accept the controller's opinion or report on these financial statements as one meeting the requirements of generally accepted auditing standards?

.006 Answer—It could not, since, as an employee of the corporation, the controller cannot express an independent opinion on financial statements of the subsidiary.

4. Two-Year Opinion—Prior Year Previously Unaudited

.007 Question—A member was engaged for one fiscal year to prepare unaudited financial statements. He was engaged by the same client for the following fiscal year to perform an audit in accordance with generally accepted auditing standards. May he express an unqualified opinion on the statements of income and changes in financial position for the two fiscal years?

.008 Answer—Nothing would prevent the member from expressing such an unqualified opinion provided he carried out necessary audit procedures. The fact that the member had originally disclaimed an opinion on the preceding year's financial statements because they were unaudited would not preclude him from subsequently expressing an opinion on the audited statements for that year.

In performing his audit for the current year, it is assumed that the member made his audit in conformity with generally accepted auditing standards and performed all auditing procedures considered necessary in the circumstances including observation of the taking of the physical inventory. He would then be able to express an unqualified opinion on the balance sheet at the close of the current year.

For example, even though the member did not observe the taking of the physical inventories at the beginning of the current year and at the beginning of the preceding year, he may be able to satisfy himself as to such prior inventories through appropriate procedures (see section 331.13 of Statement on Auditing Standards No. 1 [AU section 331.13.]). If he can satisfy himself as to the prior inventories and if he audits the statements of income and changes in financial position for the preceding year in accordance with generally accepted auditing standards, he should be able to express an unqualified opinion on those statements for the two years. The member is not required to disclose that he did not observe the taking of the earlier inventories although he may wish to do so. [AU section 508.42]

If the member is not able to satisfy himself as to the inventory at the beginning of the current year and the inventory enters materially into the determination of results of operations and changes in financial position, he would be unable to express an opinion on the statements of income and changes in financial position for the current year. His report on the financial statements for that year would follow the illustration in section 542.05 of Statement on Auditing Standards No. 1. [AU section 542.05]

It is assumed the member has been able to satisfy himself as to the consistency of the application of generally accepted accounting principles (see section 420 of Statement on Auditing Standards No. 1). [AU section 420]

5. Interim Financial Statements

.009 Question—Interim reports issued by public entities, as defined in Statement on Auditing Standards No. 26 [AU section 504], sometimes contain the auditor's name listed on the cover or elsewhere along with the company's officers, board of directors, and legal counsel. Would this listing constitute an "association" of a member's name with financial statements as that term is used in Rule 202 of the Code of Professional Conduct?

.010 Answer—Yes, such a listing would be considered an "association" of a member's name with the accompanying financial statements as that term is used in Rule 202. Accordingly, in such circumstances, each financial statement in such a report should be marked "unaudited."

The auditor should also be aware that Statement on Auditing Standards No. 26 [AU section 504] states that a disclaimer of opinion should accompany unaudited financial statements with which the CPA is associated. Accordingly, he may suggest to his client that wording such as the following be included in the interim report: "The financial information included in this interim report has been prepared by management without audit by independent public accountants who do not express an opinion thereon. Semiannual (annual) reports will contain audited financial statements."

The member should have a clear understanding with his client with respect to issuance of interim reports which display the name of the member's firm along with unaudited financial statements, and he should not permit his name to be associated with the financial statements in a manner which might lead a reader to believe that the auditor is assuming some degree of responsibility for the unaudited statements.

6. Letterhead

.011 Question—A member performs accounting services on a gratis basis for a private club of which he is treasurer. His firm does no work for the club. Would it be proper for him to issue financial statements in connection with his accounting services for the club on his firm letterhead with a disclaimer for lack of independence?

.012 Answer—It would be preferable for the stationary of the club to be used for presentation of the financial statements with an indication that the auditor is acting as treasurer. However, should he use his firm's letterhead, Statement on Standards for Accounting and Review Services No. 1 [AR section 100] is applicable.

7. Non-CPA Partner

.013 Question—May a member who is in partnership with non-CPAs sign reports with the firm name and below it affix his own signature with the designation "Certified Public Accountant"?

.014 Answer—This would not be improper, provided it is clear that the partnership itself is not being held out as composed entirely of CPAs.

8. Subcontractor Selection for MAS Engagements

.015 Question—A member has been engaged to design and program a computer system. The engagement is well within his competence. He plans to retain a contract programming organization as a subcontractor to provide additional qualified manpower. What procedures should he consider in making his selection of a subcontractor?

.016 Answer—When selecting subcontractors the member has a responsibility to assure himself that they have the professional qualifications, technical skills and other resources required. Factors that can be helpful in evaluating a prospective subcontractor include business, financial and personal references from banks, from other CPAs, and from other customers of the subcontractor; the subcontractor's professional reputation and recognition; published materials (articles and books authored); and the practitioner's personal evaluation of the subcontractor.

9. Supervision of Technical Specialist on MAS Engagements

.017 Question—A member would like to add to his staff a systems analyst who specializes in developing computer systems. Must the member be able to perform all of the services that the specialist can perform in order to be able to supervise him?

.018 Answer—The member must be qualified to supervise and evaluate the work of specialists in his employ. Although supervision does not require that he be qualified to perform each of the specialist's tasks, he should be able to define the tasks and evaluate the end product.

ET Section 300

RESPONSIBILITIES TO CLIENTS

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ET Section 301

Confidential Client Information

.01 Rule 301—Confidential client information. A member in public practice shall not disclose any confidential client information without the specific consent of the client.

This rule shall not be construed (1) to relieve a member of his or her professional obligations under rules 202 and 203, (2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, (3) to prohibit review of a member's professional practice under AICPA or state CPA society authorization, or (4) to preclude a member from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body.

Members of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any member's confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with a recognized investigative or disciplinary body or affect, in any way, compliance with a validly issued and enforceable subpoena or summons.

Interpretations under Rule 301—Confidential client information

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

[.02] [301-1]—[Deleted]

.03 301-2—Disclosure of confidential client information in certain circumstances. Rule 301 provides that "A member in public practice shall not disclose any confidential client information without the specific consent of the client." The rule provides four exemptions that permit AICPA members to disclose confidential client information without the client's specific consent.

Consistent with the AICPA's jurisdiction only over AICPA members, exemptions (1), (2), and (3) pertain to bodies designated by the AICPA to set standards or acknowledge the legal process to which members are subject.

Exemption (4) in Rule 301 provides that Rule 301 shall not be construed "to preclude a member from initiating a complaint with or responding to any inquiry from a recognized investigative or disciplinary body."

In keeping with the AICPA's jurisdiction solely over AICPA members and the other three exemptions in Rule 301, exemption (4) of the rule pertains to the disciplinary and investigative processes of the AICPA. Exemption (4) allows but does not require members to file complaints with the AICPA and other participants in the Joint Ethics Enforcement Program even though the

complaint may necessitate disclosing confidential client information without the specific consent of the client. The concluding paragraph of the rule is evidence of this intent as it asserts that members of recognized investigative or disciplinary bodies and professional practice reviewers shall not use to their own advantage or disclose any member's confidential client information.

Consistent with this perceived intent of exemption (4), it is interpreted to state the following: Rule 301 shall not be construed to preclude a member from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body of the AICPA or other participant in the Joint Ethics Enforcement Program.

In addition, the exemption (2) is interpreted to provide that Rule 301 should not be construed to prohibit or interfere with a member's compliance with applicable laws and government regulations.

[Effective August 31, 1989.]

.04 301-3—Confidential Information and the Purchase, Sale, or Merger of a Practice. Rule 301 prohibits a member in public practice from disclosing any confidential client information without the specific consent of the client. The rule provides that it shall not be construed to prohibit the review of a member's professional practice under AICPA or state CPA society authorization.

For purposes of Rule 301, a review of a member's professional practice is hereby authorized to include a review in conjunction with a prospective purchase, sale, or merger of all or part of a member's practice. The member must take appropriate precautions (for example, through a written confidentiality agreement) so that the prospective purchaser does not disclose any information obtained in the course of the review, since such information is deemed to be confidential client information.

Members reviewing a practice in connection with a prospective purchase or merger shall not use to their advantage nor disclose any member's confidential client information that comes to their attention.

[Effective February 28, 1990.]

[The next page is 4681.]

ET Section 302***Contingent Fees***

.01 Rule 302—Contingent fees. Professional services shall not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services. However, a member's fees may vary depending, for example, on the complexity of services rendered.

Fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

[As adopted January 12, 1988.]

Interpretation under Rule 302—Contingent Fees

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 302-1—Meaning of the phrase “the findings of governmental agencies” as stated in rule 302 of the rules of conduct. Rule 302 of the Rules of Conduct provides that fees are not regarded as being contingent “in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.”

For the purposes of rule 302, in tax matters, the phrase “the findings of governmental agencies” refers to the resolution of a controversy with a governmental agency and does not refer to the preparation of original returns, amended returns, claims for refund, and requests for private letter rulings.

[The next page is 4691.]

ET Section 391

Ethics Rulings on Responsibilities to Clients

Ethics Rulings and Interpretations which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

1. Computer Processing of Clients' Returns

.001 Question—May a member make use of an outside service bureau for the processing of clients' tax returns? The member's firm would control the input of information and the computer service would perform the mathematical computations and print the return. Is there any violation of the confidential relationship in the fact that client information leaves the member's office?

.002 Answer—A member may utilize outside services to process tax returns. He must take all necessary precautions to be sure that the use of outside services does not result in the release of confidential information.

2. Distribution of Client Information to Trade Associations

.003 Question—A member's firm is requested by a trade association to supply profit and loss percentages taken from the reports of the accountants' clients. The association would distribute them to its members. May the firm comply with the request?

.004 Answer—Rule 301 would not be violated if the firm has the clients' permission to distribute the figures.

3. Information to Successor Accountant About Tax Return Irregularities

.005 Question—A member withdrew from an engagement on discovering irregularities in his client's tax return. May he reveal to the successor accountant why the relationship was terminated?

.006 Answer—Rule 301 is not intended to help an unscrupulous client cover up illegal acts or otherwise hide information by changing CPAs. If the member is contacted by the successor he should, at a minimum, suggest that the successor ask the client to permit the member to discuss all matters freely with the successor. The successor is then on notice of some conflict. Because of the serious legal implications, the member should seek legal advice as to his status and obligations in the matter.

[4.]

[.007—.008] [Deleted]

5. Records Retention Agency

.009 Question—May a member use a records-retention agency to store his clients' records, working papers, and so forth?

.010 *Answer*—There is no objection to the use of such a records center. However, responsibility for preserving the confidential nature of the records rests with the member.

6. Revealing Client Information to Competitors

.011 *Question*—A municipality in a particular state enforces a personal property tax on business inventories, fixtures and equipment, and machinery by retaining a firm of CPAs to examine the books and records of the businesses to be sure the proper amount has been declared. In the course of its engagement, the CPA firm will examine sales, purchases, gross profit percentages, and inventories as well as fixed asset accounts. A member serving one of the companies involved objects to these procedures on the ground that information gathered from the books and records of his client could be inadvertently conveyed to competitors by employees of the CPA firm doing the audit. Is such an engagement ethically proper?

.012 *Answer*—It would be proper for a member's firm to perform such services. It should be emphasized to everyone concerned that Rule 301 prohibits members from revealing to others any confidential information obtained in their professional capacity.

7. Revealing Names of Clients

.013 *Question*—May a member in public practice disclose the name of a client for whom the member or the member's firm performed professional services?

.014 *Answer*—It is permissible under Rule 301 for a member to disclose the name of a client, whether publicly or privately owned, without the client's specific consent unless the disclosure of the client's name constitutes the release of confidential information. For example, if a member's practice is limited to bankruptcy matters, the disclosure of a client's name would suggest that the client may be experiencing financial difficulties, which could be confidential client information.

[Replaced previous Ruling No. 7, Revealing Names of Employer's Clients, effective August 31, 1989.]

8. Fee as Percentage of Bond Issue

.015 *Question*—Is it proper for a member to determine his fee for services rendered in connection with a bond issue as a percentage of the total amount of the bond issue?

.016 *Answer*—The member's fee for services rendered in connection with a bond issue should not be based upon the percentage of the total amount of the issue since that amount is often, in part, influenced by the findings of the member. Furthermore, the receipt of a fee by a member in connection with such work should not be contingent upon whether or not the bond issue is sold.

The member's fee should be related to services rendered and should not be determined by his findings or the results of his findings.

9. Finder's Fee

.017 *Question*—Would the occupation of finder for a client in the acquisition of another company be considered incompatible with public accounting? If a member may serve as finder, would he violate Rule 302 by charging a fee contingent upon the acquisition and based on a percentage of the acquisition price?

.018 *Answer*—The occupation of finder is not incompatible with public accounting. Rule 302, which prohibits a member from rendering a service for a

fee contingent upon the results of such service, would prohibit such fee arrangements. The receipt of a fee should be determined by the service to be rendered and should not depend on whether or not the sale takes place; nor should the amount of the fee be based on a percentage of the acquisition price.

10. Fee as Expert Witness

.019 Question—May a member, as an expert witness in a damage suit, receive compensation based on the amount awarded the plaintiff?

.020 Answer—Such an agreement would violate Rule 302, which prohibits contingent fees. Compensation for expert testimony may be at a standard per diem rate for such services or at a fixed sum previously agreed upon.

11. Fee Contingent on Mortgage Commitment

.021 Question—A member provides accounting services in connection with construction projects financed primarily by FHA-insured mortgages. His fee for such services is determined as a fixed percentage of the mortgage commitment finally granted by FHA. Prior to such commitment the member would have offered advisory accounting services. If no commitment was granted, no fee would be charged for advisory services. Is this arrangement permissible?

.022 Answer—A fee based on the percentage of a mortgage obtained would be a contingent fee, for the amount of the commitment could vary directly with the results of the member's services.

12. Fee as a Percentage of Tax Savings

.023 Question—May a member base his fee for preparing a tax return on how much in taxes he can save his client?

.024 Answer—Basing a fee for preparing a tax return on the amount saved in taxes would be a violation of Rule 302. A properly prepared return results in a proper tax liability, and there is no basis for computing a saving. To make a fee contingent upon the amount of taxes saved presumes a tax liability has been established which an accountant is attempting to reduce, whereas all persons concerned with the preparation of a tax return should attempt to determine only the correct tax liability. [As modified, November 1981, by the Professional Ethics Executive Committee.]

13. Contingent Fees to Fire Adjuster

.025 Question—A member's client is a public fire adjuster who assists insured persons in negotiating settlements of fire losses with insurance companies. The adjuster's fee is based on a percentage of the recovery. In negotiating such settlements, the adjuster needs financial statements for a three-year period, prepared without audit from the books and records of the insured. Could the member provide such services for a fee which would be a percentage of the fee received by the adjuster?

.026 Answer—Since the fee is dependent upon the amount of the settlement, it is a contingent fee in violation of Rule 302.

14. Use of Confidential Information on MAS Engagements

.027 Question—In the course of performing a feasibility study a non-client outside source has provided pertinent information to the member's firm with the understanding that the source and the details of the information will not be disclosed. The information, which the firm believes is pertinent, directly affects its conclusions and recommendations. How may this information be utilized in connection with the feasibility study engagement and related conclusions and recommendations?

.028 Answer—Rule of Conduct 301 regarding confidential client information is not directly applicable to the circumstances described; however, Rule of Conduct 501—Acts Discreditable—is applicable to situations involving confidential relationships with non-clients. For an engagement in which it appears likely that the development of pertinent information will have to come from outside non-client sources, and such information must remain confidential, the terms of the engagement with the client should specify that the confidences of outside non-client sources will not be divulged by the member's firm even when they might affect the outcome of the engagement. If the use of confidential outside sources is necessary and the terms of the engagement are silent regarding disclosure of source and details, the member should promptly seek the approval of the client to present his recommendations without making disclosures that include confidential information. If the client does not agree to this, the member should withdraw rather than breach a confidence or improperly limit the inclusion of information in his final recommendation.

15. Earlier Similar MAS Study with Negative Outcome

.029 Question—A prospective client has asked a member's firm to study the desirability of his using a newly developed electronic ticketing system for his business. A recent study made for another client leads the member's firm to believe that the system would not be desirable for him. Must the firm state its reservations at the risk of disclosing information acquired while performing an assignment for a client competitor?

.030 Answer—Rule of Conduct 301 provides that a member shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. Knowledge and expertise which results in a special competence in a particular field can be provided to a client without violating the confidence of another client. Reservations that the firm may have concerning the electronic ticketing system should be communicated to the prospective client provided the details of the other client's engagement are not disclosed. If, however, circumstances are such that the prospective client would clearly know the origin of the information on which the member's reservations are based, and such information is sensitive, the engagement should not be accepted without clearance with the first client.

ET Section 400

**RESPONSIBILITIES TO
COLLEAGUES**

[Reserved.]

ET Section 500

OTHER RESPONSIBILITIES AND PRACTICES

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ET Section 501

Acts Discreditable

.01 Rule 501—Acts discreditable. A member shall not commit an act discreditable to the profession.

[As adopted January 12, 1988.]

Interpretations under Rule 501—Acts Discreditable

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 501-1—Client's records and accountant's workpapers. Retention of client records after a demand is made for them is an act discreditable to the profession in violation of Rule 501. The fact that the statutes of the state in which a member practices may specifically grant him a lien on all client records in his possession does not change the ethical standard that it would be a violation of the Code to retain the records to enforce payment.

A member's working papers are his property and need not be surrendered to the client. However, in some instances a member's working papers will contain data which should properly be reflected in the client's books and records but which for convenience have not been duplicated therein, with the result that the client's records are incomplete. In such instances, the portion of the working papers containing such data constitutes part of the client's records, and copies should be made available to the client upon request.

If a member is engaged to perform certain work for a client and the engagement is terminated prior to the completion of such work, the member is required to return or furnish copies of only those records originally given to the member by the client.

Examples of working papers that are considered to be client's records would include:

- a. Worksheets in lieu of books of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar working paper).
- b. Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers or similar depreciation records.
- c. All adjusting and closing journal entries and supporting details. (If the supporting details are not fully set forth in the explanation of the journal entry, but are contained in analyses of accounts in the accountant's working papers, then copies of such analyses must be furnished to the client.)
- d. Consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

Any working papers developed by the member incident to the performance of his engagement which do not result in changes to the clients' records or are not in themselves part of the records ordinarily maintained by such clients, are considered to be solely "accountant's working papers" and are not the property of the client, e.g.:

The member may make extensive analyses of inventory or other accounts as part of his selective audit procedures. Even if such analyses have been prepared by client personnel at the request of the member, they nevertheless are considered to be part of the accountant's working papers.

Only to the extent such analyses result in changes to the client's records would the member be required to furnish the details from his working papers in support of the journal entries recording such changes unless the journal entries themselves contain all necessary details.

Once the member has returned the client's records to him or furnished him with copies of such records and/or necessary supporting data, he has discharged his obligation in this regard and need not comply with any subsequent requests to again furnish such records.

If the member has retained in his files copies of a client's records already in possession of the client, the member is not required to return such copies to the client.

.03 501-2—Discrimination in employment practices. Discrimination based on race, color, religion, sex, age or national origin in hiring, promotion or salary practices is presumed to constitute an act discreditable to the profession in violation of Rule 501.

.04 501-3—Failure to follow standards and/or procedures or other requirements in governmental audits. Engagements for audits of government grants, government units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, he is obligated to follow such requirements. Failure to do so is an act discreditable to the profession in violation of Rule 501, unless the member discloses in his report the fact that such requirements were not followed and the reasons therefor.

.05 501-4—Negligence in the preparation of financial statements or records. A member who, by virtue of his negligence, makes, or permits or directs another to make, false and misleading entries in the financial statements or records of an entity shall be considered to have committed an act discreditable to the profession in violation of rule 501.

.06 501-5—Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies in performing attest or similar services. Many governmental bodies, commissions or other regulatory agencies have established requirements such as audit standards, guides, rules, and regulations that members are required to follow in performing attest or similar services for clients subject to their jurisdiction. For example, the Securities and Exchange Commission, Federal Communications Commission, state insurance commissions, and other regulatory agencies have established such requirements.

When a member agrees to perform an attest or similar service for the purpose of reporting to such bodies, commissions, or regulatory agencies, the member should follow such requirements, in addition to generally accepted auditing standards (where applicable). Failure to substantially follow such requirements is an act discreditable to the profession, unless the member discloses in his or her report that such requirements were not followed and the reasons therefore. Not following such requirements could require the member to modify his or her report.

If the agency requires additional disclosures of the auditor, they must be made in accordance with the disclosure requirements established by the governmental body, commission or other regulatory agency. Failure to substantially follow such requirements is an act discreditable to the profession.

[Effective August 31, 1989.]

[The next page is 4841.]

ET Section 502

Advertising and Other Forms of Solicitation

.01 Rule 502—Advertising and other forms of solicitation. A member in public practice shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

[As adopted January 12, 1988.]

Interpretations under Rule 502—Advertising and Other Forms of Solicitation

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

[.02] [502-1]—[Deleted]

.03 502-2—False, misleading or deceptive acts in advertising or solicitation. Advertising or other forms of solicitation that are false, misleading, or deceptive are not in the public interest and are prohibited. Such activities include those that—

1. Create false or unjustified expectations of favorable results.
2. Imply the ability to influence any court, tribunal, regulatory agency, or similar body or official.
3. Consist of self-laudatory statements that are not based on verifiable facts.
4. Make comparisons with other CPAs that are not based on verifiable facts.
5. Contain a representation that specific professional services in current or future periods will be performed for a stated fee, estimated fee or fee range when it was likely at the time of the representation that such fees would be substantially increased and the prospective client was not advised of that likelihood.
6. Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived.

[Revised, December 31, 1986, by the Professional Ethics Executive Committee.]

[.04] [502-3]—[Deleted]

[.05] [502-4]—[Deleted]

.06 502-5—Engagements obtained through efforts of third parties. Members are often asked to render professional services to clients or customers

of third parties. Such third parties may have obtained such clients or customers as the result of their advertising and solicitation efforts.

Members are permitted to enter into such engagements. The member has the responsibility to ascertain that all promotional efforts are within the bounds of the Rules of Conduct. Such action is required because the members will receive the benefits of such efforts by third parties, and members must not do through others what they are prohibited from doing themselves by the Rules of Conduct.

[The next page is 4871.]

ET Section 503

Commissions

.01 Rule 503—Commissions. The acceptance by a member in public practice of a payment for the referral of products or services of others to a client is prohibited. Such action is considered to create a conflict of interest that results in a loss of objectivity and independence.

A member shall not make a payment to obtain a client. This rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

Interpretation under Rule 503—Commissions

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 503-1—Fees in payment for services. Rule 503, which prohibits payment of a commission to obtain a client, was adopted to avoid a client's having to pay fees for which he did not receive commensurate services. However, payment of fees to a referring public accountant for professional services to the successor firm or to the client in connection with the engagement is not prohibited.

[The next page is 4891.]

ET Section 505

Form of Practice and Name

.01 Rule 505—Form of practice and name. A member may practice public accounting only in the form of a proprietorship, a partnership, or a professional corporation whose characteristics conform to resolutions of Council.

A member shall not practice public accounting under a firm name that is misleading. Names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under such name which includes the name of past partners or shareholders for up to two years after becoming a sole practitioner.

A firm may not designate itself as "Members of the American Institute of Certified Public Accountants" unless all of its partners or shareholders are members of the Institute.

[As adopted January 12, 1988.]

Interpretations under Rule 505—Form of Practice and Name

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 505-1—Investment in commercial accounting corporation. A member in the practice of public accounting may have a financial interest in a commercial corporation which performs for the public services of a type performed by public accountants provided such interest is not material to the corporation's net worth, and the member's interest in and relation to the corporation is solely that of an investor.

.03 505-2—Application of rules of conduct to members who operate a separate business. Members in public practice who participate in the operation of a separate business that offers to clients one or more types of services rendered by public accountants will be considered to be in the practice of public accounting in the conduct of that business. In such a case, members will be required to observe all of the Rules of Conduct in the operation of the separate business.

In addition, members who are not otherwise in public practice must observe the Rules of Conduct in the operation of their business if they hold out to the public as being a CPA or public accountant and at the same time offer to clients one or more types of services rendered by public accountants.

[The next page is 4901.]

ET Section 591

Ethics Rulings on Other Responsibilities and Practices

Ethics Rulings and Interpretations which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

1. Retention of Records

[.001-.002] [Superseded by Interpretation 501-1.]

2. Fees: Collection of Notes Issued in Payment

.003 Question—A member's firm made arrangements with a bank to collect notes issued by a client in payment of fees due, and so advised the delinquent client. Is this procedure ethical?

.004 Answer—The procedure followed does not violate any provision of the Code.

3. Employment by Non-CPA Firm

.005 Question—A member is considering employment with a public accounting firm made up of one or more non-CPA practitioners. If he is employed by such a firm, what are his responsibilities under the Rules of Conduct?

.006 Answer—A member so employed must comply with all the Rules of Conduct. If he becomes a partner in such a firm, he will then in addition be held responsible for compliance with the Rules of Conduct by all persons associated with him.

[4.—32.]

[.007-.064] [Deleted]

33. Course Instructor

.065 Question—What responsibility does a member have for the information included in advertising material used to promote a course which he has been asked to conduct?

.066 Answer—It is of value to prospective students to know the instructor's background—such as degrees he holds, professional society affiliations, and the name of his firm. The member has the responsibility to ascertain that all promotional efforts are within the bounds of Rule 502.

[34.—37.]

[.067-.074] [Deleted]

38. CPA Title, Controller of Bank

.075 Question—A member not in public practice is controller of a bank. May the member permit the bank to use his CPA title on bank stationery and in paid advertisements listing the officers and directors of the bank?

.076 Answer—The use of the CPA title on bank stationery by a member not in public practice is proper. It would also be proper for the CPA title of the member to appear in paid advertisements of the bank that list the officers and directors.

[39.—44.]

[.077-.088] [Deleted]

45. CPA Title on Agency Letterhead

[.089-.090] [Superseded August, 1975.]

[46.—62.]

[.091-.124] [Deleted]

63. Directory Listing, White Pages

[.125-.126] [Superseded February, 1976.]

[64.—77.]

[.127-.154] [Deleted]

78. Letterhead: Lawyer-CPA

.155 Question—May a member who is also admitted to the Bar represent himself on his letterhead as both an attorney and a CPA, or should he use separate letterheads in the conduct of the two practices?

.156 Answer—The Code does not prohibit the simultaneous practice of accounting and law by a member licensed in both professions. Either a single or separate letterheads may be used, provided the information with respect to the CPA designation complies with Rule 502. However, the member should also consult the rules of the applicable Bar Association.

[79.—81.]

[.157-.162] [Deleted]

82. Newsletter

.163 Question—A publishing company has discussed the possibility of issuing a newsletter on financial management under a member's name. His name would be featured prominently. The letter would be sold for a fee, and subscriptions would be solicited by direct mail or other forms of advertising. Would this arrangement violate the Code?

.164 Answer—No, if (1) the letter bearing the member's name was written by him or under his supervision and (2) he ensures that those promoting such a publication do not make statements concerning the author or his writings that would be in violation of Rule 502.

[83.—90.]

[.165-.180] [Deleted]

91. Press Release on Change in Staff

[.181-.182] [Superseded March, 1975.]

92. Press Release on Change in Staff

[.183-.184] [Superseded March, 1975.]

[93.—107.]

[.185-.214] [Deleted]

108. Member Interviewed by the Press

.215 Question—What ethical standards should a member observe when he is interviewed by the press?

.216 Answer—When interviewed by a writer or reporter, the member should observe the limitations imposed on him by the Rules of Conduct. The member may not provide the press with any information for publication that he could not publish himself.

109. Compensation from Nonpractitioners

.217 Question—A member proposes to render a management service to clients by arranging for the purchase of supplies from a supplier who offers a discount. The supplier, who is also a client, feels that the member's fee should be increased as compensation for providing this service. Would this constitute a violation of Rule 503? Would the answer be any different if the supplier was not a regular client of the member's firm?

.218 Answer—Accepting a commission from the supplier, whether or not he is a regular client, would violate Rule 503 which states that a member may not accept a commission for referral of products and services of others to a client. However, assisting clients in obtaining the best equipment at the best price is a legitimate professional service, and the member may properly charge for the time and effort devoted to this activity.

110. Computer Service Franchise

.219 Question—A member in public practice wishes to be a representative of a computer tax service. The computer organization provides services only to tax practitioners. That member would be expected to utilize his professional contacts to introduce the service to other practitioners and to promote its use by them. He would receive a fee from the computer tax service for each tax return processed for a practitioner from within his franchise area. Would this arrangement constitute a violation of Rules 503 and 504?

.220 Answer—Rule 503 provides that a member may not accept commissions or participate in fees from others for services referred to his clients. Since the proposed activity would not involve services referred to his clients, but only to tax practitioners, Rule 503 does not apply. In regard to Rule 504, serving as a representative of a tax preparation computer center in itself would not create a conflict of interest within the practice of public accounting.

111. Purchase of Bookkeeping Practice

.221 Question—A member buys a bookkeeping firm's practice which is limited to monthly write-ups and tax return preparation. The purchase price is a percentage of the fees received from the bookkeeping firm's clients over a three-year period. Would there be a violation of Rule 503 in these circumstances?

.222 Answer—Since the rule prohibiting the payment of commissions was not intended to cover such situations, there would be no violation of Rule 503. This ruling is based on the assumption that the percentage of fees received is simply a means of determining the price that will be paid for the practice and that the arrangement will terminate at the end of the three-year period.

112. Referral

.223 Question—A member's firm has proposed to enter into an arrangement with a management specialist. The management specialist would seek engagements to prepare an operations survey that would suggest where improvements might be made. If the survey indicated deficiencies in the accounting systems, the consultant would recommend the member's firm to perform the proposed services. The member's firm would pay the specialist compensation for the referral. Would such an engagement be a violation of Rule 503?

.224 Answer—It would be improper to have such an arrangement because the member would be acquiring business through the payment of a commission in violation of Rule 503.

113. Member's Spouse as Insurance Agent

.225 Question—May a member in public practice refer life insurance assignments to his wife, who is a life insurance agent, or to an agent who will share a commission with the member's wife?

.226 Answer—Rule 503 would prohibit such referrals since the member would receive the economic benefit derived from the commission paid to his wife.

114. Member's Firm Paying Employee Bonuses

.227 Question—Does Rule 503, which states that a member shall not pay a commission to obtain a client, prohibit a member from paying bonuses or otherwise sharing the profits of professional accounting work with his employees where practice development is a factor in determining such bonus or profit-sharing amount?

.228 Answer—Rule 503 was not intended to prevent the sharing of the profits of professional work with employees, retired partners, and the heirs or estate of a deceased partner. It was not designed to prevent a firm from having some form of bonus or profit-sharing plan which includes recognition of practice development.

115. Actuary

.229 Question—A member's firm has acquired that portion of an insurance brokerage firm that performs actuarial and administrative services in connection with employee benefit plans. Would conduct of the operation as a separate partnership constitute a violation of Rule 504?

.230 Answer—Actuarial and administrative services in connection with employee benefit plans are a proper function of CPAs and are not incompatible with the practice of public accounting. As long as the organization adheres to all the provisions of the Code and bylaws, there would be no objection to this arrangement.

116. Bank Director

[.231-.232] [Superseded June, 1976.]

117. Consumer Credit Company Director

.233 Question—A consumer credit company purchases installment sales contracts from retailers and receives payments from consumers. May a practicing CPA serve as a director or officer of such a corporation?

.234 Answer—Yes, as long as he does not audit the corporation and does not participate in matters which might involve a conflict of interest.

[118.—133.]

[.235-.266] [Deleted]

134. Association of Accountants Not Partners

.267 Question—Two members who are not partners share an office, have the same employees, have a joint bank account, and work together on each other's engagements. Would it be proper to have a joint letterhead showing both names, "Certified Public Accountants," and their addresses?

.268 Answer—In these circumstances the public would assume that a partnership existed. If any reports were to be issued under the joint heading, Rule 505 would be violated.

Members should not use a letterhead showing the names of two accountants when a partnership does not exist.

135. Association of Firms Not Partners

.269 Question—Three CPA firms wish to form an association—not a partnership—to be known as "Smith, Jones & Associates." Is there any impropriety in this?

.270 Answer—The use of such a title is not permitted since it might mislead the public into thinking a true partnership exists. Instead, each firm is advised to use its own name on its letterhead, indicating the other two as correspondents.

136. Audit with Former Partner

.271 Question—A member's firm consisting of one certified and one noncertified partner has been dissolved. One account was retained which the two practitioners plan to continue to service together. Should the audit report be submitted on partnership stationery?

.272 Answer—It would appear proper for the audit to be carried out jointly by the two former partners. The opinion should be presented on plain paper and signed somewhat as follows:

John Doe, Certified Public Accountant

Richard Roe, Accountant

Such a signature would leave no doubt as to whether a partnership existed, and the client and others would have the assurance that both accountants participated in the audit.

137. Nonproprietary Partners

.273 Question—A member's firm wishes to institute the designation "nonproprietary partner" to describe certain high-ranking staff men who were former partners of merged firms who did not qualify for partnership in the merging firm. With this title, they would be eligible to participate in the firm's pension plan. In holding themselves out to the public they would be required to use this designation. Is there any impropriety in the proposed title?

.274 Answer—The use of the designation "partner" should be restricted to those members of the firm who are legally partners. Those who are not parties to the partnership agreement should not hold themselves out in any manner which might lead others to believe that they are partners. The use of the designation "nonproprietary partner" by one who is not in fact a partner is considered misleading and therefore is not permitted.

138. Partner Having Separate Proprietorship

.275 Question—May a member be a partner of a firm of public accountants, all other members of which are noncertified, and at the same time retain for himself a practice of his own as a CPA?

.276 Answer—Rule 505 would not prohibit such a practice. However, clients and others interested should be advised about the dual position of the member to prevent any misunderstanding or misrepresentation.

139. Partnership with Non-CPA

.277 Question—May a member form a partnership for the practice of public accounting with a non-CPA?

.278 Answer—While some state boards and CPA societies have rules prohibiting mixed partnerships, the Institute's code does not prohibit a member from forming a partnership with a non-CPA. However, all partners would have to conform to the code, and the partnership would not be permitted to represent itself as a partnership of CPAs. [Revised, December 31, 1986, by the Professional Ethics Executive Committee.]

140. Political Election

.279 Question—A member's firm, consisting of four members, practices under the name of the managing partner who is presently seeking election to high public office. If he is elected and withdraws from the partnership, may the three remaining partners continue to use the present firm name?

.280 Answer—It would not be a violation for the three remaining partners to continue to practice under the name of the managing partner followed by the designation "and Company."

141. Responsibility for Non-CPA Partner

.281 Question—Is a member who has formed a partnership with a noncertified public accountant ethically responsible for all the acts of the partnership?

.282 Answer—Yes. If the noncertified partner should violate the Code, the member would be held accountable.

[142.—143.]

[.283-.286] [Deleted]

144. Title: Partnership Roster

.287 Question—Is there any prohibition in the Code to the use of an established firm name in a different state where there is some difference in the roster of partners?

.288 Answer—It would be proper for the firm to use the established name in different states even though the roster of partners differed as long as the firm otherwise complies with Rule 505.

145. Firm Name of Merged Partnerships

.289 Question—When two partnerships merge, is it permissible for the newly merged firm to practice under a title which includes the name of a partner who had retired from one of the two firms prior to the merger?

.290 Answer—Rule 505 of the Code of Professional Ethics states that partnerships may practice under a firm title which includes the name or names of former partners. Since the retired partner was once a partner in one

of the merged firms, it would be proper for his name to appear in the title of a newly created firm.

146. Membership Designation

.291 Question—On the letterhead of a partnership of members and noncertified public accountants, the designation “Members of the American Institute of Certified Public Accountants” appears in a manner which attempts to distinguish members of the Institute from nonmembers. Is such use of the designation of Institute membership by a mixed partnership permitted by Rule 505?

.292 Answer—Rule 505 states, “A firm may not designate itself as Members of the American Institute of Certified Public Accountants unless all of its partners or shareholders are members of the Institute.” Individual members may be designated as such.

[147.—154.]

[.293-.308] [Deleted]

155. Data Processing: Computer Corporation

.309 Question—A member’s firm wishes to set up a computer corporation of which a firm of computer consultants would be equal owner. The corporation would perform consulting work through the member’s firm only for clients of the firm. The corporation would not offer any services directly to the public. Would such an arrangement violate the Code?

.310 Answer—The proposed arrangement would not be a violation of Rules 503 and 505 if the corporation served only practitioners and, through them, their clients.

156. Data Processing: Consultant to Service Bureau

.311 Question—May a member in public practice assist a corporation in developing a tabulating service to be offered to the public? He would have no financial interest in the corporation and no representations would be made that he or any CPA was connected with the development of the tabulating service.

.312 Answer—This would not be a violation of the Code.

[157.]

[.313-.314] [Deleted]

158. Data Processing: Employee-Shareholder in Public Practice

.315 Question—A member having a public accounting practice is also president and a shareholder of a corporation whose main business is financing but which also engages in adjunct data processing services for the public. Is he acting in accord with Interpretation 505-1?

.316 Answer—Because the member is engaged in a public accounting practice his relationship to the corporation should be solely that of an investor, and his financial interest in the corporation should not be material to the corporation’s net worth. His association with the data processing corporation should be limited to that of a consultant, as opposed to that of an officer and shareholder.

159. Data Processing: Fees Paid to Other CPAs

.317 Question—A member’s firm A renders data processing services to its clients but uses the electronic equipment of CPA firm B. Firm B bills firm A at a reduced rate as compared to its normal billing rates for its own clients. Firm

A then bills its clients at a higher rate than it was billed. Does this arrangement violate Rule 503?

.318 Answer—This arrangement is not a violation of Rule 503.

[160.—161.]

[.319-.322] [Deleted]

162. CPA Designation on Professional Organization Letterhead

[.323-.324] [Superseded August, 1975.]

[163.—166.]

[.325-.332] [Deleted]

167. Member Receiving Payment for Referral of Client to Others

.333 Question—A member has been approached by a company that sells limited partnership interests (tax shelter investments) in oil and gas properties with the proposal that:

1. the member investigate this investment venture to the extent he deems necessary and inform or recommend the investment to appropriate clients of the member's firm, and
2. the company will make a payment to the member, such payment being roughly equal to 5% of any amount invested by the firm's clients who invest because of the member's recommendation.

Would such an arrangement violate Rule 503 prohibiting commissions?

.334 Answer—The above arrangement would be a violation of Rule 503. This would be true whether:

1. the member's clients were aware of the payment arrangement or not, and
2. the payment was a stated percentage of amounts invested or arrived at through any other manner.

It would not be a violation of Rule 503 if the member were, on behalf of one or more of his firm's clients, to investigate a tax shelter or other investment venture and recommend such investments to these clients. His fee for such investigations should be charged to such clients. A member's fee is an integral part of the customary professional relationship with a client and such fees should comprise the only compensation for the rendering of services to his clients.

168. Audit Guides Issued by Governmental Agencies

[.335-.336] [Superseded by Interpretation 501-3.]

[169.—174.]

[.337-.348] [Deleted]

175. Bank Director

.349 Question—May a member in public practice serve as a director of a bank?

.350 Answer—Before accepting a bank directorship, the member should carefully consider the implications inherent in such service.

These fall generally into three categories:

- (a) Confidentiality of Information—Rule 301 provides that a member shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. This ethical requirement applies even though failure to disclose might constitute a breach of the member's fiduciary responsibilities as a director and thereby result in potential personal liability for damages to shareholders, depositors and others. The member must also consider whether his clients might have any inhibitions in consulting with him professionally concerning matters that may affect the client's relationship with the bank.
- (b) Conflict of Interest—Even though a member may be released by a client from the ethical requirement of confidentiality, the member should not express a position or vote on decisions involving a client since the member's objectivity may be questioned because of his dual role with the client and the bank.
- (c) Independence—The independence of a member serving as a bank director would be considered impaired with regard to any client in which the bank has a loan that is material to the client involved. If such a situation develops between the bank and a client, the member must either resign from the client engagement or his directorship or disclaim an opinion based on lack of independence as prescribed under Statement on Auditing Standards No. 26 [AU section 504]. If the client is a nonpublic entity that engages the member to compile or review its financial statements, Statements on Standards for Accounting and Review Services are applicable.

In view of the above factors, it is generally not desirable for a member in public practice to accept a position as bank director where the member's clients are likely to engage in significant transactions with the bank. If a member is engaged in public practice he should avoid the high probability of conflict of interest and the appearance that the member's fiduciary obligations and responsibilities to the bank may conflict with or interfere with his ability to serve his clients' interest objectively and in complete confidence.

The general knowledge and experience of CPAs in public practice may be very helpful to a bank in formulating policy matters and making business decisions; however, in most instances it would be more appropriate for the member as part of his public practice to serve as a consultant to the bank's board. Under such an arrangement, the member could limit his activities to those which did not involve conflicts of interest, independence, or confidentiality problems.

176. Newsletters and Publications Prepared by Others

.351 Question—May a member permit a newsletter, tax booklet, or similar publication to be imprinted with his or her firm's name if it has not been prepared by the member's firm?

.352 Answer—A member may permit his or her firm's name to be imprinted on a newsletter, tax booklet, or similar publication provided that he or she has a reasonable basis to conclude that the information contained therein is not false, misleading or deceptive.

[Replaced previous Ruling No. 176, Newsletters and Publications Prepared by Others, effective August 31, 1989.]

177. Data Processing: Billing Services

.353 Question—A member in public practice plans to form a separate business to perform centralized billing services for local doctors. The member maintains that this service, which is similar to one currently offered and advertised by a local bank, does not constitute the practice of public accounting and that Rules 502 and 505 do not apply. Is the member correct in this conclusion?

.354 Answer—No, the service in question does in fact constitute service of a type performed by public accountants and consequently the member could proceed with this plan only if the operation were conducted in accordance with the Institute's Rules of Conduct.

178. Location of Separate Business

.355 Question—May a member engaged in the practice of public accounting concurrently operate a separate business or conduct an occupation from the same location?

.356 Answer—The simultaneous operation of an accounting practice and such other business or occupation, either in the same or separate offices, does not by itself violate Rule 504, unless a conflict of interest exists in rendering professional services.

179. Practice of Public Accounting Under Name of Association or Group

.357 Question—Several CPA firms wish to form an association or group whereby certain joint advertising, training, professional development and management assistance will take place. The firms will otherwise remain separate and distinct. Would it be proper for such firms to practice public accounting under the name of an association or group in the United States?

.358 Answer—The practice of public accounting under such a name in the United States is not permitted since it would be likely to confuse the public as to the nature of the actual relationship which exists among the firms. Instead, each firm should practice only in its own firm name and may indicate the association or group name elsewhere on the firm stationery. Each firm may also list on its stationery the names of the other firms in the association or group.

180. Side Businesses Which Offer Services of a Type Performed by CPAs

.359 Question—A member in public practice desires to form a commercial estate planning corporation in a separate office from that of his accounting practice. The member maintains that he will not hold himself out to the public as being a CPA in the commercial corporation and is therefore not bound by the Institute's Rules of Conduct. Is the member correct in his conclusion?

.360 Answer—No, estate planning is a service of a type performed by public accountants. Because the member is presently holding himself out to the public as being a CPA in his public accounting practice, he must conduct the estate planning business in accordance with the Institute's Rules of Conduct. Rule 505 provides that members may practice public accounting only in the form of a proprietorship, a partnership or a professional corporation whose characteristics conform to resolutions of Council. Therefore, the member may not operate the separate business in the form of a commercial corporation. Because the member is considered to be in the practice of public accounting regarding the operation of his estate planning business, he must observe all of the Rules of Conduct in that business.

181. Sale of a Practice—Purchase of Accounts

.361 Question—A member enters into a contract with another practitioner to purchase a portion of the latter's practice. The purchase price will be computed based upon a percentage of the annual fees the member will receive from certain clients over a three-year period. An account broker has been used to arrange the transaction. Would such an arrangement be prohibited under Rule 503 of the Code?

.362 Answer—Rule 503 does not prohibit a member from purchasing a practice, a portion of a practice, an individual account, or a portion of an account from another practitioner whether or not an account broker is used or whether the purchase price is based on a percentage of the annual fees accruing from the clients or is computed in some other manner. A purchase price is not considered to constitute payment of a commission under Rule 503 and the manner in which the payment is computed is merely a method of establishing the purchase price.

182. Termination of Engagement Prior to Completion

.363 Question—Does Rule 501 require a member to furnish a tax return or supporting detail to a client if the engagement to prepare the tax return is terminated prior to its completion?

.364 Answer—As provided in Interpretation 501-1, if an engagement is terminated by either the member or the client prior to completion, the member is required to return or furnish copies of only those records originally given to the member by the client. Therefore, if a member has been engaged to prepare a tax return and the client or the member terminates the engagement before the tax return is delivered to the client, the member's responsibility is to return only those records originally provided to the member by the client.

ET

APPENDIXES

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[The next page is 5121.]

ET Appendix A

Council Resolution Designating Bodies to Promulgate Technical Standards

[As amended January 12, 1988.]

Financial Accounting Standards Board

WHEREAS: In 1959 the Council designated the Accounting Principles Board to establish accounting principles, and

WHEREAS: The Council is advised that the Financial Accounting Standards Board (FASB) has become operational, it is

RESOLVED: That as of the date hereof the FASB, in respect of statements of financial accounting standards finally adopted by such board in accordance with its rules of procedure and the bylaws of the Financial Accounting Foundation, be, and hereby is, designated by this Council as the body to establish accounting principles pursuant to rule 203 and standards on disclosure of financial information for such entities outside financial statements in published financial reports containing financial statements under rule 202 of the Rules of the Code of Professional Conduct of the American Institute of Certified Public Accountants provided, however, any accounting research bulletins, or opinions of the accounting principles board issued or approved for exposure by the accounting principles board prior to April 1, 1973, and finally adopted by such board on or before June 30, 1973, shall constitute statements of accounting principles promulgated by a body designated by Council as contemplated in rule 203 of the Rules of the Code of Professional Conduct unless and until such time as they are expressly superseded by action of the FASB.

Governmental Accounting Standards Board

WHEREAS: The Governmental Accounting Standards Board (GASB) has been established by the board of trustees of the Financial Accounting Foundation (FAF) to issue standards of financial accounting and reporting with respect to activities and transactions of state and local governmental entities, and

WHEREAS: The American Institute of Certified Public Accountants is a signatory to the agreement creating the GASB as an arm of the FAF and has supported the GASB professionally and financially, it is

RESOLVED: That as of the date hereof, the GASB, with respect to statements of governmental accounting standards adopted and issued in July 1984 and subsequently in accordance with its rules of procedure and the bylaws of the FAF, be, and hereby is, designated by the Council of the American Institute of Certified Public Accountants as the body to establish financial accounting principles for state and local governmental entities pursuant to rule 203, and standards on disclosure of financial information for such entities outside

financial statements in published financial reports containing financial statements under rule 202.

AICPA COMMITTEES AND BOARDS

WHEREAS: The membership of the Institute has adopted rules 201 and 202 of the Rules of the Code of Professional Conduct, which authorizes the Council to designate bodies to promulgate technical standards with which members must comply, and therefore it is

Accounting and Review Services Committee

RESOLVED: That the AICPA accounting and review services committee is hereby designated to promulgate standards under rules 201 and 202 with respect to unaudited financial statements or other unaudited financial information of an entity that is not required to file financial statements with a regulatory agency in connection with the sale or trading of its securities in a public market.

Auditing Standards Board

RESOLVED: That the AICPA auditing standards board is hereby designated as the body authorized under rules 201 and 202 to promulgate auditing and attest standards and procedures.

RESOLVED: That the auditing standards board shall establish under statements on auditing standards the responsibilities of members with respect to standards for disclosure of financial information outside financial statements in published financial reports containing financial statements.

Management Advisory Services Executive Committee

RESOLVED: That the AICPA management advisory services executive committee is hereby designated to promulgate standards under rules 201 and 202 with respect to the offering of management advisory services, provided, however, that such standards do not deal with the broad question of what, if any, services should be proscribed.

AND FURTHER RESOLVED: That any Institute committee or board now or in the future authorized by the Council to issue enforceable standards under rules 201 and 202 must observe an exposure process seeking comment from other affected committees and boards, as well as the general membership.

Attestation Standards

RESOLVED: That the AICPA accounting and review services committee, auditing standards board, and management advisory services executive committee are hereby designated as bodies authorized under rules 201 and 202 to promulgate attestation standards in their respective areas of responsibility.

[Added by Council, May 1988]

[The next page is 5131.]

ET Appendix B***Council Resolution Concerning
Professional Corporations
or Associations***

[As amended January 12, 1988.]

RESOLVED: that the characteristics of a professional corporation as referred to in Rule 505 of the Code of Professional Conduct are as follows:

1. *Ownership.* All shareholders of the corporation or association shall be persons engaged in the practice of public accounting as defined by the Code of Professional Conduct. Shareholders shall at all times own their shares in their own right and shall be the beneficial owners of the equity capital ascribed to them.

2. *Transfer of Shares.* Provision shall be made requiring any shareholder who ceases to be eligible to be a shareholder to dispose of all of his or her shares within a reasonable period to a person qualified to be a shareholder or to the corporation or association.

3. *Directors and Officers.* The principal executive officer shall be a shareholder and a director, and to the extent possible, all other directors and officers shall be certified public accountants. Lay directors and officers shall not exercise any authority whatsoever over professional matters.

4. *Conduct.* The right to practice as a corporation or association shall not change the obligation of its shareholders, directors, officers, and other employees to comply with the Code of Professional Conduct established by the American Institute of Certified Public Accountants.

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Bylaws of the American Institute of Certified Public Accountants

As Amended January 12, 1988

DEFINITIONS

As used in these bylaws, implementing resolutions of Council thereunder, or the Code of Professional Conduct, masculine terms shall be understood to include the feminine; "state" shall be understood to include the District of Columbia, Puerto Rico, and the territories, or territorial possessions of the United States of America; "partner" shall be understood to include partner equivalents, and any shareholders, or other equity owners of a professional corporation or association; "partnership" shall be understood to include professional corporations and associations; and "committee" shall be understood to include any board (except the AICPA Board of Directors), division, task force or any subdivision thereof.

[The next page is 5303.]

BL Section 100

1. NAME AND PURPOSE

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[The next page is 5311.]

BL Section 101***Name and Purpose***

As amended
January 12, 1988

.01 The name of this organization shall be the American Institute of Certified Public Accountants. In keeping with the Institute's certificate of incorporation, its objectives shall be to unite certified public accountants in the United States; to promote and maintain high professional standards of practice; to assist in the maintenance of standards for entry to the profession; to promote the interests of CPAs; to develop and improve accounting education; and to encourage cordial relations between CPAs and professional accountants in other countries.

BL Section 200

2. ADMISSION TO, AND RETENTION OF, MEMBERSHIP AND ASSOCIATION

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[260R]	[Revoked]	

[The next page is 5331.]

BL Section 210

2.1 Members

As amended
January 12, 1988

.01 Members of the Institute shall be

2.1.1 Members of the Institute at the effective date of these bylaws,
and

2.1.2 Persons who shall qualify for admission as provided in section
2.2 of this article and who shall be admitted under procedures adopted by
the Board of Directors.

BL Section 220

***2.2 Requirements
for Admission to
Membership***

As amended
January 12, 1988

.01 The following persons may qualify for admission as members of the Institute:

2.2.1 Those who are in possession of a valid and unrevoked certified public accountant certificate issued by a legally constituted state authority,

2.2.2 Who shall have passed an examination in accounting and other related subjects satisfactory to the Board of Directors.

2.2.3 Who, if engaged in the practice of public accounting as a proprietor, partner, or shareholder or as an employee who has been licensed as a CPA for more than two years, are practicing in firms enrolled in Institute-approved practice-monitoring programs.

(See section 220R.)

2.2.4 Those applying for membership who first become eligible to take the examination required by section 2.2.2 after the year 2000 who shall have obtained 150 semester hours of education at an accredited college or university including a bachelor's degree or its equivalent.

BL Section 220R***Implementing Resolution Under
Section 2.2 Requirements for Admission
to Membership***

As amended
January 12, 1988

Under Sections 2.2.3 and 2.3.4 to Authorize the Quality Review Program and to Implement the Practice-Monitoring Requirement***Resolved:***

.01 That the Board of Directors is authorized to establish within the Institute a quality review division governed by an executive committee having senior status with authority to carry out the activities of the division. The primary activities of the division will be (1) to establish and conduct, in cooperation with state CPA societies, a quality review program for AICPA and state society members engaged in the public practice of accounting and (2) to conduct reviews of firms enrolled in the program. Such activities shall not conflict with the policies and standards of the AICPA and shall be subject to the oversight of the Board of Directors. The nominees to serve on the executive committee of the division shall be selected by the AICPA nominations committee, and the members of the committee shall be elected by Council.

Further Resolved:

.02 That in order for members of the Institute engaged in the practice of public accounting to retain their membership beyond the periods set forth in this resolution, they shall be associated as proprietors, partners, shareholders, or employees of firms enrolled in an approved practice review program as designated in this resolution. A member firm of the AICPA division for CPA firms or a firm enrolled in the quality review program established by this resolution shall be deemed to be enrolled in an approved program under sections 2.2.3 and 2.3.4 of the bylaws.

Further Resolved:

.03 That a member in public practice associated with a firm as a proprietor, partner, or shareholder shall become ineligible to retain AICPA membership six months after the adoption of section 2.3.4 unless the firm enrolls in an approved practice-monitoring program and that a member associated with a firm as an employee shall become ineligible two years after the adoption of section 2.3.4, or two years after becoming licensed as a CPA, whichever is later, unless the firm enrolls in an approved program.

[The next page is 5341.]

BL Section 230**2.3 Requirements for Retention of Membership**

As amended
January 12, 1988,
unless otherwise
indicated

.01 Members of the Institute shall

2.3.1 Pay dues as established by Council.

2.3.2 Conform with these bylaws and the Rules of the Code of Professional Conduct.

2.3.3 Complete continuing professional education requirements established by Council.

(See section 230 R.)

2.3.4 Engage in the practice of public accounting only with a firm that is enrolled in an Institute-approved practice-monitoring program.

(See section 230 R.)

2.3.5 Engage in the practice of public accounting with a firm auditing one or more SEC clients as defined by Council only if that firm is a member of the SEC Practice Section.

(See section 230 R.)

[As adopted, January 8, 1990.]

BL Section 230R***Implementing Resolutions Under
Section 2.3 Requirements for Retention
of Membership***

As amended
January 12, 1988,
unless otherwise
indicated

Under Sections 2.2.3 and 2.3.4 to Authorize the Quality Review Program and to Implement the Practice-Monitoring Requirement***Resolved:***

.01 That the Board of Directors is authorized to establish within the Institute a quality review division governed by an executive committee having senior status with authority to carry out the activities of the division. The primary activities of the division will be (1) to establish and conduct, in cooperation with state CPA societies, a quality review program for AICPA and state society members engaged in the public practice of accounting and (2) to conduct reviews of firms enrolled in the program. Such activities shall not conflict with the policies and standards of the AICPA and shall be subject to the oversight of the Board of Directors. The nominees to serve on the executive committee of the division shall be selected by the AICPA nominations committee, and the members of the committee shall be elected by Council.

Further Resolved:

.02 That in order for members of the Institute engaged in the practice of public accounting to retain their membership beyond the periods set forth in this resolution, they shall be associated as proprietors, partners, shareholders, or employees of firms enrolled in an approved practice review program as designated in this resolution. A member firm of the AICPA division for CPA firms or a firm enrolled in the quality review program established by this resolution shall be deemed to be enrolled in an approved program under sections 2.2.3 and 2.3.4 of the bylaws.

Further Resolved:

.03 That a member in public practice associated with a firm as a proprietor, partner, or shareholder shall become ineligible to retain AICPA membership six months after the adoption of section 2.3.4 unless the firm enrolls in an approved practice-monitoring program and that a member associated with a firm as an employee shall become ineligible two years after the adoption of section 2.3.4, or two years after becoming licensed as a CPA, whichever is later, unless the firm enrolls in an approved program.

Under Section 2.3 Continuing Professional Education for Members in Public Practice

Resolved:

.04 That pursuant to section 2.3.3 of the bylaws the basic continuing professional education requirements for membership in the American Institute of Certified Public Accountants shall be as follows:

For each three-year reporting period beginning with the 1989 calendar year, or with the second full calendar year after the adoption of the bylaw provision, AICPA members in public practice, except those in retirement, shall demonstrate for each calendar year that they have completed acceptable continuing education as follows:

- A. A member in public practice shall, during each three-year reporting period, complete 120 hours with a minimum of twenty hours each year.
- B. A member who complies with a state licensing or state society membership continuing education requirement shall be deemed to be in compliance with this provision, provided such a requirement is for an average of forty hours per year, at a minimum, and provided the member submits a statement of compliance with such a requirement showing completion of at least twenty hours each year.
- C. A member who is not subject to such a state requirement shall submit each year a report of the amount of continuing education completed during the immediately preceding calendar year showing for each program completed (1) the sponsoring organization, (2) the location at which the program was given, (3) the title of the program or a description of its contents, (4) the dates attended, and (5) the number of hours claimed.

Further Resolved:

.05 That the Board of Directors shall designate a body with the authority to grant exceptions for reasons such as health, military service, foreign residency, and other similar reasons.

Under Section 2.3.3 Continuing Professional Education for Members Not in Public Practice

Resolved:

.06 That pursuant to section 2.3.3 of the bylaws the basic continuing professional education requirements for membership in the American Institute of Certified Public Accountants shall be as follows:

For each three-year reporting period beginning with the 1989 calendar year, or with the second full calendar year after the adoption of the bylaw provision, AICPA members not in public practice, except those in retirement, shall demonstrate for each calendar year that they have completed acceptable continuing education as follows:

- A. A member not engaged in public practice shall, during the first three-year reporting period after the adoption of the bylaw provision, complete sixty hours with a minimum of ten hours in each year and shall, during subsequent three-year reporting periods, complete ninety hours with a minimum of fifteen hours each year.

- B. A member who complies with a state licensing or state society membership continuing education requirement shall be deemed to be in compliance with this provision, provided such a requirement is for an average of thirty hours per year, at a minimum, and provided the member submits a statement of compliance with such a requirement showing completion of at least ten hours each year.
- C. A member who is not subject to such a state requirement shall submit each year a report of the amount of continuing education completed during the immediately preceding calendar year showing for each program completed (1) the sponsoring organization, (2) the location at which the program was given, (3) the title of the program or a description of its contents, (4) the dates attended, and (5) the number of hours claimed.

Further Resolved:

.07 That the Board of Directors shall designate a body with the authority to grant exceptions for reasons such as health, military service, foreign residency, and other similar reasons.

Under Section 2.3.5, Definition of "SEC Client"

Resolved:

.08 That for purposes of Section 2.3, an SEC client is

- An issuer making an initial filing, including amendments, under the Securities Act of 1933.
- A registrant that files periodic reports (for example, forms N-SAR and 10-K) with the SEC under the Securities and Exchange Act of 1934 (except brokers or dealers registered only because of Section 15(a) of that Act) or the Investment Company Act of 1940.

[As adopted, January 8, 1990.]

[The next page is 5351.]

BL Section 240***2.4 Certificate of
Membership***

As amended
January 12, 1988

.01 Upon admission each member shall be entitled to a certificate setting forth that he is a member of the Institute, but no certificate shall be issued until receipt of dues for the current year. Certificates of membership shall be returned upon the demand of the secretary of the Institute in the event of suspension or termination of membership.

BL Section 250

***2.5 Right of Members
to Describe Them-
selves as Such***

As amended
January 12, 1988

.01 A member of the Institute shall be entitled to use the designation "Member of the American Institute of Certified Public Accountants." A firm all of whose CPA partners are members shall be entitled to use the designation "Members of the American Institute of Certified Public Accountants."

[The next page is 5371.]

BL Section 260***2.6 International
Associates***

As amended
January 12, 1988

.01 International associates shall include those who were international associates on the effective date of these bylaws. Thereafter, citizens of other countries who shall satisfy such requirements as the Council may prescribe may be admitted as international associates. The Council shall adopt rules governing such association and indications thereof.

BL Section 300**3. ORGANIZATION
AND PROCEDURE**

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[The next page is 5401.]

BL Section 310**3.1 General**

As amended
January 12, 1988

.01 The organization of the Institute shall include the members, the Council, the Board of Directors, officers, and committees.

.02 The Board of Directors may from time to time organize the committees and staff of the Institute into divisions and, subject to section 3.6, may adopt rules of procedure and operating policies for such divisions.

BL Section 320**3.2 Membership**

As amended
January 12, 1988

.01 The rights and powers of the membership of the Institute shall be as defined herein.

3.2.1 Attendance at Meetings

Every member and international associate of the Institute shall be entitled to attend all meetings of the Institute.

3.2.2 Voting Rights

Every member, but no international associate, shall be entitled to vote in person, when in attendance, upon all questions brought before duly called meetings of the Institute, and by mail ballot for the election of Council members pursuant to sections 6.1 through 6.1.6, on proposed amendments to these bylaws or to the Code of Professional Conduct as provided in article 8, and upon proposed resolutions of the membership as provided in section 5.1.4.

3.2.3 Residence for Voting Purposes

The state from which a member may vote shall be that indicated by his mailing address as carried in the official records of the Institute, and may be either the state in which he resides or that in which his office is located.

3.2.4 Resolutions of the Membership

As provided in section 5.1.4, the members by mail ballot may enact resolutions of the membership, not inconsistent with these bylaws, which shall be binding upon the membership, the Council, the Board of Directors, officers, committees, and staff.

3.2.5 Certain Positions to Be Held Only by Members

Only members of the Institute, as defined in section 2.1, may serve as officers of the Institute or as members of the Council, the Board of Directors, or any committee or board, except the board of examiners, designated as "senior" by the Council (see section 3.6.1), or as "permanent" by these bylaws (see section 3.6.2); provided, however, that the secretary, who need not be a member of the Institute, and three representatives of the public, none of whom shall be members of the Institute, shall be members of the Board of Directors.

[The next page is 5421.]

BL Section 330**3.3 Council**

As amended
January 12, 1988

.01 The governing body of the Institute shall be the Council.

3.3.1 Composition

The Council shall be composed of

3.3.1.1 Members of the Institute directly elected by the membership in each state in accordance with sections 6.1.1 through 6.1.6;

3.3.1.2 Representatives of the recognized state societies of certified public accountants selected in accordance with section 6.2;

3.3.1.3 Twenty-one members-at-large selected in accordance with section 6.3;

3.3.1.4 All members of the Board of Directors of the Institute;

3.3.1.5 All past presidents of the American Institute of Certified Public Accountants who served prior to December 31, 1973, and are members of the Institute;

3.3.1.6 All past chairmen of the board of the American Institute of Certified Public Accountants who are members of the Institute.

3.3.2 Powers

The Council may exercise all powers requisite for the purposes of the Institute, not inconsistent with these bylaws or with duly enacted resolutions of the membership, including but not limited to the authority to prescribe the policies and procedures of the Institute and to enact resolutions binding upon the Board of Directors, the officers, committees, and staff.

3.3.3 Reports to Membership

The actions of the Council shall be reported to the membership at least annually.

[The next page is 5431.]

BL Section 340**3.4 Board of Directors**

As amended
January 12, 1988

.01 Between meetings of the Council, the activities of the Institute shall be directed by the Board of Directors, the composition of which shall be prescribed by the Council.

(See section 340 R.)

3.4.1 Powers

The Board of Directors shall act as the executive committee of Council between meetings of Council, shall control and manage the property, business, and activities of the Institute, and shall take whatever action it deems desirable including the establishment of policies for the conduct of the affairs of the Institute consistent with the provisions of these bylaws, resolutions of the membership, or actions of the Council.

3.4.2 Reports to Council

The actions of the Board of Directors shall be reported to the Council at least semiannually.

BL Section 340R

***Implementing Resolution
Under Section 3.4
Board of Directors***

As amended
January 12, 1988

Resolved:

.01 That the Board of Directors shall be composed of

(a) The chairman and the vice chairman of the Board of Directors, the board vice presidents elected by the Council, the treasurer, and the immediate past chairman of the board;

(b) The president and the secretary of the Institute;

(c) Nine present or former members of the Council elected to the board by the Council pursuant to section 6.3, to serve for three years or until the election of their successors; and

(d) Three representatives of the public, who are not members of the Institute.

[The next page is 5451.]

BL Section 350**3.5 Officers Elected
by Council**

As amended
January 12, 1988

.01 The officers of the Institute shall be a chairman of the Board of Directors, a vice chairman of the board, who shall be the chairman of the board nominee, a president, who shall be a full-time employee of the Institute, three board vice presidents, and a treasurer, all of whom shall be members possessing valid and unrevoked certified public accountant certificates, and a secretary, who shall be a full-time employee of the Institute, but need not be a member of the Institute. The chairman and the vice chairman of the board, the president, the board vice presidents, the treasurer, and the secretary shall have such terms of office, powers, and privileges as the Council may prescribe.

(See section 350 R.)

3.5.1 Officers Appointed by the Board of Directors

The Board of Directors may appoint staff vice presidents who shall be neither members of the board nor of the Council and who shall perform such duties as may be assigned to them by the president.

[The next page is 5461.]

BL Section 350R**Implementing Resolution
Under Section 3.5
Officers**

As amended
January 12, 1988

Resolved:**Term of Office**

.01 That the chairman and the vice chairman of the Board of Directors, the board vice presidents, and the treasurer shall each be elected annually by the Council for a term of one year or until the election of his successor. Only the treasurer may succeed himself in the same office after serving a full term of one year. The term of the president and secretary shall be determined by the Board of Directors.

Chairman of the Board

.02 That the chairman of the Board of Directors shall preside at meetings of members of the Institute, the Council, and the Board of Directors. He shall appoint committees and boards as provided in section 3.6 of the bylaws. He shall act as a spokesman for the Institute and appear on its behalf before other organizations.

Vice Chairman of the Board

.03 That the vice chairman shall be chairman-nominee of the Board of Directors and shall preside in the absence of the chairman at meetings of the Institute, the Council, and the Board of Directors. He shall familiarize himself with the duties of the office of chairman and shall perform such other related duties as may be assigned to him by the chairman.

Board Vice Presidents

.04 That the duties of the board vice presidents shall be those usually appertaining to the office of vice president. One of the board vice presidents designated by the Board of Directors shall preside at meetings of the Institute or of the Council in the absence of the chairman and the vice chairman of the board. No two board vice presidents shall be residents of the same state.

Treasurer

.05 That the treasurer shall familiarize himself with financial policies, investment policies, and the accounting procedures, controls, and financial reporting of the Institute, and shall consult with the president and the independent auditors on such matters, on which he shall advise the members

of the Board of Directors and the president. He shall report thereon to the Board of Directors to the extent that he deems desirable or as the Board of Directors may direct, and shall perform such other related duties as may be assigned to him by the Council or the Board of Directors.

President

.06 That the president shall have full responsibility for the execution of the policies and programs of the Institute, act as a spokesman for the Institute, and perform such other services as may be assigned to him by the Council and the Board of Directors.

Secretary

.07 That the secretary of the Institute shall have the usual duties of a corporate secretary and shall perform such other related duties as may be assigned to him by the president. An assistant secretary to serve in his absence, who need not be a member of the Institute, may be appointed by the Board of Directors.

[The next page is 5471.]

BL Section 360**3.6 Committees**

As amended
January 12, 1988

.01 Except as otherwise provided by these bylaws or the Council (see section 3.6.1), the chairman of the Board of Directors, or his delegate, may appoint committees and boards with such duties, powers, responsibilities, and procedures as he may prescribe. The chairman of the board, the president, and the secretary shall have the privilege of the floor at meetings of all committees.

(See section 360 R.)

3.6.1 Senior Committees

The Council may designate any committee as a "senior" committee. The appointment by the chairman of the Board of Directors of members to senior committees shall require the approval of the Board of Directors. The duties, powers, responsibilities, and procedures of senior committees shall be as the Council may prescribe consistent with the specific provisions of these bylaws.

(See section 360 R.)

3.6.2 Permanent Committees, Boards, and Divisions

The following shall be permanent committees, boards, or divisions of the Institute: the nominations committee (see section 3.6.2.1); the professional ethics division (see section 3.6.2.2); the trial board (see section 3.6.2.3); and the board of examiners (see section 3.6.2.4).

(See section 360 R.)

3.6.2.1 Nominations Committee

There shall be a nominations committee composed of eleven members of the Institute, elected by the Council in such manner as the Council shall prescribe. It shall be the responsibility of the committee to make nominations for the offices of chairman of the Board of Directors, vice chairman of the Board of Directors, board vice presidents, treasurer, the elected members of the Board of Directors, the joint trial board, the quality review executive committee, and the Council, as elsewhere provided in these bylaws, and to apportion among the states directly elected Council seats pursuant to section 6.1.2.

(See section 360R.)

3.6.2.2 Professional Ethics Division

The executive committee of the professional ethics division shall serve as the ethics committee of the Institute, and there shall be such other committees within the division as the Board of Directors shall authorize. The executive committee shall (1) subject to amendment, suspension, or revocation by the Board of Directors, adopt

rules governing procedures consistent with these bylaws or actions of Council to investigate potential disciplinary matters involving members, (2) arrange for presentation of a case before the trial board where the committee finds prima facie evidence of infraction of these bylaws or of the Code of Professional Conduct, (3) interpret the Code of Professional Conduct, (4) propose amendments thereto, and (5) perform such related services as the Council may prescribe.

(See section 360R.)

3.6.2.3 Joint Trial Board

There shall be a trial board consisting of present or former members of Council possessing a valid and unrevoked certified public accountant certificate to adjudicate disciplinary charges against members of the Institute pursuant to section 7.4. Members of the trial board shall be elected by the Council for such terms as the Council may prescribe.

The trial board is empowered to adopt rules, consistent with these bylaws or actions of the Council, governing procedure in cases heard by any hearing panel, and in connection with any application for review of a decision of a hearing panel.

Decisions of any hearing panel shall be subject to review only by the trial board.

(See section 360 R.)

3.6.2.4 Board of Examiners

There shall be a board of examiners, consisting of persons who have passed the Uniform CPA Examination and who possess valid and unrevoked certified public accountant certificates, appointed by the chairman of the Board of Directors subject to the approval of the Board of Directors. It shall supervise the preparation of a uniform examination which may be adopted by the legally constituted authorities of the states in examining candidates for the certified public accountant certificate and the conduct of the grading service offered by the Institute. The board of examiners shall formulate the necessary rules and regulations for the conduct of its work, but all such rules and regulations may be amended, suspended, or revoked by the Board of Directors. The board of examiners may delegate to members of the Institute's staff or other duly qualified persons the preparation of examination questions and the operation of the grading service conducted by the Institute.

[The next page is 5491.]

BL Section 360R***Implementing Resolutions
Under Section 3.6
Committees***

As amended
January 12, 1988

Resolved:

.01 (1) That the following be designated as senior committees and boards:

- Accounting and review services committee
- Accounting standards executive committee
- Auditing standards board
- Board of examiners
- Federal taxation executive committee
- Management advisory services executive committee
- Private companies practice section executive committee
- Continuing professional education executive committee
- Professional ethics executive committee
- Quality review executive committee
- Personal Financial Planning Executive Committee
- SEC practice section executive committee, and further

[As amended by Council May, 1988.]

.02 (2) That the following senior technical committees be authorized to make public statements, without clearance with the Council or the Board of Directors, on matters related to their area of practice.

- Accounting and review services committee
- Accounting standards executive committee
- Auditing standards board
- Federal taxation executive committee
- Management advisory services executive committee
- Personal financial planning executive committee
- Professional ethics executive committee
- Quality review executive committee

[As amended by Council May, 1988.]

Under Section 3.6.2.1 Nominations Committee

Resolved:

.03 That at the Council meeting preceding the annual meeting the Board of Directors, after having considered at least twenty-two candidates, shall recommend eleven members for election to the nominations committee for the current year, no more than three of whom shall be members of the Council, and no more than one of such three Council members shall be a member of the Board of Directors. Other nominations from the floor shall be permitted. Voting shall be by voice vote of the incoming Council, or, if requested by a majority of those present, by written ballot. A majority vote shall elect. The Board of Directors shall recommend a chairman of the nominations committee for election by the Council.

Further Resolved:

.04 That the nominations committee shall not select any of its members for positions to be filled by the committee.

Under Section 3.6.2.2 Professional Ethics Division

Resolved:

.05 That in cases where the professional ethics executive committee concludes that a prima facie violation of the Code of Professional Conduct or bylaws is not of sufficient gravity to warrant further formal action, the committee may direct the member or members concerned to complete specified continuing professional education courses, or to take other remedial or corrective action, provided, however, that there will be no publication of such action in the Institute's principal membership periodical and the member concerned is notified of his right to reject such direction. In the case of such a rejection, the professional ethics executive committee shall determine whether to bring the matter to a hearing panel of the trial board for a hearing.

Under Section 3.6.2.3 Joint Trial Board

Resolved:

.06 That the joint trial board shall consist of at least thirty-six members elected for a three-year term by Council on a staggered basis from among its present and former members on nomination of the nominations committee. No member shall serve more than two full successive terms. The size of the trial board shall be determined by the Board of Directors. No member of the Institute's professional ethics division, of a state society ethics committee, or of a state board of accountancy shall be a member of the trial board.

.07 The trial board shall elect from its membership a chairman and a vice chairman, the vice chairman to serve as chairman during any period of unavailability of the chairman. It shall also elect a secretary who need not be a member.

.08 The chairman or vice chairman, when acting as chairman, pursuant to the trial board rules of practice and procedure, may appoint from the

members of the trial board a panel of not less than five members, which may, but need not, include himself to sit as a sub-board and hear and adjudicate charges against members, or an ad hoc committee consisting of not less than three members of the trial board to consider requests for nonapplication of sections 7.2 and 7.3. Decisions of sub-boards shall be reviewable by the trial board under the conditions and procedures as provided for in Council resolution under section 7.4 of the bylaws.

Resolved:

.09 That the trial board is authorized to receive and act on petitions requesting review of a decision of the quality review executive committee terminating a firm's participation in the practice-monitoring program. Following such review, the trial board may affirm, modify, or reverse all or any part of the executive committee's decision, but it may not increase the severity of the committee's sanction.

Resolved:

.10 That the trial board may hear and adjudicate charges involving alleged violations of a state CPA society's bylaws or code of professional conduct when there is in force a written agreement for such procedure between the Institute and the state CPA society concerned.

BL Section 400**4. FINANCIAL MANAGEMENT
AND CONTROLS**

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[The next page is 5521.]

BL Section 401***Financial Management
and Controls***

As amended
January 12, 1988

.01 The Council shall have authority to prescribe such procedures as it deems appropriate to assure adequate budgetary and financial controls. Budgets shall be prepared and presented as the Council shall prescribe.

(See section 401 R.)

BL Section 401R

***Implementing Resolution
Under Article 4 Finan-
cial Management
and Controls***

As amended
January 12, 1988

Resolved:

.01 That annual budgets and projections of revenues and expenditures for the succeeding four years shall be prepared by the Institute's staff, reviewed and approved by the Board of Directors, and presented to Council for approval at its meeting preceding the annual meeting; such budgets shall be in a form indicating the costs of the principal programs and activities of the Institute; material variations from the annual budget shall be reported to the Council at its spring meeting by the Board of Directors; receipt of such report without rejection shall constitute authority to continue expenditures for purposes indicated in the annual budget, as modified and presented at the spring meeting, until a new budget for the following fiscal year is approved by the Council. However, the Board of Directors may, between meetings of Council, authorize additional expenditures in total not to exceed 5 percent of budgeted revenues from all sources.

[The next page is 5541.]

BL Section 410**4.1 Audit**

As amended
January 12, 1988

.01 The Council shall, for each fiscal year, appoint a certified public accountant or certified public accountants to express an opinion on the financial statements of the Institute and its affiliated organizations. The financial statements of the Institute and the report of the auditor or auditors for each fiscal year shall be published for the information of the membership.

5542

BL Section 420

4.2 Committee on Audit

**As amended
January 12, 1988**

.01 The chairman of the board shall appoint from among the members of the Board of Directors, other than the officers, a committee on audit to make arrangements with the auditor or auditors for their examination and to review the audit report.

[The next page is 5561.]

BL Section 430***4.3 Execution of Instruments on Behalf of the Institute***

As amended
January 12, 1988

.01 All checks, drafts, deeds, mortgages, bonds, contracts, reports, proxies, and other instruments may be executed on behalf of the Institute by such officers or employees as the Council or the Board of Directors may from time to time designate, either generally or in specific instances.

BL Section 440

4.4 Indemnification

**As amended
January 12, 1988**

.01 The Institute shall indemnify to the full extent authorized by law for the good faith exercise of judgment in the performance of assigned duties any person made or threatened to be made a party to any action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that he, his testator, or intestate is or was a member of Council, the Board of Directors, or any committee, trustee, officer, employee, or agent of the Institute or any affiliated entity or serves or served any other enterprise as a director, trustee, officer, employee, or agent at the request of the Institute.

.02 Without limiting the generality of the foregoing, the Institute may contract for insurance against all or a portion of any liabilities and expenses, if any, resulting from the indemnification of any of the foregoing persons pursuant to this section or otherwise as permitted by law, and may also contract for companion insurance directly insuring any or all of such persons against liabilities and expenses.

[The next page is 5581.]

BL Section 450**4.5 Dues**

**As amended
January 12, 1988**

.01 The Council shall determine the annual dues which shall be paid by each member and international associate in accordance with such classifications as it deems appropriate, and may require dues of a different amount for each class so created.

.02 Dues shall be payable on or before the first day of each fiscal year of the Institute or in such other manner as the Council shall prescribe. For new members or international associates, dues shall be apportioned to the end of the fiscal year.

.03 No dues shall be paid by members or international associates of the Institute while they are engaged in military service of the United States or its allies during war. Individual members or international associates may be excused from payment of dues for reasonable cause by the treasurer.

[The next page is 5591.]

BL Section 460

4.6 Fiscal Year

As amended
January 12, 1988

.01 The fiscal year of the Institute shall be as the Council shall prescribe.
(See section 460 R.)

5592

BL Section 460R

***Implementing Resolution
Under Section 4.6
Fiscal Year***

**As amended
January 12, 1988**

Resolved:

.01 That the fiscal year of the Institute shall be the twelve months beginning August 1 and ending July 31.

BL Section 500**5. MEETINGS OF THE INSTITUTE
AND THE COUNCIL**

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[The next page is 5615.]

BL Section 501***Meetings of the Institute
and the Council***

**As amended
January 12, 1988**

.01 This article shall govern meetings of the Institute and of the Council. The Board of Directors shall determine the dates of meetings of Council and the matters to be presented for action.

BL Section 510

***5.1 Meetings of the
Institute***

As amended
January 12, 1988

.01 The membership shall meet pursuant to sections 5.1.1 through 5.1.3, conduct its business pursuant to section 5.1.3, and may adopt resolutions pursuant to section 5.1.4. Meetings of the membership shall be known as meetings of the Institute.

5.1.1 Regular Meetings of the Institute

There shall be a regular meeting of the Institute within three months after the close of the fiscal year, on a date to be fixed by the Board of Directors. This meeting shall also be known as the annual meeting of the Institute.

5.1.2 Special Meetings of the Institute

The chairman of the board shall call special meetings of the Institute when so requested by the Council or the Board of Directors, or upon the written request of at least 5 percent of the membership of the Institute or any thirty members of Council. Special meetings of the Institute shall be held at places designated by the Board of Directors. No business shall be transacted at a special meeting of the Institute other than that for which the meeting shall have been convened.

5.1.3 Notice of Meetings of the Institute

Notice of each meeting of the Institute, whether regular or special, shall be mailed to each member of the Institute, at his mailing address as shown on the official records of the Institute, at least thirty days prior to the date of such meeting.

5.1.4 Resolution of the Membership by Mail Ballot

A majority of the members of the Institute, assembled at any duly called corporate meeting of the Institute at which a quorum is present, may direct that the chairman of the board submit any question to the entire membership for a vote by mail. Any resolution enacted in such a mail ballot by two-thirds of the members voting shall be declared by the chairman of the board a resolution of the membership and shall be binding, if consistent with these bylaws, upon the Council, the Board of Directors, committees, officers, and staff. Mail ballots shall be valid and counted only if received within sixty days after the date of the mailing of ballot forms.

[The next page is 5631.]

BL Section 520***5.2 Meetings of Council***

As amended
January 12, 1988

.01 Meetings of the Council shall be governed by sections 5.2.1 through 5.2.5, section 5.3, and section 6.7.

5.2.1 Regular Meetings of Council

Regular meetings of the Council shall be held prior to the annual meeting of the Institute and on such other dates as the Council or the Board of Directors may designate.

5.2.2 Special Meetings of Council

The chairman of the board shall call special meetings of the Council when requested to do so by the Board of Directors or when requested in writing by at least thirty members of the Council. Special meetings of the Council shall be held at places designated by the Board of Directors.

5.2.3 Mail Ballot in Lieu of Special Meeting of Council

In lieu of a special meeting of the Council, the chairman of the board, with the approval of the Board of Directors, may submit any question to the Council for a vote by mail, and any action therein approved in writing by not less than two-thirds of the whole membership of the Council shall be declared by the chairman of the board an act of the Council and shall be recorded in the minutes of the Council.

5.2.4 Notice

Notice of each meeting of the Council shall be sent to each member of the Council, at his mailing address as shown in the official records of the Institute, at least twenty-one days before such meeting. Such notice, as far as practicable, shall contain a statement of the business to be transacted.

5.2.5 Minutes

A copy of the minutes of each meeting of the Council shall be forwarded to each member of the Council within forty-five days after such meeting.

BL Section 530

**5.3 General Provisions
Governing Meetings**

As amended
January 12, 1988

.01 The following general provisions shall govern quorum and parliamentary procedure.

5.3.1 Meetings—Quorum

Five hundred members of the Institute shall constitute a quorum for the transaction of any business duly presented at any meeting of the Institute. Thirty members of Council shall constitute a quorum of the Council at any duly called meeting of the Council. Eleven members of the Board of Directors shall constitute a quorum of the board.

5.3.2 Meetings—Rules of Parliamentary Procedure Applicable

The rules of parliamentary procedure contained in *Robert's Rules of Order Revised* shall govern all meetings of the Institute and of the Council.

BL Section 600

**6. ELECTION OF COUNCIL,
BOARD OF DIRECTORS,
AND OFFICERS OF
THE INSTITUTE**

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[The next page is 5655.]

BL Section 601***Election of Council, Board
of Directors, and Officers
of the Institute***

As amended
January 12, 1988

.01 Except for ex officio members of Council (see sections 3.3.1.4 through 3.3.1.6), the election of members of the Council, the Board of Directors, and officers of the Institute shall be in accordance with the provisions of this article.

[The next page is 5661.]

BL Section 610**6.1 Members of Council
Directly Elected by
Members of the
Institute**

As amended
January 12, 1988

.01 Members of Council directly elected by the membership in the respective states (see section 3.3.1.1) shall be elected in accordance with sections 6.1.1 through 6.1.6 as supplemented by Council resolution.

6.1.1 At Least One Member of Council Directly Elected by Membership of Each State

There shall be at least one member of Council directly elected by the members of the Institute in each state having one or more persons enrolled upon the membership lists of the Institute.

6.1.2 Number and Allocation of Directly Elected Council Seats Among the States

The total number of directly elected members of Council, in addition to those provided for by section 6.1.1, shall be eighty-five except as modified by section 6.1.2.1. The number of seats, excluding those extended by section 6.1.2.1, shall be equitably allocated among the states in direct proportion to the number of Institute members enrolled from each state.

6.1.2.1 Unexpired Terms Unaffected by Reduced Allocation

No member of Council directly elected by the membership in any state shall lose his seat for the term he then serves should the allocation of that state be diminished by virtue of section 6.1.2; but, no state's allocation of directly elected Council seats shall be extended by this section beyond the natural expiration of a seat's full term or its vacation by the member filling it, whichever first occurs.

6.1.2.2 Allocation to Be Made by Nominations Committee

The nominations committee shall make the allocation provided in section 6.1.2. It shall be made at five-year intervals, at least nine months prior to annual meetings to be held each calendar year which ends in one and in six, and shall govern the five annual elections immediately following. It shall be based upon the membership figures and addresses carried on the books of the Institute the last

day of the fiscal year immediately preceding the date of such determination.

If a state gains an additional seat from such allocation, the state society may request the nominations committee to authorize election for an initial term of less than three years in order to promote orderly rotation of Council members from that state. Upon receipt of such request, the nominations committee may authorize such shortened term. Following the expiration of such shortened term, subsequent terms for the seat shall be for three years, as provided in section 6.1.3.

In the event that a state has three or more directly elected members whose terms are not evenly staggered over a three-year cycle, the state society may request the nominations committee, for the election following the year these bylaws are adopted and thereafter in calendar years ending in one and in six, to approve the election of a nominee to fill a vacancy for a term of less than three years in order to effect a more orderly rotation of the Council members from that state. The nominations committee may authorize such shortened term. Subsequent terms for such a seat shall be three years, as provided in section 6.1.3.

6.1.3 Term of Office

Except as specified by this section 6.1.3, the term of office of a directly elected member of the Council shall commence when his election is announced by the chairman of the Board of Directors at the meeting of the Council immediately preceding the annual meeting of the Institute, as prescribed by section 6.7, and shall run until the announcement of the election of new directly elected members of the Council at the meeting of the Council immediately preceding the annual meeting of the Institute three years after his election. If any such member of the Council shall not serve his full term, the vacancy so created may be filled pursuant to section 6.6. The term of office of any member directly elected by the members in his state to fill such vacancy shall be the remainder of the three-year term with respect to which the vacancy occurred.

No member having served for two consecutive full terms as a directly elected member of the Council shall be eligible to serve another such term until at least one year after the completion of his second consecutive full term.

6.1.4 Number of Council Seats to Be Filled by Election

The number of Council seats to be filled in a state's quota of directly elected members of the Council for any given year shall be the number of its allocation of directly elected Council seats less the number of members of the Council from that state filling such seats for terms running through that year.

6.1.5 Nominations

At least eight months prior to the annual meeting of the Institute, the nominations committee shall request, from the recognized society of certified public accountants in each state for which any vacancies (see section 6.1.4) will arise in the coming year, the names of suggested candidates from the state represented by such society to fill each such

vacancy. The committee shall give due consideration to the names so submitted, but shall not be required to select its nominees from among such names. In the absence of a satisfactory response from any such state society, the nominations committee shall select the nominees from such state.

The nominations committee shall make its nominations for directly elected members of the Council at least six months prior to the annual meeting of the Institute. Notice of such nominations shall be published to the membership by the secretary at least five months prior to the annual meeting of the Institute. Any twenty members of the Institute from any given state for which a vacancy shall arise may submit to the secretary independent nominations for directly elected members of the Council from that state provided that such nominations be filed with the secretary at least four months prior to the annual meeting of the Institute.

6.1.6 Election

The nominees of the nominations committee for directly elected seats on Council shall be declared elected by the secretary if no independent nominations are filed for such seats as required by section 6.1.5.

The secretary shall mail to all members of the Institute in each state in which there is a contest for a directly elected seat on Council, at least ninety days prior to the annual meeting of the Institute, mail ballots containing the names and relevant background information of nominees from that state nominated by the nominations committee and the names and relevant background information of nominees independently nominated. Each ballot shall contain an announcement that votes will be counted only if received by the secretary at least forty-five days before the annual meeting of the Institute. Election to contested seats on Council shall be determined by a majority of the votes received from each jurisdiction by that date. Mail ballots shall be counted by the secretary, who shall certify the results for publication to the membership. Newly elected members shall be notified promptly and advised to attend the initial meeting of Council prior to the annual meeting of the Institute. They shall take office as provided in section 6.7.

(See section 610 R.)

[The next page is 5681.]

BL Section 610R

***Implementing Resolution
Under Section 6.1
Members of Council
Directly Elected by
Members of the
Institute***

As amended
January 12, 1988

Under Section 6.1.6 Election***Resolved:***

.01 That the withdrawal of a nomination for whatever reason after the balloting has commenced will not be acted upon until the certification of election has been completed. Vacancies then arising will be filled in accordance with section 6.6 of the bylaws, except that in states where the number of nominees exceeds the number of vacancies, the vacancy created by any withdrawal will be filled by that nominee having the highest number of votes after all other vacancies have been filled.

5682

BL Section 620

***6.2 Selection of Members
of Council to Represent
State Societies***

**As amended
January 12, 1988**

.01 Each recognized state society of certified public accountants shall designate, in a manner it deems appropriate, an Institute member to represent it on the Council. The term of each member of the Council so designated shall commence upon notification of the secretary by the society designating him at the meeting of Council immediately preceding the annual meeting of the Institute and shall run for one year or until the designation of his successor, provided that no such member of the Council shall represent a state society for more than six consecutive years.

[The next page is 5701.]

BL Section 630

***6.3 Election of Members-
at-Large of Council,
Board of Directors,
Chairman of the Board,
Vice Chairman of the
Board, Board Vice
Presidents and
Treasurer***

As amended
January 12, 1988

.01 Seven Institute members, without regard to the states in which they reside, shall be elected annually by the Council as members-at-large of the Council, at its meeting immediately preceding the annual meeting of the Institute, and immediately prior to the installation of the members of the Council newly elected under section 6.1, for a term of three years or until the election of their successors. At the same meeting, but subsequent to the installation of such newly elected members of the Council, including members-at-large, the Council shall elect the chairman of the board, the vice chairman of the board, the board vice presidents and the treasurer, and three Institute members of the Board of Directors. Such members of the Board of Directors shall serve for a term of three years or until election of their successors. The Council shall also elect one representative of the public, who is not a member of the Institute, to the Board of Directors for a term of three years, or until election of a successor. Nominations for all such positions shall be made by the nominations committee at least six months prior to the annual meeting of the Institute, and notice thereof shall be published to the membership of the Institute at least five months prior to such annual meeting. Independent nominations may be made by any twenty members of the Council if filed with the secretary at least four months prior to the annual meeting of the Institute. No nominations from the floor will be recognized. A majority of votes shall elect. Nominees may be invited to the meeting at which the election is to be held, and those elected shall take office as prescribed in section 6.7.

.02 No member having served for two consecutive full terms as a member-at-large of the Council shall be eligible to serve another such term until at least one year after the completion of his second consecutive full term.

6.3.1. Re-election to Board of Directors

No elected member of the Board of Directors who has served a full three-year term shall be eligible for re-election to such a term until the meeting of the Council one year after the completion of his full three-year term, provided, however, that a public member may be elected to serve a second three-year term.

[The next page is 5711.]

BL Section 640

***6.4 Election of the
President and
the Secretary***

As amended
January 12, 1988

.01 Election of the president and secretary shall be by the Council and shall be conducted as the Council may prescribe.

(See section 640 R.)

5712

BL Section 640R

***Implementing Resolution
Under Section 6.4 Elec-
tion of the President
and the Secretary***

As amended
January 12, 1988

Resolved:

.01 That the Board of Directors shall recommend to the Council persons to be elected as president and secretary, respectively. Other nominations shall be permitted from the floor. Voting may be by voice vote or, upon request of a majority of those present, by written ballot. A majority vote shall elect.

[The next page is 5721.]

BL Section 650

***6.5 Forfeiture of Office
for Nonattendance***

As amended
January 12, 1988

.01 Any directly elected member or member-at-large of Council who shall be absent from three consecutive meetings shall forfeit his seat.

BL Section 660

6.6 Vacancies

**As amended
January 12, 1988**

.01 Vacancies in the membership of Council, or in the Board of Directors, or in any of the offices of the Institute, occurring between annual meetings of the Institute, may be filled by election of replacements by the Council, either at a meeting of Council or by mail ballot, under such conditions as the Council may prescribe. If the Council should so replace a directly elected member of the Council, such interim appointment will run only until his seat is filled by direct election of the membership of his state as provided in these bylaws.

.02 Pending action by the Council to fill a vacancy among any of the elected officers of the Institute, the Board of Directors may appoint a temporary successor to act in the capacity indicated.

(See section 660 R.)

[The next page is 5741.]

BL Section 660R***Implementing Resolution
Under Section 6.6
Vacancies***

As amended
January 12, 1988

Resolved:

.01 That if a vacancy occurs in the membership of Council, or in the Board of Directors, or in any of the offices of the Institute between annual meetings of the Institute, the Board of Directors shall recommend replacements for election by Council. Voting on such replacement may be conducted by mail ballot, in which case provision shall be made for write-in votes, or at the next meeting of Council, as may appear most desirable in the circumstances. If the voting takes place at a Council meeting, nominations from the floor shall be permitted; voting may be by voice vote, or, at the request of a majority of those present, by written ballot. A majority vote shall elect. In any event, persons elected to fill vacancies in the Board of Directors, in the Council, or in any of the offices of the Institute shall serve only for the remainder of the unexpired term of the previous incumbent or until a successor is elected.

BL Section 670

***6.7 Election Meeting
of Council***

As amended
January 12, 1988

.01 At the meeting of the Council immediately preceding the annual meeting of the Institute, following the completion of such other business as the Council may transact, the Council shall elect new members-at-large of the Council pursuant to section 6.3. New members-at-large shall then take office, replacing those members-at-large whose terms shall have expired. Then the presiding officer shall announce the installation of members of the Council newly elected under section 6.1, at which time they shall take office, replacing those directly elected members of Council whose terms shall have expired. Election of officers, new members of the Board of Directors, and others shall then be held, and each officer or member of the Board of Directors so elected shall replace his predecessor upon such election, provided, however, that the retiring chairman of the board shall continue in office through the end of the annual meeting of the Institute.

BL Section 700**7. TERMINATION OF MEMBERSHIP
AND DISCIPLINARY SANCTIONS****TABLE OF CONTENTS**

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[The next page is 5771.]

BL Section 701***Termination of Member-
ship and Disciplinary
Sanctions***

As amended
January 12, 1988

.01 This article shall govern the termination or suspension of membership in the Institute, whether imposed as a matter of discipline or voluntarily sought, and the imposition of any other disciplinary sanction, or administrative reprimand, whether public or private, or imposition of conditions for retention of membership.

5772

BL Section 710

***7.1 Resignation of
Membership***

**As amended
January 12, 1988**

.01 Resignations of members shall be in writing and may be offered at any time. Actions on such resignations and applications for reinstatement of resigned members shall be taken by the Board of Directors under such provisions as the Council may prescribe. Council may make separate provision for action on resignations of members not in good standing or against whom disciplinary proceedings or investigations are pending and on applications for reinstatement of persons whose resignation was accepted when in such classification.

(See section 710 R.)

[The next page is 5791.]

BL Section 710R***Implementing Resolution
Under Section 7.1
Resignation of
Membership***

As amended
January 12, 1988

Resolved:

.01 That the Board of Directors shall act upon resignation of members, which shall become effective on the date of acceptance, but no action shall be taken on the resignation of a member with respect to whom charges are under investigation by the professional ethics division, or against whom a complaint is pending before the trial board, unless the division or the trial board, as the case may be, recommends that such resignation be accepted. If a person whose resignation was accepted when he was under investigation or the object of a complaint should subsequently apply for reinstatement, the Board of Directors shall not reinstate such person without the consent of the division or the trial board, as the case may be.

BL Section 720

***7.2 Termination of Membership
for Nonpayment of
Financial Obligation or
for Failure to Comply
With Membership-Retention
Requirements***

As amended
January 12, 1988

.01 The Board of Directors may, in its discretion, terminate the membership of a member who fails to pay dues or any other obligation to the Institute within five months after such debt has become due and terminate the membership of a member who fails to comply with the practice-monitoring or continuing education membership-retention requirements. The Council shall provide for consideration and disposition by the trial board, with or without hearing, of a timely written petition that membership should not be terminated pursuant to this section. Any membership so terminated may be reinstated by the Board of Directors, under such conditions and procedures as the Council may prescribe.

(See section 720 R.)

7.2.1 Termination of Association of International Associate

The Council may terminate the affiliation of an international associate in its discretion.

[The next page is 5811.]

BL Section 720R***Implementing Resolution Under
Section 7.2 Termination of
Membership for Nonpayment of
Financial Obligation or for
Failure to Comply With
Membership-Retention
Requirements***

As amended
January 12, 1988

Resolved:

.01 That if a person whose membership has terminated for nonpayment of dues or other financial obligation shall apply for reinstatement, the Board of Directors, in its discretion, may reinstate the member, provided that all dues and other obligations owing to the Institute at the time membership was terminated shall have been paid.

Further Resolved:

.02 That if a person whose membership has terminated for failure to comply with membership-retention requirements relating to CPE or practice-monitoring shall apply for reinstatement, the Board of Directors, in its discretion, may reinstate the person as a member provided the person shall have satisfactorily demonstrated that the failure to comply with the CPE or practice-monitoring requirements has been rectified.

Further Resolved:

.03 That no person shall be considered to have resigned in good standing if at the time of resignation the person was in debt to the Institute for dues or other obligations. A member submitting a resignation after the beginning of the fiscal year, but before expiration of the time limit for payment of dues or other obligations, may attain good standing by paying dues prorated according to the portion of the fiscal year which has elapsed, provided obligations other than dues shall have been paid in full.

.04 A member who has resigned or whose membership has terminated in any manner may not file a new application for admission but may apply for reinstatement under this resolution or applicable provisions of the bylaws.

[The next page is 5821.]

BL Section 730***7.3 Disciplinary Suspension
and Termination of Mem-
bership Without Hearing***

As amended
January 12, 1988

.01 Membership in the Institute shall be suspended or terminated without a hearing for disciplinary purposes as provided in sections 7.3.1 and 7.3.2, under such conditions and by such procedure as shall be prescribed by the Council.

(See section 730 R.)

7.3.1 Criminal Conviction of Member

Membership in the Institute shall be suspended without a hearing should there be filed with the secretary of the Institute a judgment of conviction imposed upon any member for

7.3.1.1 A crime punishable by imprisonment for more than one year;

7.3.1.2 The willful failure to file any income tax return which he, as an individual taxpayer, is required by law to file;

7.3.1.3 The filing of a false or fraudulent income tax return on his or a client's behalf; or

7.3.1.4 The willful aiding in the preparation and presentation of a false and fraudulent income tax return of a client; and

shall be terminated in like manner upon the similar filing of a final judgment of conviction; however, the Council shall provide for the consideration and disposition by the trial board, with or without hearing, of a timely written petition of any member that his membership should not be suspended or terminated pursuant to section 7.3.1.1, herein.

7.3.2 Suspension or Revocation of Certificate

Membership in the Institute shall be suspended without a hearing should a member's certificate as a certified public accountant or license or permit to practice as such or to practice public accounting be suspended as a disciplinary measure by any governmental authority; but, such suspension of membership shall terminate upon reinstatement of the certificate, or such membership in the Institute shall be terminated without hearing should such certificate, license, or permit be revoked, withdrawn, or cancelled as a disciplinary measure by any governmental authority. The Council shall provide for the consideration and disposition by the trial board, with or without hearing, of a timely written petition of

any member that his membership should not be suspended or terminated pursuant to this section 7.3.2.

7.3.3 Trial Board Disciplining Not Precluded

Application of the provisions of section 7.3.1 and section 7.3.2 shall not preclude the summoning of the member concerned to appear before a hearing panel of the trial board pursuant to section 7.4.

[The next page is 5831.]

BL Section 730R***Implementing Resolution
Under Section 7.3 Disci-
plinary Suspension and
Termination of Member-
ship Without Hearing***

As amended
January 12, 1988

Resolved:

.01 (1) That the membership of a member who is convicted by a court of any of the criminal offenses enumerated in section 7.3.1 of the bylaws shall become automatically suspended upon the mailing of a notice of such suspension, as provided in paragraph (5) of this resolution. Such notice shall be mailed within a reasonable time after a certified copy of a judgment of conviction of such criminal offense has been filed with the secretary of the Institute.

.02 (2) That the membership of a member who has been convicted by a court of any of the offenses enumerated in section 7.3.1 of the bylaws, and which conviction has become final, shall become automatically terminated upon the mailing of a notice of such termination, as provided in paragraph (5) of this resolution. Such notice shall be mailed within a reasonable time after a certified copy of such conviction and evidence that it has become final has been filed with the secretary of the Institute.

.03 (3) That the membership of a member whose certificate as a certified public accountant, or license or permit to practice as such or to practice public accounting has been suspended as a disciplinary measure by any governmental authority shall, except as provided in paragraph (6) of this resolution, become automatically suspended upon the expiration of thirty days after the mailing of a notice of such suspension, as provided in paragraph (5) of this resolution. Such notice shall be mailed within a reasonable time after a statement of such governmental authority, showing that such certificate, license, or permit has been suspended and specifying the cause and duration of such suspension, has been filed with the secretary of the Institute. Such automatic suspension shall cease upon the expiration of the period of suspension so specified.

.04 (4) That the membership of a member whose certificate as a certified public accountant, or license or permit to practice as such or to practice public accounting has been revoked, withdrawn, or cancelled as a disciplinary measure by any governmental authority shall, except as provided in paragraph (6) of this resolution, become automatically terminated upon the expiration of thirty days after the mailing of a notice of such termination, as provided in paragraph (5) of this resolution. Such notice shall be mailed within a reasona-

ble time after a statement of such governmental authority showing that such certificate, license, or permit has been revoked, withdrawn, or cancelled and specifying the cause of such revocation, withdrawal, or cancellation has been filed with the secretary of the Institute.

.05 (5) That notices of suspension or termination pursuant to paragraph (1), (2), (3), or (4) of this resolution shall be signed by the secretary of the Institute and mailed by registered or certified mail, postage prepaid, addressed to the member concerned at his last known address according to the records of the Institute.

.06 (6) That the operation of paragraph (1), (2), (3), or (4) of this resolution shall become postponed if, within thirty days after mailing the notice of suspension or termination, the secretary of the Institute receives a request from the member concerned that the pertinent provision shall not become operative. The request shall state briefly the facts and reasons relied upon. All such requests shall be referred to the trial board for action thereon by the trial board or by an ad hoc committee thereof consisting of at least five members appointed by the chairman of the trial board or vice chairman, when acting as chairman. If the request is denied, the suspension or termination, as the case may be, shall become effective upon such denial, and the member concerned shall be so notified in writing by the secretary. No appeal to the trial board shall be allowable with respect to a denial of such a request by the ad hoc committee. If the request is granted, the suspension or termination, as the case may be, shall not become effective. In such event, the secretary shall transmit the matter to the professional ethics division to take whatever action it considers proper in the circumstances. A determination that paragraph (1), (2), (3), or (4) of this resolution shall not become operative shall be made only when it clearly appears that, because of exceptional or unusual circumstances, it would be inequitable to permit such automatic suspension or termination.

[The next page is 5851.]

BL Section 740**7.4 Disciplining of
Member by Trial
Board**

As amended
January 12, 1988

.01 Under such conditions and by such procedure as the Council may prescribe, a hearing panel of the trial board, by a two-thirds vote of the members present and voting, may expel a member (except as otherwise provided in section 7.4.3), or by a majority vote of the members present and voting, may suspend a member for a period not to exceed two years not counting any suspension imposed under sections 7.3.1 and 7.3.2, or may impose such lesser sanctions as the Council may prescribe on any member if the member

7.4.1 Infringes any of these bylaws or any rule of the Code of Professional Conduct;

7.4.2 Is declared by a court of competent jurisdiction to have committed any fraud;

7.4.3 Is held by a hearing panel of the trial board to have been guilty of an act discreditable to the profession, or to have been convicted of a criminal offense which tends to discredit the profession; provided that should a hearing panel of the trial board find by a majority vote that he has been convicted by a criminal court of an offense involving moral turpitude, or any of the offenses enumerated in section 7.3.1, the penalty shall be expulsion;

7.4.4 Is declared by any competent court to be insane or otherwise incompetent;

7.4.5 Is subject to the suspension, revocation, withdrawal, or cancellation of the member's certificate as a certified public accountant or license or permit to practice as such or to practice public accounting as a disciplinary measure by any governmental authority; or

7.4.6 Fails to cooperate with the professional ethics division in any disciplinary investigation of the member or a partner or employee of the firm by not making a substantive response to interrogatories or a request for documents from a committee of the professional ethics division or by not complying with the educational and remedial or corrective action determined to be necessary by the professional ethics executive committee, within thirty days after the posting of notice of such interrogatories, or a request for documents, or directive to take CPE or corrective action by registered or certified mail, postage prepaid, to the member at his or her last-known address shown on the books of the Institute.

.02 With respect to a member residing in a state in which the state society has entered into an agreement approved by the Institute's Board of Directors to deal with complaints against society members in cooperation with the professional ethics division, disciplinary hearings shall be conducted before a hearing panel of the joint trial board.

(See section 740 R.)

[The next page is 5871.]

BL Section 740R**Implementing Resolution
Under Section 7.4 Dis-
ciplining of Member
by Trial Board**

As amended
January 12, 1988

Resolved:

That

.01 (1) Any complaint preferred against a member under section 7.4 of the bylaws shall be submitted to the professional ethics division, which in turn may refer the complaint for investigation and recommendation to an ethics committee (or its equivalent) of a state society of certified public accountants that has made an agreement with the Institute of the type authorized in section 7.4 of the bylaws. If, upon consideration of the complaint, investigation and/or recommendation thereon, it appears that a prima facie case is established showing a violation of any applicable bylaws or any rule of the Code of Professional Conduct of the Institute or any state society making an agreement with the Institute referred to above or showing any conduct discreditable to a certified public accountant, the professional ethics division or the ethics committee of such state society shall report the matter to the secretary of the trial board who shall summon the member involved to appear in answer at the next convenient meeting of a panel of the trial board appointed to hear the case provided, however, that, with respect to a case falling within the scope of section 7.3 of the bylaws, the division or such state society ethics committee shall have discretion as to when and whether to report the matter to the secretary for such summoning.

.02 (2)

(a) If the professional ethics division or state society ethics committee dismisses any complaint preferred against a member or fails to initiate its inquiry within ninety days after such complaint is presented to it in writing, the member preferring the complaint may present the complaint in writing to the trial board, provided, however, that this provision shall not apply to a case falling within the scope of section 7.3.

(b) The chairman of the trial board shall cause such investigation to be made of the matter as he may deem necessary, and shall either dismiss the complaint or refer it to the secretary of the trial board who shall summon the member involved thereby to appear before the panel appointed in paragraph (c) hereof to hear the case.

(c) Prior to causing the investigation referred to in paragraph (a), the chairman of the trial board shall designate six members of the trial board who shall not be involved in such investigation in order that five of them may be appointed to an independent hearing panel if necessary. He

shall report the names of such members to the secretary of the trial board prior to any action under paragraph (a).

.03 (3) For the purpose of adjudicating charges against members of the Institute as provided in the foregoing paragraphs of this resolution, the following must take place:

(a) The secretary shall mail to the member concerned, at least thirty days prior to the proposed meeting of the trial board or any sub-board appointed to hear the case, written notice of the charges to be adjudicated. Such notice, when mailed by registered mail, postage prepaid, addressed to the member concerned at the member's last known address, according to the records of the Institute, shall be deemed properly served.

(b) After hearing the evidence presented by the professional ethics division or other complainant, and by the defense, the trial board or sub-board hearing the case, a quorum present, by vote of the members present and voting, may, in a manner consistent with section 7.4 of the bylaws, admonish, suspend for a period of not more than two years, or expel the member against whom complaint is made, provided that in any case in which the trial board or sub-board finds that a member has departed from the profession's technical standards it may also direct the member concerned to complete specified professional development courses and to report to the trial board upon such completion.

(c) In a case decided by a sub-board, the member concerned may request a review by the trial board of the decision of the sub-board, provided such a request for review is filed with the secretary of the trial board at the principal office of the Institute within thirty days after the decision of the sub-board, and that such information as may be required by the rules of the trial board shall be filed with such request. Such a review shall not be a matter of right. Each such request for a review shall be considered by an ad hoc committee to be appointed by the chairman of the trial board, or its vice chairman in the event of his unavailability, and composed of not less than five members of the trial board who did not participate in the prior proceedings in the case. The ad hoc committee shall have power to decide whether or not such request for review by the trial board shall be allowed, and such committee's decision that such request shall not be allowed shall be final and subject to no further review. A quorum of such ad hoc committee shall consist of a majority of those appointed. If such request for review is allowed, the trial board shall review the decision of the sub-board in accordance with its rules of practice and procedure. On review of such decision, the trial board may affirm, modify, or reverse all or any part of such decision or make such other disposition of the case as it deems appropriate. The trial board may, by general rule, indicate the character of reasons that may be considered to be of sufficient importance to warrant an ad hoc committee granting a request for review of a decision of a sub-board.

(d) Any decision of the trial board, including any decision reviewing a decision of a sub-board shall become effective when made, unless the trial board's decision indicates otherwise, in which latter event it shall become effective at the time determined by the trial board. Any decision of a sub-board shall become effective as follows:

(i) Upon the expiration of thirty days after it is made, if no request for review is properly filed within such thirty-day period.

(ii) Upon the denial of a request for review, if such request has been properly filed within such thirty-day period and is denied by the ad hoc committee.

(iii) Upon the effective date of a decision of the trial board affirming the decision of sub-board in cases where a review has been granted by the ad hoc committee.

[The next page is 5881.]

BL Section 750

7.5 Reinstatement

As amended
January 12, 1988

.01 The Council may prescribe the conditions and procedures under which members suspended or terminated under sections 7.3 and 7.4 may be reinstated.

(See section 750 R.)

[The next page is 5891.]

BL Section 750R**Implementing Resolution
Under Section 7.5
Reinstatement**

As amended
January 12, 1988

Resolved:

.01 (1) That at any time after the publication in a membership periodical of the Institute of a statement of a case and decision, on application of the member concerned, the appropriate panel of the trial board which last heard the case and whose decision provides the basis for the publication, may, by a two-thirds vote of the members present and voting, recall, rescind, or modify such decision, which action shall be published in the membership periodical of the Institute. The denial of an application under this section shall not prevent the member concerned from applying for reinstatement under section (2) hereof.

.02 (2) That

(a) Should a judgment of conviction or an order of a governmental authority on which the suspension or termination of membership was based under section 7.3 of the bylaws be reversed or otherwise set aside or invalidated, such suspension shall terminate or such member shall become reinstated when a certified copy of the order reversing or otherwise setting aside or invalidating such conviction or order is filed with the secretary of the joint trial board, who shall refer the matter to the professional ethics division for whatever action it deems appropriate.

(b) A member who has been suspended or expelled by the trial board pursuant to section 7.4 of the bylaws may request that the suspension terminate or may request reinstatement if a judgment of conviction, an order or finding of any court, or an order of the governmental authority on which the suspension or expulsion was based has been reversed or otherwise set aside or invalidated. Such request shall be referred to the trial board whereupon a hearing panel composed of five members designated by the chairman of the trial board may, after investigating all related circumstances, terminate the suspension or reinstate the member concerned by a majority vote of the members present and entitled to vote.

(c) Except as provided in subparagraphs (a) and (b) of this paragraph (2), a member whose membership has been automatically terminated under section 7.3, or who has been expelled by or had his resignation accepted by a panel of the trial board may, at any time after three years from the effective date of such termination, expulsion, or acceptance of resignation, request reinstatement of his membership. Such request shall be referred to the trial board, whereupon the chairman shall designate five members of the board to a hearing panel which may, after investigation, reinstate such member on such terms and conditions as it shall determine to be appropriate. If an application for reinstatement under this subparagraph is denied, the member concerned may again apply for reinstatement at any time after two years from the date of such denial.

[The next page is 5901.]

BL Section 760***7.6 Publication of
Disciplinary Action***

As amended
January 12, 1988

.01 Notice of disciplinary action pursuant to section 7.3 or 7.4 or of termination of participation of a member's firm in an Institute-approved practice-monitoring program, together with a statement of the reasons therefor, shall be published in such form and manner as the Council may prescribe.

(See section 760 R.)

BL Section 760R

***Implementing Resolution
Under Section 7.6
Publication of
Disciplinary Action***

As amended
January 12, 1988

Resolved:

.01 That notice of disciplinary action taken under section 7.3 or 7.4 of the bylaws and the basis therefor shall be published in a membership periodical of the Institute and the professional ethics division shall maintain a record of such information and disclose that information upon request. In the case of a suspension or termination pursuant to section 7.3 of the bylaws, such notice shall be in a form approved by the chairman of the trial board and shall disclose the name of the member concerned. In any action pursuant to section 7.4 of the bylaws, the trial board or sub-board hearing the case shall decide, by a majority vote of the members present and voting, on the form of the notice of the case and the decision to be published, which shall disclose the name of the member involved when the member is found guilty. The statement and decision, as released by the chairman, trial board, or hearing panel, shall be published in a membership periodical of the Institute. No such publication shall be made until such decision has become effective.

[The next page is 5921.]

BL Section 770***7.7 Disciplinary Sections
Not to Be Applied
Retroactively***

As amended
January 12, 1988

.01 Sections 7.3 and 7.4 shall not be applied to offenses of wrongful conduct occurring prior to their effective dates, but such offenses shall be subject to discipline under the bylaws of the Institute in effect at the time of their occurrence.

BL Section 800**8. AMENDMENTS****TABLE OF CONTENTS**

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840	Submission to Membership by Mail Ballot01

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BL Section 801

Amendments

As amended
January 12, 1988

.01 Amendments to these bylaws and the Code of Professional Conduct shall be accomplished in a manner consistent with this article.

5942

BL Section 810

***8.1 Proposals to Amend
the Bylaws***

**As amended
January 12, 1988**

.01 Proposals to amend the bylaws may be made by any thirty members of the Council, by any two hundred or more members of the Institute in good standing, by the Board of Directors, or by petition of 5 percent of the membership as of the end of the prior fiscal year.

[The next page is 5961.]

BL Section 820***8.2 Proposals to Amend
the Code of Professional
Conduct***

As amended
January 12, 1988

.01 Proposals to amend the Code of Professional Conduct may be made by any thirty members of the Council, by any two hundred or more members of the Institute in good standing, by the Board of Directors, by the professional ethics division, or by petition of 5 percent of the membership as of the end of the prior fiscal year.

BL Section 830

***8.3 Submission to Council
via Board of Directors***

As amended
January 12, 1988

.01 All such proposals to amend the bylaws or the Code of Professional Conduct, unless made at a meeting of the Council or the Board of Directors, shall be submitted in writing to the Board of Directors. The Board of Directors shall submit all such proposals, accompanied by its recommendation, to the Council for action.

8.3.1 Proposals Not Requiring Council Approval

Following discussion at a meeting of the Council, proposals sponsored by at least 5 percent of the membership shall be submitted to the membership of the Institute for vote by mail ballot pursuant to section 8.4.

[The next page is 5981.]

BL Section 840***8.4 Submission to
Membership by
Mail Ballot***

As amended
January 12, 1988

.01 Amendments proposed under section 8.3.1 and those authorized by the Council under section 8.3 shall be submitted to all of the members of the Institute for a vote by mail ballot on or after ninety days following discussion by the Council, but no later than 180 days following such discussion. If at least two-thirds of those voting approve such proposal, it shall become effective as an amendment to the bylaws or to the Code of Professional Conduct, as applicable. Mail ballots shall be considered valid and counted only if received in the Institute's principal office within sixty days from the date of mailing the ballots to the members.

BL Section 900**GENERAL**

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[The next page is 6021.]

BL Section 911***Mission Statement of the
American Institute of
Certified Public Accountants***

.01 The American Institute of Certified Public Accountants is the national professional organization for all certified public accountants. The mission of the AICPA is to act on behalf of its members and provide necessary support to assure that CPAs serve the public interest in performing quality professional services. In fulfilling its mission, the AICPA gives priority to those areas where public reliance on CPA skills is most significant.

To achieve its mission, the AICPA:

1. Promotes uniform certification and licensing standards for CPAs.
 2. Sets requirements for maintaining members' professional competence.
 3. Assists members in the continuing development of professional expertise.
 4. Provides standards of professional conduct and performance.
 5. Monitors professional performance to enforce professional standards.
 6. Promotes public confidence in the integrity, objectivity, competence, and professionalism of AICPA members and the services they perform.
 7. Encourages highly qualified individuals to become CPAs and promotes the availability of appropriate educational programs.
 8. Unites CPAs—whether in public practice, industry, education, or government—in their efforts to serve the public interest.
 9. Serves as the national representative of CPAs to government, regulatory bodies, and other organizations.
 10. Assists members in understanding and adjusting to changes in the economic, political, and technological environment.
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[The next page is 6031.]

BL Section 921***A Description of the Professional Practice of Certified Public Accountants***

.01 Certified public accountants practice in the broad field of accounting.

.02 Accounting is a discipline which provides financial and other information essential to the efficient conduct and evaluation of the activities of any organization.

.03 The information which accounting provides is essential for (1) effective planning, control, and decision-making by management, and (2) discharging the accountability of organizations to investors, creditors, government agencies, taxing authorities, association members, contributors to welfare institutions, and others.

.04 Accounting includes the development and analysis of data, the testing of their validity and relevance, and the interpretation and communication of the resulting information to intended users. The data may be expressed in monetary or other quantitative terms, or in symbolic or verbal forms.

.05 Some of the data with which accounting is concerned are not precisely measurable, but necessarily involve assumptions and estimates as to the present effect of future events and other uncertainties. Accordingly, accounting requires not only technical knowledge and skill, but even more important, disciplined judgment, perception, and objectivity.

.06 Within this broad field of accounting, certified public accountants are the identified professional accountants. They provide leadership in accounting research and education. In the practice of public accounting CPAs bring competence of professional quality, independence, and a strong concern for the usefulness of the information and advice they provide, but they do not make management decisions.

.07 The professional quality of their services is based upon experience and the requirements for the CPA certificate—education and examination—and upon the ethical and technical standards established and enforced by their profession.

.08 CPAs have a distinctive role in examining financial statements submitted to investors, creditors, and other interested parties, and in expressing independent opinions on the fairness of such statements. This distinctive role has inevitably encouraged a demand for the opinions of CPAs on a wide variety of other representations, such as compliance with rules and regulations of government agencies, sales statistics under lease and royalty agreements, and adherence to covenants in indentures.

.09 The examination of financial statements requires CPAs to review many aspects of an organization's activities and procedures. Consequently they can advise clients of needed improvements in internal control and make constructive suggestions on financial, tax, and other operating matters.

.10 In addition to furnishing advice in conjunction with their independent examinations of financial statements, CPAs are engaged to provide objective advice and consultation on various management problems. Many of these involve information and control systems and techniques, such as budgeting, cost control, profit planning, internal reporting, automatic data processing, and quantitative analysis. CPAs also assist in the development and implementation of programs approved by management.

.11 Among the major management problems depending on the accounting function is compliance with tax requirements. An important part of the practice of CPAs includes tax planning and advice, preparation of tax returns, and representation of clients before government agencies.

.12 CPAs also participate in conferences with government agencies such as the Securities and Exchange Commission, and with other interested parties, such as bankers.

.13 Like other professionals, CPAs are often consulted on business, civic, and other problems on which their judgment, experience, and professional standards permit them to provide helpful advice and assistance.

.14 The complexities of an industrial society encourage a high degree of specialization in all professions. The accounting profession is no exception. Its scope is so wide and varied that many individual CPAs choose to specialize in particular types of service.

.15 Although their activities may be diverse, all CPAs have demonstrated basic competence of professional quality in the discipline of accounting. It is this which unites them as members of one profession, and provides a foundation for extension of their services into new areas.

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