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AICPA

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

AICPA Professional Standards:

Code of Professional Conduct and *Bylaws*

As of June 1, 2003

AICPA

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

AICPA Professional Standards:

Code of Professional Conduct

and

Bylaws

As of June 1, 2003

Code of Professional Conduct (as of June 1, 2003)
is reprinted from AICPA Professional Standards, volume 2.

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HOW TO USE THIS VOLUME

Scope of This Volume...

This volume, which is a reprint of the Code of Professional Conduct and Bylaws 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, and Ethics Rulings, as well as the AICPA Bylaws and related Implementing Resolutions of Council.

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 the Institute and the 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.

CODE OF PROFESSIONAL CONDUCT

The Rules of Conduct, Interpretations of Rules of Conduct, and Ethics Rulings related to the same subject have been assembled within the major divisions of the Code of Professional 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 in 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:

- AICPA Mission Statement
- 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.

CODE OF PROFESSIONAL CONDUCT

As Adopted January 12, 1988, amended January 14, 1992 and October 28, 1997

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 Guidance

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.

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ET Section 50
PRINCIPLES OF PROFESSIONAL CONDUCT

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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.

[Revised May 15, 2000.]

[The next page is 4361.]

ET Section 90

RULES: APPLICABILITY AND DEFINITIONS

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[The next page is 4371.]

ET Section 91

Applicability

As adopted January 12, 1988, unless otherwise indicated

.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, associated member, or international associate of the American Institute of CPAs [ET section 92.20].

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 [ET section 202.01] and 203 [ET section 203.01].
2. A member shall not knowingly permit a person, whom the member has the authority or capacity to control, 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. Further, a member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control.
3. A member (as defined in ET section 92.20) or a covered member (as defined in ET section 92.06) may be considered to have his or her independence impaired, with respect to a client, as the result of the actions or relationships of certain persons or entities, as described in rule 101 [ET section 101.01] and its interpretations and rulings, whom the member or covered member does not have the authority or capacity to control. Therefore, nothing in this section should lead one to conclude that the member's or covered member's independence is not impaired solely because of his or her inability to control the actions or relationships of such persons or entities.

[Paragraph added, August, 1989, effective November 30, 1989. Revised December, 1998. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[The next page is 4381.]

ET Section 92

Definitions

As adopted, January 12, 1988, unless otherwise indicated

[Pursuant to its authority under the bylaws (BL § 3.6.2.2) 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 Attest engagement. An attest engagement is an engagement that requires independence as defined in AICPA Professional Standards.

[Revised November, 2001.]

.02 Attest engagement team. The attest engagement team consists of individuals participating in the attest engagement, including those who perform concurring and second partner reviews. The attest engagement team includes all employees and contractors retained by the firm who participate in the attest engagement, irrespective of their functional classification (for example, audit, tax, or management consulting services). The attest engagement team excludes specialists as discussed in SAS No. 73, *Using the Work of a Specialist* [AU section 336], and individuals who perform only routine clerical functions, such as word processing and photocopying.

[Revised November, 2001.]

.03 Client. 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. For purposes of this paragraph, the term "employer" does not include—

a. Entities engaged in the practice of public accounting; or

b. Federal, state, and local governments or component units thereof provided the member performing professional services with respect to those entities—

   i. Is directly elected by voters of the government or component unit thereof with respect to which professional services are performed; or

   ii. Is an individual who is (1) appointed by a legislative body and (2) subject to removal by a legislative body; or

   iii. Is appointed by someone other than the legislative body, so long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body.

[Revised December, 1998.]

.04 Close relative. A close relative is a parent, sibling, or nondependent child.

[Revised November, 2001.]

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

.06 Covered member. A covered member is—

a. An individual on the attest engagement team;

b. An individual in a position to influence the attest engagement;

c. A partner or manager who provides nonattest services to the attest client beginning once he or she provides ten hours of nonattest services to the client within any fiscal year and ending on the later of the date (i) the firm signs the report on the financial statements for the fiscal year during which those services were provided or (ii) he or she no longer expects to provide ten or more hours of nonattest services to the attest client on a recurring basis;

d. A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;

e. The firm, including the firm's employee benefit plans; or

f. An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles [GAAP] for consolidation purposes) by any of the individuals or entities described in (*a*) through (*e*) or by two or more such individuals or entities if they act together.

[Revised November, 2001.]

[.07] Enterprise. [Revised November, 2001.]

.08 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.

[Revised November, 2002.]

.09 Financial statements. A presentation of financial data, including accompanying notes, if any, intended to communicate an entity's economic resources and/or obligations at a point in time or the changes therein for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.

Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements and tax returns and supporting schedules do not, for this purpose, constitute financial statements. 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.

.10 Firm. A firm is a form of organization permitted by law or regulation whose characteristics conform to resolutions of the Council of the American Institute of Certified Public Accountants that is engaged in the practice of public accounting. Except for purposes of applying Rule 101: *Independence* [ET section 101.01], the firm includes the individual partners thereof.

[Revised November, 2001.]

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.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.

.12 Immediate family. Immediate family is a spouse, spousal equivalent, or dependent (whether or not related).

.13 Individual in a position to influence the attest engagement. An individual in a position to influence the attest engagement is one who—

a. Evaluates the performance or recommends the compensation of the attest engagement partner;

b. Directly supervises or manages the attest engagement partner, including all successively senior levels above that individual through the firm's chief executive;

c. Consults with the attest engagement team regarding technical or industry-related issues specific to the attest engagement; or

d. Participates in or oversees, at all successively senior levels, quality control activities, including internal monitoring, with respect to the specific attest engagement.

[Revised November, 2001.]

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

.15 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.

.16 Joint closely held investment. A joint closely held investment is an investment in an entity or property by the member and the client (or the client's officers or directors, or any owner who has the ability to exercise significant influence over the client) that enables them to control (as defined by GAAP for consolidation purposes) the entity or property.

[Revised November, 2001.]

.17 Key position. A key position is a position in which an individual:

a. Has primary responsibility for significant accounting functions that support material components of the financial statements;

b. Has primary responsibility for the preparation of the financial statements; or

c. Has the ability to exercise influence over the contents of the financial statements, including when the individual is a member of the board of directors or similar governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

For purposes of attest engagements not involving a client's financial statements, a key position is one in which an individual is primarily responsible for, or able to influence, the subject matter of the attest engagement, as described above.

[Revised November, 2001.]

.18 Loan. A loan is 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. A loan includes, but is not limited to, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment.

[Revised November, 2001.]

.19 Manager. A manager is a professional employee of the firm who has either of the following responsibilities:

a. Continuing responsibility for the overall planning and supervision of engagements for specified clients.

b. Authority to determine that an engagement is complete subject to final partner approval if required.

[Revised November, 2001.]

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

.21 Normal lending procedures, terms, and requirements. "Normal lending procedures, terms, and requirements" relating to a covered 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 covered member is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under "normal lending procedures, terms, and requirements," the covered 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 covered member.
2. Repayment terms.
3. Interest rate, including "points."
4. Closing costs.
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.

[Revised November, 2002.]

.22 Office. An office is a reasonably distinct subgroup within a firm, whether constituted by formal organization or informal practice, where personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. Substance should govern the office classification. For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location.

[Revised November, 2001.]

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.23 Partner. A partner is a proprietor, shareholder, equity or non-equity partner or any individual who assumes the risks and benefits of firm ownership or who is otherwise held out by the firm to be the equivalent of any of the aforementioned.

[Revised November, 2001.]

.24 Period of the professional engagement. The period of the professional engagement begins when a member either signs an initial engagement letter or other agreement to perform attest services or begins to perform an attest engagement for a client, whichever is earlier. The period lasts for the entire duration of the professional relationship (which could cover many periods) and ends with the formal or informal notification, either by the member or the client, of the termination of the professional relationship or by the issuance of a report, whichever is later. Accordingly, the period does not end with the issuance of a report and recommence with the beginning of the following year's attest engagement.

[Revised November, 2001.]

.25 Practice of public accounting. 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 Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements.

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.

.26 Professional services. Professional services include all services performed by a member while holding out as a CPA.

.27 Significant influence. The term *significant influence* is as defined in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations.

[Revised November, 2001.]

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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

In performing an attest engagement, a member should consult the rules of his or her state board of accountancy, his or her state CPA society, the U.S. Securities and Exchange Commission (SEC) if the member's report will be filed with the SEC, the U.S. Department of Labor (DOL) if the member's report will be filed with the DOL, the AICPA SEC Practice Section (SECPS) if the member's firm is a member of the SECPS, the General Accounting Office (GAO) if law, regulation, agreement, policy or contract requires the member's report to be filed under GAO regulations, and any organization that issues or enforces standards of independence that would apply to the member's engagement. Such organizations may have independence requirements or rulings that differ from (e.g., may be more restrictive than) those of the AICPA.

.02 101-1—Interpretation of Rule 101. Independence shall be considered to be impaired if:

A. During the **period of the professional engagement*** a **covered member**

1. Had or was committed to acquire any direct or material indirect financial interest in the **client**.
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 client and
   - (i) The covered member (individually or with others) had the authority to make investment decisions for the trust or estate; or
   - (ii) The trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or
   - (iii) The value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate.
3. Had a **joint closely held investment** that was material to the covered member.
4. Except as specifically permitted in interpretation 101-5 [ET section 101.07], had any **loan** to or from the client, any officer or director of the client, or any individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests.

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* Terms shown in **boldface** type upon first usage in this interpretation are defined in ET section 92, *Definitions*. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

B. During the period of the professional engagement, a **partner** or professional employee of the **firm**, his or her **immediate family**, or any group of such persons acting together owned more than 5 percent of a client's outstanding equity securities or other ownership interests.

C. During the period covered by the **financial statements** or during the period of the professional engagement, a firm, or partner or professional employee of the firm was simultaneously associated with the client as a(n)

1. Director, officer, or employee, or in any capacity equivalent to that of a member of management;
2. Promoter, underwriter, or voting trustee; or
3. Trustee for any pension or profit-sharing trust of the client.

Transition Period for Certain Business and Employment Relationships

A business or employment relationship with a client that impairs independence under interpretation 101-1.C [ET section 101.02], and that existed as of November 2001, will not be deemed to impair independence provided such relationship was permitted under rule 101 [ET section 101.01], and its interpretations and rulings as of November 2001, and the individual severed that relationship on or before May 31, 2002.

Application of the Independence Rules to Covered Members Formerly Employed by a Client or Otherwise Associated With a Client

An individual who was formerly (i) employed by a client or (ii) associated with a client as a(n) officer, director, promoter, underwriter, voting trustee, or trustee for a pension or profit-sharing trust of the client would impair his or her firm's independence if the individual—

1. Participated on the **attest engagement team** or was an **individual in a position to influence the attest engagement** for the client when the **attest engagement** covers any period that includes his or her former employment or association with that client; or
2. Was otherwise a covered member with respect to the client unless the individual first dissociates from the client by—
   (*a*) Terminating any relationships with the client described in interpretation 101-1.C [ET section 101.02];
   (*b*) Disposing of any direct or material indirect financial interest in the client;
   (*c*) Collecting or repaying any loans to or from the client, except for loans specifically permitted or grandfathered under interpretation 101-5 [ET section 101.07];
   (*d*) Ceasing to participate[1] in all employee benefit plans sponsored by the client, unless the client is legally required to allow the individual to participate in the plan (for example, COBRA) and the individual pays 100 percent of the cost of participation on a current basis; and

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[1] See Ethics Ruling No. 107, "Participation in Health and Welfare Plan of Client" [ET section 191.214–.215], for instances in which participation was the result of permitted employment of the individual's spouse or spousal equivalent.

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(*e*) Liquidating or transferring all vested benefits in the client's defined benefit plans, defined contribution plans, deferred compensation plans, and other similar arrangements at the earliest date permitted under the plan. However, liquidation or transfer is not required if a penalty[2] significant to the benefits is imposed upon liquidation or transfer.

Application of the Independence Rules to a Covered Member's Immediate Family

Except as stated in the following paragraph, a covered member's immediate family is subject to rule 101 [ET section 101.01], and its interpretations and rulings.

The exceptions are that independence would not be considered to be impaired solely as a result of the following:

1. An individual in a covered member's immediate family was employed by the client in a position other than a **key position**.
2. In connection with his or her employment, an individual in the immediate family of one of the following covered members participated in a retirement, savings, compensation, or similar plan that is a client, is sponsored by a client, or that invests in a client (provided such plan is normally offered to all employees in similar positions):
   a. A partner or **manager** who provides ten or more hours of non-attest services to the client; or
   b. Any partner in the **office** in which the lead attest engagement partner primarily practices in connection with the attest engagement.

For purposes of determining materiality under rule 101 [ET section 101.01] the financial interests of the covered member and his or her immediate family should be aggregated.

Application of the Independence Rules to Close Relatives

Independence would be considered to be impaired if—

1. An individual participating on the attest engagement team has a **close relative** who had
   a. A key position with the client, or
   b. A financial interest in the client that
      (i) Was material to the close relative and of which the individual has knowledge; or
      (ii) Enabled the close relative to exercise **significant influence** over the client.
2. An individual in a position to influence the attest engagement or any partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement has a close relative who had
   a. A key position with the client; or
   b. A financial interest in the client that
      (i) Was material to the close relative and of which the individual or partner has knowledge; and
      (ii) Enabled the close relative to exercise significant influence over the client.

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[2] A penalty includes an early withdrawal penalty levied under the tax law but excludes other income taxes that would be owed or market losses that may be incurred as a result of the liquidation or transfer.

Grandfathered Employment Relationships

Employment relationships of a covered member's immediate family and close relatives with an existing attest client that impair independence under this interpretation and that existed as of November 2001, will not be deemed to impair independence provided such relationships were permitted under preexisting requirements of rule 101 [ET section 101.01], and its interpretations and rulings.

Other Considerations

It is impossible to enumerate all circumstances in which the appearance of independence might be questioned. Members should consider whether personal and business relationships between the member and the client or an individual associated with the client would lead a reasonable person aware of all the relevant facts to conclude that there is an unacceptable threat to the member's and the firm's independence.

[Paragraph added by adoption of the Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, November 1991, effective January 1, 1992, with earlier application encouraged, by the Professional Ethics Executive Committee. Revised, effective February 28, 1998, by the Professional Ethics Executive Committee. Revised, November 2001, effective May 31, 2002, with earlier application encouraged, by the Professional Ethics Executive Committee. Revised, effective July 31, 2002, by the Professional Ethics Executive Committee. Revised, effective March 31, 2003, by the Professional Ethics Executive Committee. Revised, effective April 30, 2003, by the Professional Ethics Executive Committee.]

[.03] [101-1] [Formerly paragraph .02 renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Formerly interpretation 101-1, renumbered as 101-4 and moved to paragraph .06, April 1992.]

.04 101-2—Employment or association with attest clients. A firm's independence will be considered to be impaired with respect to a client if a partner or professional employee leaves the firm and is subsequently employed by or associated with that client in a key position unless all the following conditions are met:

1. Amounts due to the former partner or professional employee for his or her previous interest in the firm and for unfunded, vested retirement benefits are not material to the firm, and the underlying formula used to calculate the payments remains fixed during the payout period. Retirement benefits may also be adjusted for inflation and interest may be paid on amounts due.

2. The former partner or professional employee is not in a position to influence the accounting firm's operations or financial policies.

3. The former partner or professional employee does not participate or appear to participate in, and is not associated with the firm, whether or not compensated for such participation or association, once employment or association with the client begins. An appearance of participation or association results from such actions as:

- The individual provides consultation to the firm.
- The firm provides the individual with an office and related amenities (for example, secretarial and telephone services).
- The individual's name is included in the firm's office directory.
- The individual's name is included as a member of the firm in other membership lists of business, professional, or civic organizations, unless the individual is clearly designated as retired.

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4. The ongoing attest engagement team considers the appropriateness or necessity of modifying the engagement procedures to adjust for the risk that, by virtue of the former partner or professional employee's prior knowledge of the audit plan, audit effectiveness could be reduced.

5. The firm assesses whether existing attest engagement team members have the appropriate experience and stature to effectively deal with the former partner or professional employee and his or her work, when that person will have significant interaction with the attest engagement team.

6. The subsequent attest engagement is reviewed to determine whether the engagement team members maintained the appropriate level of skepticism when evaluating the representations and work of the former partner or professional employee, when the person joins the client in a key position within one year of disassociating from the firm and has significant interaction with the attest engagement team. The review should be performed by a professional with appropriate stature, expertise, and objectivity and should be tailored based on the position that the person assumed at the client, the position he or she held at the firm, the nature of the services he or she provided to the client, and other relevant facts and circumstances. Appropriate actions, as deemed necessary, should be taken based on the results of the review.

Responsible members within the firm should implement procedures for compliance with the preceding conditions when firm professionals are employed or associated with attest clients.

With respect to conditions 4, 5, and 6, the procedures adopted will depend on several factors, including whether the former partner or professional employee served as a member of the engagement team, the positions he or she held at the firm and has accepted at the client, the length of time that has elapsed since the professional left the firm, and the circumstances of his or her departure.[3]

Considering Employment or Association With the Client

When a member of the attest engagement team or an individual in a position to influence the attest engagement intends to seek or discuss potential employment or association with an attest client, or is in receipt of a specific offer of employment from an attest client, independence will be impaired with respect to the client unless the person promptly reports such consideration or offer to an appropriate person in the firm, and removes himself or herself from the engagement until the employment offer is rejected or employment is no longer being sought. When a covered member becomes aware that a member of the attest engagement team or an individual in a position to influence the attest engagement is considering employment or association with a client, the covered member should notify an appropriate person in the firm.

The appropriate person should consider what additional procedures may be necessary to provide reasonable assurance that any work performed for the client by that person was performed with objectivity and integrity as required under rule 102 [ET section 102.01]. Additional procedures, such as reperformance of work already done, will depend on the nature of the engagement and the individual involved.

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[3] An inadvertent and isolated failure to meet conditions 4, 5, and 6 would not impair independence provided that the required procedures are performed promptly upon discovery of the failure to do so, and all other provisions of the interpretation are met. [Footnote added, effective April 30, 2003, by the Professional Ethics Executive Committee.]

[Replaces previous interpretation 101-2, *Retired Partners and Firm Independence,* August, 1989, effective August 31, 1989. Revised, effective December 31, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, effective April 30, 2003, by the Professional Ethics Executive Committee.]

.05 101-3—Performance of other services. A member or his or her firm ("member") who performs an attest engagement for a client may also perform other nonattest services ("other services") for that client. Before a member performs other services for an attest client, he or she must evaluate the effect of such services on his or her independence. In particular, care should be taken not to perform management functions or make management decisions for the attest client, the responsibility for which remains with the client's board of directors and management.

Before performing other services, the member should establish an understanding with the client regarding the objectives of the engagement, the services to be performed, management's responsibilities, the member's responsibilities, and the limitations of the engagement. It is preferable that this understanding be documented in an engagement letter. In addition, the member should be satisfied that the client is in a position to have an informed judgment on the results of the other services and that the client understands its responsibility to—

1. Designate a management-level individual or individuals to be responsible for overseeing the services being provided.
2. Evaluate the adequacy of the services performed and any findings that result.
3. Make management decisions, including accepting responsibility for the results of the other services.
4. Establish and maintain internal controls, including monitoring ongoing activities.

General Activities

The following are some general activities that would be considered to impair a member's independence:

- Authorizing, executing or consummating a transaction, or otherwise exercising authority on behalf of a client or having the authority to do so
- Preparing source documents[4] or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders)
- Having custody of client assets
- Supervising client employees in the performance of their normal recurring activities

[4] The documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports, which do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders. [Footnote renumbered by the revision of interpretation 101-2, April 2003.]

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- Determining which recommendations of the member should be implemented
- Reporting to the board of directors on behalf of management
- Serving as a client's stock transfer or escrow agent, registrar, general counsel or its equivalent

The examples in the following table identify the effect that performance of other services for an attest client can have on a member's independence. These examples are not intended to be all-inclusive of the types of other services performed by members.

Impact on Independence of Performance of Other Services

Type of Other Service	*Independence Would Not Be Impaired*	*Independence Would Be Impaired*
Bookkeeping	• Record transactions for which management has determined or approved the appropriate account classification, or post coded transactions to a client's general ledger. • Prepare financial statements based on information in the trial balance. • Post client-approved entries to a client's trial balance. • Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the client. • Provide data-processing services.	• Determine or change journal entries, account codings or classification for transactions, or other accounting records without obtaining client approval. • Authorize or approve transactions. • Prepare source documents or originate data. • Make changes to source documents without client approval.
Payroll and other disbursement	• Using payroll time records provided and approved by the client, generate unsigned checks, or process client's payroll. • Transmit client-approved payroll or other disbursement information to a financial institution provided the client has authorized the member to make the transmission and has made arrangements for the financial institution to limit the corresponding individual payments as to amount and payee. In addition, once transmitted, the client must authorize the financial institution to process the information. • Make electronic payroll tax payments in accordance with U.S. Treasury Department guidelines provided the client has made arrangements for its financial institution to limit such payments to a named payee.[5]	• Accept responsibility to authorize payment of client funds, electronically or otherwise, except as specifically provided for with respect to electronic payroll tax payments. • Accept responsibility to sign or cosign client checks, even if only in emergency situations. • Maintain a client's bank account or otherwise have custody of a client's funds or make credit or banking decisions for the client. • Sign payroll tax return on behalf of client management. • Approve vendor invoices for payment.

[5] Although this type of transaction may be considered by some to be similar to signing checks or disbursing funds, the Professional Ethics Executive Committee concluded that making electronic payroll tax payments under the specified criteria would not impair a member's independence. [Footnote renumbered by the revision of interpretation 101-2, April 2003.]

Type of Other Service	*Independence Would Not Be Impaired*	*Independence Would Be Impaired*
Benefit plan administration[6]	• Communicate summary plan data to plan trustee. • Advise client management regarding the application or impact of provisions of the plan document. • Process transactions (e.g., investment/benefit elections or increase/decrease contributions to the plan; data entry; participant confirmations; and processing of distributions and loans) initiated by plan participants through the member's electronic medium, such as an interactive voice response system or Internet connection or other media. • Prepare account valuations for plan participants using data collected through the member's electronic or other media. • Prepare and transmit participant statements to plan participants based on data collected through the member's electronic or other medium.	• Make policy decisions on behalf of client management. • When dealing with plan participants, interpret the plan document on behalf of management without first obtaining management's concurrence. • Make disbursements on behalf of the plan. • Have custody of assets of a plan. • Serve a plan as a fiduciary as defined by ERISA.
Investment—advisory or management	• Recommend the allocation of funds that a client should invest in various asset classes, depending upon the client's desired rate of return, risk tolerance, etc. • Perform recordkeeping and reporting of client's portfolio balances including providing a comparative analysis of the client's investments to third-party benchmarks. • Review the manner in which a client's portfolio is being managed by investment account managers, including determining whether the managers are (1) following the guidelines of the client's investment policy statement; (2) meeting the client's investment objectives; and (3) conforming to the client's stated investment styles. • Transmit a client's investment selection to a broker-dealer or equivalent provided the client has authorized the broker-dealer or equivalent to execute the transaction.	• Make investment decisions on behalf of client management or otherwise have discretionary authority over a client's investments. • Execute a transaction to buy or sell a client's investment. • Have custody of client assets, such as taking temporary possession of securities purchased by a client.
Corporate finance—consulting or advisory	• Assist in developing corporate strategies.	• Commit the client to the terms of a transaction or consummate a transaction on behalf of the client.

[6] When auditing plans subject to the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations, which may be more restrictive, must be followed. [Footnote renumbered by the revision of interpretation 101-2, April 2003.]

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Type of Other Service	Independence Would Not Be Impaired	Independence Would Be Impaired
	• Assist in identifying or introducing the client to possible sources of capital that meet the client's specifications or criteria. • Assist in analyzing the effects of proposed transactions including providing advice to a client during negotiations with potential buyers, sellers, or capital sources. • Assist in drafting an offering document or memorandum. • Participate in transaction negotiations in an advisory capacity. • Be named as a financial adviser in a client's private placement memoranda or offering documents.	• Act as a promoter, underwriter, broker-dealer, or guarantor of client securities, or distributor of private placement memoranda or offering documents. • Maintain custody of client securities.
Appraisal, valuation or actuarial	• Test the reasonableness of the value placed on an asset or liability included in a client's financial statements by preparing a separate valuation of that asset or liability. • Perform a valuation of a client's business when all significant matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on the results of the valuation.	• Prepare a valuation of an employer's securities contained in an employee stock ownership plan (ESOP) to support transactions with participants, plan contributions, and allocations within the ESOP, when the client is not in a position to have an informed judgment on the results of this valuation. • Prepare an appraisal, valuation, or actuarial report using assumptions determined by the member and not approved by the client.
Executive or employee search	• Recommend a position description or candidate specifications. • Solicit and perform screening of candidates and recommend qualified candidates to a client based on the client-approved criteria (e.g., required skills and experience). • Participate in employee hiring or compensation discussions in an advisory capacity.	• Commit the client to employee compensation or benefit arrangements. • Hire or terminate client employees.
Business risk consulting	• Provide assistance in assessing the client's business risks and control processes. • Recommend a plan for making improvements to a client's control processes and assist in implementing these improvements.	• Make or approve business risk decisions. • Present business risk considerations to the board or others on behalf of management.
Information systems—design, installation or integration	• Design, install or integrate a client's information system, provided the client makes all management decisions. • Customize a prepackaged accounting or information system, provided the client makes all management decisions. • Provide the initial training and instruction to client employees on a newly implemented information and control system.	• Supervise client personnel in the daily operation of a client's information system. • Operate a client's local area network (LAN) system when the client has not designated a competent individual, preferably within senior management, to be responsible for the LAN.

[Formerly paragraph .04, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, effective May 31, 1999, by the Professional Ethics Executive Committee. Revised, effective April 30, 2000, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

.06 101-4—Honorary directorships and trusteeships of not-for-profit organization. Partners or professional employees of a firm (individual) may be 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. An individual who permits his or her name to be used in this manner would not be considered to impair independence under rule 101 [ET section 101.01] provided his or her position is clearly honorary, and he or she cannot vote or otherwise participate in board or management functions. If the individual is named in letterheads and externally circulated materials, he or she must be identified as an honorary director or honorary trustee. [Formerly paragraph .05, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Formerly interpretation 101-1. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Renumbered as interpretation 101-4 and moved from paragraph .03, April, 1992. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

.07 101-5—Loans from financial institution clients and related terminology. Interpretation 101-1.A.4 [ET section 101.02] provides that, except as permitted in this interpretation, independence shall be considered to be impaired if a **covered member*** has any **loan** to or from a **client**, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests. This interpretation describes the conditions a covered member (or his or her **immediate family**) must meet in order to apply an exception for a "Grandfathered Loan" or "Other Permitted Loan."

Grandfathered Loans

Unsecured loans that are not material to the covered member's net worth, home mortgages,[7] and other secured loans[7] are grandfathered if:

1. they were obtained from a **financial institution** under that institution's **normal lending procedures, terms, and requirements**,

2. after becoming a covered member they are kept current as to all terms at all times and those terms do not change in any manner not provided for in the original loan agreement,[8] and

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* Terms shown in **boldface** type upon first usage in this interpretation are defined in ET section 92, *Definitions*.

[7] The value of the collateral securing a home mortgage or other secured loan should equal or exceed the remaining balance of the grandfathered loan during the term of the loan. If the value of the collateral is less than the remaining balance of the grandfathered loan, the portion of the loan that exceeds the value of the collateral must not be material to the covered member's net worth. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

[8] Changes in the terms of the loan include, but are not limited to, a new or extended maturity date, a new interest rate or formula, revised collateral, or revised or waived covenants. [Footnote added, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

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3. they were:
   (*a*) obtained from the financial institution prior to its becoming a client requiring independence; or
   (*b*) obtained from a financial institution for which independence was not required and were later sold to a client for which independence is required; or
   (*c*) obtained prior to February 5, 2001 and met the requirements of previous provisions of Interpretation 101-5 [ET section 101.07] covering grandfathered loans; or
   (*d*) obtained between February 5, 2001 and May 31, 2002, and the covered member was in compliance with the applicable independence requirements of the SEC during that period; or
   (*e*) obtained after May 31, 2002 from a financial institution client requiring independence by a borrower prior to his or her becoming a covered member with respect to that client

In determining when a loan was obtained, the date a loan commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained.

For purposes of applying the grandfathered loans provision when the covered member is a partner in a partnership:

- a loan to a limited partnership (or similar type of entity) or a general partnership would be ascribed to each covered member who is a partner in the partnership on the basis of their legal liability as a limited or general partner if:
  - the covered member's interest in the limited partnership, either individually or combined with the interest of one or more covered members, exceeds 50 percent of the total limited partnership interest; or
  - the covered member, either individually or together with one or more covered members, can control the general partnership.
- even if no amount of a partnership loan is ascribed to the covered member(s) identified above, independence is considered to be impaired if the partnership renegotiates the loan or enters into a new loan that is not one of the permitted loans described below.

Other Permitted Loans

This interpretation permits only the following new loans to be obtained from a financial institution client for which independence is required. These loans must be obtained under the institution's normal lending procedures, terms, and requirements and must, at all times, be kept current as to all terms.

1. Automobile loans and leases collateralized by the automobile.
2. Loans fully collateralized by the cash surrender value of an insurance policy.
3. Loans fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").
4. Credit cards and cash advances where the aggregate outstanding balance on the current statement is reduced to $5,000 or less by the payment due date.

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.

[Revised, November 30, 1987, by the Professional Ethics Executive Committee. 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, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, November 1991, effective January 1, 1992 with earlier application encouraged, by the Professional Ethics Executive Committee. Revised, effective February 28, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, November 2002, by the Professional Ethics Executive Committee.]

.08 101-6—The effect of actual or threatened litigation on independence. In some circumstances, independence may be considered to be impaired as a result of litigation or the expressed intention to commence litigation as discussed below.

Litigation between client and member

The relationship between the management of the client and a covered member 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 covered member so that he or she can exercise 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 a covered member, the covered member and the client's management may be placed in adversarial positions in which the management's willingness to make complete disclosures and the covered member's objectivity may be affected by self-interest.

For the reasons outlined above, independence may be impaired whenever the covered member and the covered member's client or its management are in threatened or actual positions of material adverse interests by reason of threatened or actual 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 covered member 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 covered member alleging deficiencies in audit work for the client would be considered to impair independence if the auditor concludes that it is probable that such a claim will be filed.

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4. Litigation not related to performance of an attest engagement for the client (whether threatened or actual) for an amount not material to the covered member's firm[9] or to the client company[9] would not generally 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

A covered member may also become involved in litigation ("primary litigation") in which the covered member and the client 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 or its management, its officers, directors, underwriters and covered members under the securities laws. Such primary litigation in itself would not alter fundamental relationships between the client or its management and the covered member and therefore would not be deemed to have an adverse impact on independence. These situations should be examined carefully, however, since the potential for adverse interests may exist if cross-claims are filed against the covered member alleging that the covered member is responsible for any deficiencies or if the covered member alleges fraud or deceit by the present management as a defense. In assessing the extent to which independence may be impaired under these conditions, the covered member should consider the following additional guidelines:

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 the covered member 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 covered member's firm[10] or to the client.
2. The assertion of cross-claims against the covered member by underwriters would not generally impair independence if no such claims are asserted by the client or the present management.
3. If any of the persons who file cross-claims against the covered member are also officers or directors of other clients of the covered member, independence with respect to such other clients would not generally be considered to be impaired.

Other third-party litigation

Another type of third-party litigation against the covered member may be commenced by a lending institution, other creditor, security holder, or insurance company who alleges reliance on financial statements of the client with

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[9] 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 covered member should consider the nature of the controversy underlying the litigation and all other relevant factors in reaching a judgment. [Footnote renumbered and revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003.]

[10] See footnote 9. [Footnote renumbered, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003.]

which the covered member is associated 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 covered member in the name of the client to recover losses reimbursed to the client. These types of litigation would not normally affect independence with respect to a client who is either not the plaintiff or is only the nominal plaintiff, since the relationship between the covered member and client management would not be affected. They should be examined carefully, however, since the potential for adverse interests may exist if the covered member 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 covered member ("the plaintiff client"), 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 covered member's firm[11] or to the plaintiff client.

Effects of impairment of independence

If the covered member 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 independence, the covered member should either (*a*) disengage himself or herself, or (*b*) disclaim an opinion because of lack of independence. Such disengagement may take the form of resignation or cessation of any attest engagement then in progress pending resolution of the issue between the parties.

Termination of impairment

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

[Formerly paragraph .07, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, effective September 30, 1995, by the Professional Ethics Executive Committee, by deletion of subhead and paragraph and reissuance as ethics ruling No. 100, *Actions Permitted When Independence is Impaired*, under rule 101. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[.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 nonclients having investor or investee relationships with a covered member's client.

Introduction

Financial interests in nonclients that are related in various ways to a client may impair independence. Situations in which the nonclient investor is a partnership are covered in other rulings [ET section 191.138–.139, .158–.159, and .162–.163].

[11] See footnote 9. [Footnote renumbered, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003.]

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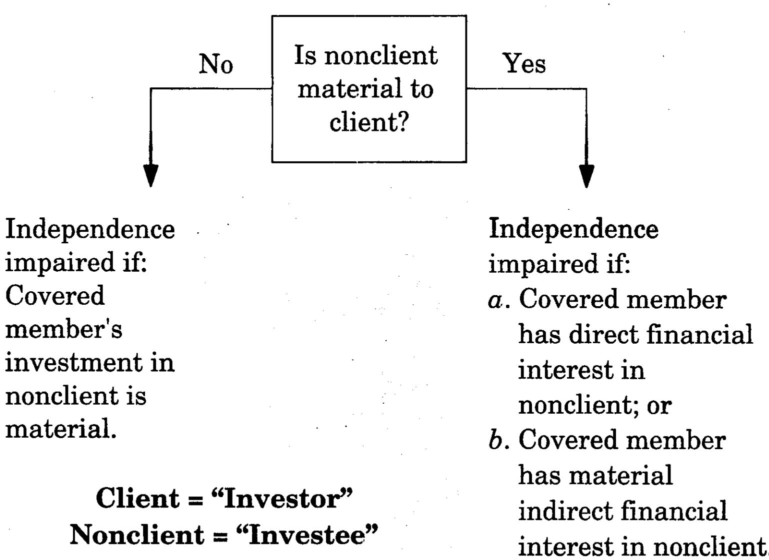
Terminology

The following specifically identified terms are used in this interpretation as indicated:

1. Client. The term client means the person or entity with whose financial statements a covered member is associated.
2. Significant Influence. The term significant influence is as defined in Accounting Principles Board (APB) Opinion 18 [AC I82].
3. Investor. The term investor means (*a*) a parent, (*b*) a general partner, or (*c*) a natural person or corporation that has the ability to exercise significant influence.
4. Investee. The term investee means (*a*) a subsidiary or (*b*) an entity over which an investor has the ability to exercise significant influence.

Interpretation

Where a nonclient investee is material to a client investor, any direct or material indirect financial interest of a covered member in the nonclient investee would be considered to impair independence with respect to the client investor. If the nonclient investee is immaterial to the client investor, a covered member's material investment in the nonclient investee would cause an impairment of independence.



Where a client investee is material to nonclient investor, any direct or material indirect financial interest of a covered member in the nonclient investor would be considered to impair independence with respect to the client investee. If the client investee is immaterial to the nonclient investor, and if a covered member's financial interest in the nonclient investor allows the covered member to exercise significant influence over the actions of the nonclient investor, independence would be considered to be impaired.

Is client material to nonclient?

No: Independence *not* impaired unless covered member's investment allows the covered member to exercise significant influence over nonclient.

Nonclient = "Investor"
Client = "Investee"

Yes: Independence impaired if:

a. Covered member has direct financial interest in nonclient; or
b. Covered member has material indirect financial interest in nonclient.

Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The covered member should make a reasonable inquiry to determine whether such relationships exist, and if 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 independence.

In general, in brother-sister common control situations, an immaterial financial interest of a covered member in the nonclient investee would not impair independence with respect to the client investee, provided the covered member could not exercise significant influence over the nonclient investor. However, if a covered member's financial interest in a nonclient investee is material, the covered member could be influenced by the nonclient investor, thereby impairing independence with respect to the client investee. In like manner, in a joint venture situation, an immaterial financial interest of a covered member in the nonclient investor would not impair the independence of the covered member with respect to the client investor, provided that the covered member could not exercise significant influence over the nonclient investor.

If a covered member does not and could not reasonably be expected to have knowledge of the financial interests or relationship described in this interpretation, independence would not be considered to be impaired under this interpretation.

[Revised, December 31, 1983, by the Professional Ethics Executive Committee. Formerly paragraph .09 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. Replaces previous interpretation 101-8, *Effect on Independence of Financial Interests in Nonclients Having Investor or Investee Relationships With a Member's Client*, April

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1991, effective April 30, 1991. Revised, December 31, 1991, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[.11] [101-9]—[Deleted]

.12 101-10—The effect on independence of relationships with entities included in the governmental financial statements.[12] For purposes of this Interpretation, a financial reporting entity's basic financial statements, issued in conformity with generally accepted accounting principles in the United States of America, include the government-wide financial statements (consisting of the entity's governmental activities, business-type activities, and discretely presented component units), the fund financial statements (consisting of major funds, nonmajor governmental and enterprise funds, internal service funds, blended component units, and fiduciary funds) and other entities disclosed in the notes to the basic financial statements. Entities that should be disclosed in the notes to the basic financial statements include, but are not limited to, related organizations, joint ventures, jointly governed organizations, and component units of another government with characteristics of a joint venture or jointly governed organization.

Auditor of Financial Reporting Entity

A covered member issuing a report on the basic financial statements of the financial reporting entity must be independent of the financial reporting entity, as defined in paragraph 1 of this Interpretation. However, independence is not required with respect to any major or nonmajor fund, internal service fund, fiduciary fund, or component unit or other entities disclosed in the financial statements, where the primary auditor explicitly states reliance on other auditors reports thereon. In addition, independence is not required with respect to an entity disclosed in the notes to the basic financial statements, if the financial reporting entity is not financially accountable for the organization and the required disclosure does not include financial information. For example, a disclosure limited to the financial reporting entity's ability to appoint the governing board members would not require a member to be independent of that organization.

However, the covered member and his or her immediate family should not hold a key position with a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or other entity that should be disclosed in the notes to the basic financial statements.

Auditor of a Major Fund, Nonmajor Fund, Internal Service Fund, Fiduciary Fund, or Component Unit of the Financial Reporting Entity or Other Entity That Should Be Disclosed in the Notes to the Basic Financial Statements

A covered member who is auditing the financial statements of a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or an entity that should be disclosed in the notes to

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[12] Except for a financial reporting entity's basic financial statements, which is defined within the text of this Interpretation, certain terminology used throughout the Interpretation is specifically defined by the Governmental Accounting Standards Board. [Footnote renumbered, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003.]

the basic financial statements of the financial reporting entity, but is not auditing the primary government, should be independent with respect to those financial statements that the covered member is reporting upon. The covered member is not required to be independent of the primary government or other funds or component units of the reporting entity or entities that should be disclosed in the notes to the basic financial statements. However, the covered member and his or her immediate family should not hold a key position within the primary government. For purposes of this Interpretation, a covered member and immediate family member would not be considered employed by the primary government if the exceptions provided for in ET section 92.03 are met.[13], [14]

[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. Replaces previous interpretation 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*, April 1991, effective April 30, 1991. Replaces previous interpretation 101-10, *The Effect on Independence of Relationships With Entities Included in the Governmental Financial Statements*, January 1996, effective January 31, 1996. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, effective March 31, 2003, by the Professional Ethics Executive Committee.]

.13 101-11—Modified application of rule 101 for certain engagements to issue restricted-use reports under the Statements on Standards for Attestation Engagements

Rule 101: *Independence* [ET section 101.01], and its interpretations and rulings apply to all attest engagements. However, for purposes of performing engagements to issue reports under the Statements on Standards for Attestation Engagements (SSAEs) that are restricted to identified parties, only the following covered members, and their immediate families, are required to be independent with respect to the responsible party[15] in accordance with rule 101 [ET section 101.01]:

- Individuals participating on the attest engagement team;
- Individuals who directly supervise or manage the attest engagement partner; and
- Individuals who consult with the attest engagement team regarding technical or industry-related issues specific to the attest engagement.

In addition, independence would be considered to be impaired if the firm had a financial relationship covered by interpretation 101-1.A [ET section 101.02] with the responsible party that was material to the firm.

In cases where the firm provides non-attest services to the responsible party that are proscribed under interpretation 101-3 [ET section 101.05] and that do not directly relate to the subject matter of the attest engagement, independence would not be considered to be impaired.

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[13] [Footnote deleted by the Professional Ethics Executive Committee, March 2003. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

[14] [Footnote deleted by the Professional Ethics Executive Committee, March 2003. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

[15] As defined in the SSAEs. [Footnote renumbered, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote subsequently renumbered by the revision of interpretation 101-2, April 2003.]

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In circumstances where the individual or entity that engages the firm is not the responsible party or associated with the responsible party, individuals on the attest engagement team need not be independent of the individual or entity, but should consider their responsibilities under interpretation 102-2 [ET section 102.03] with regard to any relationships that may exist with the individual or entity that engages them to perform these services.

This interpretation does not apply to an engagement performed under the Statements on Auditing Standards or Statements on Standards for Accounting and Review Services, or to an examination or review engagement performed under the Statements on Standards for Attestation Engagements.

[Replaces previous interpretation 101-11, *Independence and Attest Engagements*, January 1996, effective January 31, 1996. Revised, effective November 30, 2001, by the Professional Ethics Executive Committee.]

.14 101-12—Independence and cooperative arrangements with clients. Independence will be considered to be impaired if, during the period of a professional engagement, a member or his or her firm had any cooperative arrangement with the client that was material to the member's firm or to the client.

Cooperative Arrangement—A cooperative arrangement exists when a member's firm and a client jointly participate in a business activity. The following are examples, which are not all inclusive, of cooperative arrangements:

1. Prime/subcontractor arrangements to provide services or products to a third party
2. Joint ventures to develop or market products or services
3. Arrangements to combine one or more services or products of the firm with one or more services or products of the client and market the package with references to both parties
4. Distribution or marketing arrangements under which the firm acts as a distributor or marketer of the client's products or services, or the client acts as the distributor or marketer of the products or services of the firm

Nevertheless, joint participation with a client in a business activity does not ordinarily constitute a cooperative arrangement when all the following conditions are present:

a. The participation of the firm and the participation of the client are governed by separate agreements, arrangements, or understandings.

b. The firm assumes no responsibility for the activities or results of the client, and vice versa.

c. Neither party has the authority to act as the representative or agent of the other party.

In addition, the member's firm should consider the requirements of rule 302 [ET section 302.01] and rule 503 [ET section 503.01].

[Effective November 30, 1993. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

.15 101-13—Extended audit services. A member or his or her firm ("member") may be asked by a client, for which the member performs an attest engagement, to perform extended audit services. These services may include assistance in the performance of the client's internal audit activities and/or an extension of the member's audit service beyond the requirements of generally accepted auditing standards (hereinafter referred to as "extended audit services").

A member's performance of extended audit services would not be considered to impair independence with respect to a client for which the member also performs an attest engagement, provided that the member or his or her firm is not an employee of the client or does not act or appear to act in a capacity equivalent to a member of client management.

The responsibilities of the client, including its board of directors, audit committee, and management, and the responsibilities of the member, as described below, should be understood by both the member and the client. It is preferable that this understanding be documented in an engagement letter that indicates that the member may not perform management functions or make management decisions.

A member should be satisfied that the client understands its responsibility for establishing and maintaining internal control and directing the internal audit function, if any. As part of its responsibility to establish and maintain internal control, management monitors internal control to assess the quality of its performance over time. Monitoring can be accomplished through ongoing activities, separate evaluations or a combination of both.

Ongoing monitoring activities are the procedures designed to assess the quality of internal control performance over time and that are built into the normal recurring activities of an entity and include regular management and supervisory activities, comparisons, reconciliations and other routine actions. Separate evaluations focus on the continued effectiveness of a client's internal control. A member's independence would not be impaired by the performance of separate evaluations of the effectiveness of a client's internal control, including separate evaluations of the client's ongoing monitoring activities.

The member should understand that, with respect to the internal audit function, the client is responsible for—

- Designating a competent individual or individuals, preferably within senior management, to be responsible for the internal audit function
- Determining the scope, risk and frequency of internal audit activities, including those to be performed by the member providing extended audit services
- Evaluating the findings and results arising from the internal audit activities, including those performed by the member providing extended audit services
- Evaluating the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the member

The member should be satisfied that the board of directors and/or audit committee is informed of roles and responsibilities of both client management and the member with respect to the engagement to provide extended audit services as a basis for the board of directors and/or audit committee to establish guidelines for both management and the member to follow in carrying out these responsibilities and monitoring how well the respective responsibilities have been met.

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The member should be responsible for performing the audit procedures in accordance with the terms of the engagement and reporting thereon. The day-to-day performance of the audit procedures should be directed, reviewed, and supervised by the member. The report should include information that allows the individual responsible for the internal audit function to evaluate the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures. This report may include recommendations for improvements in systems, processes, and procedures. The member may assist the individual responsible for the internal audit function in performing preliminary audit risk assessments, preparing audit plans, and recommending audit priorities. However, the member should not undertake any responsibilities that are required, as described above, to be performed by the individual responsible for the internal audit function.

Performing procedures that are generally of the type considered to be extensions of the member's audit scope applied in the audit of the client's financial statements, such as confirming of accounts receivable and analyzing fluctuations in account balances, would not impair the independence even if the extent of such testing exceeds that required by generally accepted auditing standards.

The following are examples of activities that, if performed as part of an extended audit service, would be considered to impair independence:

- Performing ongoing monitoring activities or control activities (for example, reviewing loan originations as part of the client's approval process or reviewing customer credit information as part of the customer's sales authorization process) that affect the execution of transactions or ensure that transactions are properly executed, accounted for, or both, and performing routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function
- Determining which, if any, recommendations for improving the internal control system should be implemented
- Reporting to the board of directors or audit committee on behalf of management or the individual responsible for the internal audit function
- Authorizing, executing, or consummating transactions or otherwise exercising authority on behalf of the client
- Preparing source documents on transactions
- Having custody of assets
- Approving or being responsible for the overall internal audit work plan including the determination of the internal audit risk and scope, project priorities and frequency of performance of audit procedures
- Being connected with the client as an employee or in any capacity equivalent to a member of client management (for example, being listed as an employee in client directories or other client publications, permitting himself or herself to be referred to by title or description as supervising or being in charge of the client's internal audit function, or using the client's letterhead or internal correspondence forms in communications)

The foregoing list in not intended to be all inclusive.

[Effective August 31, 1996. Revised, effective September 30, 1999, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

.16 101-14—The effect of alternative practice structures on the applicability of independence rules. Because of changes in the manner in which **members*** are structuring their practices, the AICPA's professional ethics executive committee (PEEC) studied various alternatives to "traditional structures" to determine whether additional independence requirements are necessary to ensure the protection of the public interest.

In many "nontraditional structures," a substantial (the nonattest) portion of a member's practice is conducted under public or private ownership, and the attest portion of the practice is conducted through a separate firm owned and controlled by the member. All such structures must comply with applicable laws, regulations, and Rule 505, *Form of Organization and Name* [ET section 505.01]. In complying with laws, regulations, and rule 505 [ET section 505.01], many elements of quality control are required to ensure that the public interest is adequately protected. For example, all services performed by members and persons over whom they have control must comply with standards promulgated by AICPA Council-designated bodies, and, for all other firms providing attest services, enrollment is required in an AICPA-approved practice-monitoring program. Finally, and importantly, the members are responsible, financially and otherwise, for all the attest work performed. Considering the extent of such measures, PEEC believes that the additional independence rules set forth in this interpretation are sufficient to ensure that attest services can be performed with objectivity and, therefore, the additional rules satisfactorily protect the public interest.

Rule 505 [ET section 505.01] and the following independence rules for an alternative practice structure (APS) are intended to be conceptual and applicable to all structures where the "traditional firm" engaged in attest services is closely aligned with another organization, public or private, that performs other professional services. The following paragraph and the chart below provide an example of a structure in use at the time this interpretation was developed. Many of the references in this interpretation are to the example. PEEC intends that the concepts expressed herein be applied, in spirit and in substance, to variations of the example structure as they develop.

The example APS in this interpretation is one where an existing CPA practice ("Oldfirm") is sold by its owners to another (possibly public) entity ("PublicCo"). PublicCo has subsidiaries or divisions such as a bank, insurance company or broker-dealer, and it also has one or more professional service subsidiaries or divisions that offer to clients nonattest professional services (e.g., tax, personal financial planning, and management consulting). The owners and employees of Oldfirm become employees of one of PublicCo's subsidiaries or divisions and may provide those nonattest services. In addition, the owners of Oldfirm form a new CPA firm ("Newfirm") to provide attest services. CPAs, including the former owners of Oldfirm, own a majority of Newfirm (as to vote and financial interests). Attest services are performed by Newfirm and are supervised by its owners. The arrangement between Newfirm and PublicCo (or one of its subsidiaries or divisions) includes the lease of employees, office space and equipment; the performance of back-office functions such as billing and collections; and advertising. Newfirm pays a negotiated amount for these services.

APS Independence Rules for Covered Members

The term **covered member** in an APS includes both employed and leased individuals. The **firm** in such definition would be Newfirm in the example APS.

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* Terms shown in **boldface** type upon first usage in this interpretation are defined in ET section 92, *Definitions*. [Footnote added, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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All covered members, including the firm, are subject to rule 101 [ET section 101.01] and its interpretations and rulings in their entirety. For example, no covered member may have, among other things, a direct financial interest in or a loan to or from an attest client of Newfirm.

Partners of one Newfirm generally would not be considered partners of another Newfirm except in situations where those partners perform services for the other Newfirm or where there are significant shared economic interests between partners of more than one Newfirm. If, for example, partners of Newfirm 1 perform services in Newfirm 2, such owners would be considered to be partners of both Newfirms for purposes of applying the independence rules.

APS Independence Rules for Persons and Entities Other Than Covered Members

As stated above, the independence rules normally extend only to those persons and entities included in the definition of covered member. This normally would include only the "traditional firm" (Newfirm in the example APS), those covered members who own or are employed or leased by Newfirm, and entities controlled by one or more of such persons. Because of the close alignment in many APSs between persons and entities included in covered member and other persons and entities, to ensure the protection of the public interest, PEEC believes it appropriate to require restrictions in addition to those required in a traditional firm structure. Those restrictions are divided into two groups:

1. *Direct Superiors*. Direct Superiors are defined to include those persons so closely associated with a partner or manager who is a covered member, that such persons can *directly control* the activities of such partner or manager. For this purpose, a person who can *directly control* is the immediate superior of the partner or manager who has the power to direct the activities of that person so as to be able to directly or indirectly (e.g. through another entity over which the Direct Superior can exercise significant influence[16]) derive a benefit from that person's activities. Examples would be the person who has day-to-day responsibility for the activities of the partner or manager and is in a position to recommend promotions and compensation levels. This group of persons is, in the view of PEEC, so closely aligned through direct reporting relationships with such persons that their interests would seem to be inseparable. *Consequently, persons considered Direct Superiors, and entities within the APS over which such persons can exercise significant influence*[17] *are subject to rule 101 [ET section 101.01] and its interpretations and rulings in their entirety.*

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[16] For purposes of this Interpretation, significant influence means having the ability to exercise significant influence over the financial, operating or accounting policies of the entity, for example by (1) being connected with the entity as a promoter, underwriter, voting trustee, general partner or director, (2) being in a policy-making position such as chief executive officer, chief operating officer, chief financial officer or chief accounting officer, or (3) meeting the criteria in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations to determine the ability of an investor to exercise such influence with respect to an entity. The foregoing examples are not necessarily all-inclusive. [Footnote added, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

[17] For purposes of this Interpretation, significant influence means having the ability to exercise significant influence over the financial, operating or accounting policies of the entity, for example by (1) being connected with the entity as a promoter, underwriter, voting trustee, general partner or director, (2) being in a policy-making position such as chief executive officer, chief operating officer, chief financial officer or chief accounting officer, or (3) meeting the criteria in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations to determine the ability of an investor to exercise such influence with respect to an entity. The foregoing examples are not necessarily all-inclusive. [Footnote added, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

2. *Indirect Superiors and Other PublicCo Entities.* Indirect Superiors are those persons who are one or more levels above persons included in Direct Superior. Generally, this would start with persons in an organization structure to whom Direct Superiors report and go up the line from there. PEEC believes that certain restrictions must be placed on Indirect Superiors, but also believes that such persons are sufficiently removed from partners and managers who are covered persons to permit a somewhat less restrictive standard. Indirect Superiors are not connected with partners and managers who are covered members through direct reporting relationships; there always is a level in between. The PEEC also believes that, for purposes of the following, the definition of Indirect Superior also includes the **immediate family** of the Indirect Superior.

PEEC carefully considered the risk that an Indirect Superior, through a Direct Superior, might attempt to influence the decisions made during the engagement for a Newfirm attest client. PEEC believes that this risk is reduced to a sufficiently low level by prohibiting certain relationships between Indirect Superiors and Newfirm attest clients and by applying a materiality concept with respect to financial relationships. If the financial relationship is not material to the Indirect Superior, PEEC believes that he or she would not be sufficiently financially motivated to attempt such influence particularly with sufficient effort to overcome the presumed integrity, objectivity and strength of character of individuals involved in the engagement.

Similar standards also are appropriate for Other PublicCo Entities. These entities are defined to include PublicCo and all entities consolidated in the PublicCo financial statements that are not subject to rule 101 [ET section 101.01] and its interpretations and rulings in their entirety.

The rules for Indirect Superiors and Other PublicCo Entities are as follows:

A. Indirect Superiors and Other PublicCo Entities may *not* have a relationship contemplated by interpretation 101-1.A [ET section 101.02] (e.g., investments, loans, etc.) with an attest client of Newfirm that is material. In making the test for materiality for financial relationships of an Indirect Superior, all the financial relationships with an attest client held by such person should be aggregated and, to determine materiality, assessed in relation to the person's net worth. In making the materiality test for financial relationships of Other PublicCo Entities, all the financial relationships with an attest client held by such entities should be aggregated and, to determine materiality, assessed in relation to the consolidated financial statements of PublicCo. In addition, any Other PublicCo Entity over which an Indirect Superior has direct responsibility cannot have a financial relationship with an attest client that is material in relation to the Other PublicCo Entity's financial statements.

B. Further, financial relationships of Indirect Superiors or Other PublicCo Entities should not allow such persons or entities to exercise significant influence[18] over the attest client. In making the test for

[18] For purposes of this Interpretation, significant influence means having the ability to exercise significant influence over the financial, operating or accounting policies of the entity, for example by (1) being connected with the entity as a promoter, underwriter, voting trustee, general partner or director, (2) being in a policy-making position such as chief executive officer, chief operating officer, chief financial officer or chief accounting officer, or (3) meeting the criteria in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations to determine the ability of an investor to exercise such influence with respect to an entity. The foregoing examples are not necessarily all-inclusive. [Footnote added, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

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significant influence, financial relationships of all Indirect Superiors and Other PublicCo Entities should be aggregated.

C. Neither Other PublicCo Entities nor any of their employees may be connected with an attest client of Newfirm as a promoter, underwriter, voting trustee, director or officer.

D. Except as noted in C above, Indirect Superiors and Other PublicCo Entities may provide services to an attest client of Newfirm that would impair independence if performed by Newfirm. For example, trustee and asset custodial services in the ordinary course of business by a bank subsidiary of PublicCo would be acceptable as long as the bank was not subject to rule 101 [ET section 101.01] and its interpretations and rulings in their entirety.

Other Matters

1. An example, using the chart below, of the application of the concept of Direct and Indirect Superiors would be as follows: The chief executive of the local office of the Professional Services Subsidiary (PSS), where the partners of Newfirm are employed, would be a Direct Superior. The chief executive of PSS itself would be an Indirect Superior, and there may be Indirect Superiors in between such as a regional chief executive of all PSS offices within a geographic area.

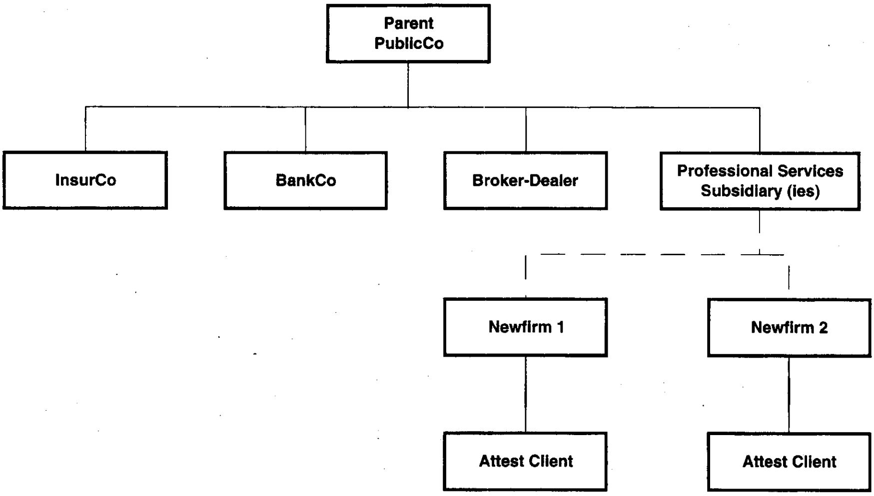
2. PEEC has concluded that Newfirm (and its partners and employees) may not perform an **attest engagement** for PublicCo or any of its subsidiaries or divisions.

3. PEEC has concluded that independence would be considered to be impaired with respect to an attest client of Newfirm if such attest client holds an investment in PublicCo that is material to the attest client or allows the attest client to exercise significant influence[19] over PublicCo.

4. When making referrals of services between Newfirm and any of the entities within PublicCo, a member should consider the provisions of Interpretation 102-2, *Conflicts of Interest* [ET section 102.03].

[19] For purposes of this Interpretation, significant influence means having the ability to exercise significant influence over the financial, operating or accounting policies of the entity, for example by (1) being connected with the entity as a promoter, underwriter, voting trustee, general partner or director, (2) being in a policy-making position such as chief executive officer, chief operating officer, chief financial officer or chief accounting officer, or (3) meeting the criteria in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations to determine the ability of an investor to exercise such influence with respect to an entity. The foregoing examples are not necessarily all-inclusive. [Footnote added, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Footnote renumbered by the revision of interpretation 101-2, April 2003.]

Alternative Practice Structure (APS) Model



[Effective February 28, 1999; Revised, November 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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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.]

Interpretations under Rule 102—Integrity and Objectivity

.02 102-1—Knowing misrepresentations in the preparation of financial statements or records. A member shall be considered to have knowingly misrepresented facts in violation of rule 102 [ET section 102.01] when he or she knowingly—

a. Makes, or permits or directs another to make, materially 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 [ET section 102.01]; or

b. Fails to correct an entity's financial statements or records that are materially false and misleading when he or she has the authority to record an entry; or

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information.

[Revised, effective May 31, 1999, by the Professional Ethics Executive Committee.]

.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 relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity, and the 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* [ET section 301.01].

Certain professional engagements, such as audits, reviews, and other attest services, require independence. Independence impairments under rule 101 [ET section 101.01], its interpretations, and rulings cannot be eliminated by such disclosure and consent.

The following are examples, not all-inclusive, of situations that should cause a member to consider whether or not the client, employer, or other appropriate parties could view the relationship as impairing the member's objectivity:

- A member has been asked to perform litigation services for the plaintiff in connection with a lawsuit filed against a client of the member's firm.

- A member has provided tax or personal financial planning (PFP) services for a married couple who are undergoing a divorce, and the member has been asked to provide the services for both parties during the divorce proceedings.
- In connection with a PFP engagement, a member plans to suggest that the client invest in a business in which he or she has a financial interest.
- A member provides tax or PFP services for several members of a family who may have opposing interests.
- A member has a significant financial interest, is a member of management, or is in a position of influence in a company that is a major competitor of a client for which the member performs management consulting services.
- A member serves on a city's board of tax appeals, which considers matters involving several of the member's tax clients.
- A member has been approached to provide services in connection with the purchase of real estate from a client of the member's firm.
- A member refers a PFP or tax client to an insurance broker or other service provider, which refers clients to the member under an exclusive arrangement to do so.
- A member recommends or refers a client to a service bureau in which the member or partner(s) in the member's firm hold material financial interest(s).

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

[Replaces previous interpretation 102-2, *Conflicts of Interest*, August 1995, effective August 31, 1995.]

.04 102-3—Obligations of a member to his or her employer's external accountant. Under rule 102 [ET section 102.01], a member must maintain objectivity and integrity in the performance of a professional service. In dealing with his or her employer's external accountant, a member must be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts. This would include, for example, responding to specific inquiries for which his or her employer's external accountant requests written representation.

[Effective November 30, 1993.]

.05 102-4—Subordination of judgment by a member. Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment when performing professional services. Under this rule, if a member and his or her supervisor have a disagreement or dispute relating to the preparation of financial statements or the recording of transactions, the member should take the following steps to ensure that the situation does not constitute a subordination of judgment:[1]

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[1] A member in the practice of public accounting should refer to the Statements on Auditing Standards. For example, see SAS No. 22, *Planning and Supervision* [AU section 311], which discusses what the auditor should do when there are differences of opinion concerning accounting and auditing standards.

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1. The member should consider whether (*a*) the entry or the failure to record a transaction in the records, or (*b*) the financial statement presentation or the nature or omission of disclosure in the financial statements, as proposed by the supervisor, represents the use of an acceptable alternative and does not materially misrepresent the facts. If, after appropriate research or consultation, the member concludes that the matter has authoritative support and/or does not result in a material misrepresentation, the member need do nothing further.

2. If the member concludes that the financial statements or records could be materially misstated, the member should make his or her concerns known to the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, the company's owners). The member should consider documenting his or her understanding of the facts, the accounting principles involved, the application of those principles to the facts, and the parties with whom these matters were discussed.

3. If, after discussing his or her concerns with the appropriate person(s) in the organization, the member concludes that appropriate action was not taken, he or she should consider his or her continuing relationship with the employer. The member also should consider any responsibility that may exist to communicate to third parties, such as regulatory authorities or the employer's (former employer's) external accountant. In this connection, the member may wish to consult with his or her legal counsel.

4. The member should at all times be cognizant of his or her obligations under interpretation 102-3 [ET section 102.04].

[Effective November 30, 1993.]

.06 102-5—Applicability of rule 102 to members performing educational services. Educational services (for example, teaching full- or part-time at a university, teaching a continuing professional education course, or engaging in research and scholarship) are professional services as defined in ET section 92.11, and are therefore subject to rule 102 [ET section 102.01]. Rule 102 [ET section 102.01] provides that the 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.

[Effective March 31, 1995.]

.07 102-6—Professional services involving client advocacy. A member or a member's firm may be requested by a client—

1. To perform tax or consulting services engagements that involve acting as an advocate for the client.

2. To act as an advocate in support of the client's position on accounting or financial reporting issues, either within the firm or outside the firm with standard setters, regulators, or others.

Services provided or actions taken pursuant to such types of client requests are professional services [ET section 92.11] governed by the Code of Professional Conduct and shall be performed in compliance with Rule 201, *General Standards* [ET section 201.01], Rule 202, *Compliance With Standards* [ET section 202.01], and Rule 203, *Accounting Principles* [ET section 203.01], and interpretations thereof, as applicable. Furthermore, in the performance of any professional service, a member shall comply with rule 102 [ET section 102.01], which requires maintaining objectivity and integrity and prohibits subordination of judgment to others. When performing professional services requiring independence, a member shall also comply with rule 101 [ET section 101.01] of the Code of Professional Conduct.

Moreover, there is a possibility that some requested professional services involving client advocacy may appear to stretch the bounds of performance standards, may go beyond sound and reasonable professional practice, or may compromise credibility, and thereby pose an unacceptable risk of impairing the reputation of the member and his or her firm with respect to independence, integrity, and objectivity. In such circumstances, the member and the member's firm should consider whether it is appropriate to perform the service.

[Effective August 31, 1995.]

[The next page is 4451.]

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ET Section 191

Ethics Rulings on Independence, Integrity, and Objectivity

1. Acceptance of a Gift

.001 *Question*—Would independence be considered to be impaired if a member accepts a gift or other unusual consideration from a client?

.002 *Answer*—Independence would be considered to be impaired if a *covered* member accepts more than a token gift from a client, even with the knowledge of the member's firm.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

2. Association Membership

.003 *Question*—Would independence be considered to be impaired if a member joined a trade association that is a client of the firm?

.004 *Answer*—Independence would not be considered to be impaired provided the member did not serve as an officer, director, or in any capacity equivalent to that of a member of management.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[3.] Member as Signer or Cosigner of Checks

[.005–.006] [Deleted May 1999]

[4.] Payroll Preparation Services

[.007–.008] [Deleted May 1999]

[5.] Member as Bookkeeper

[.009–.010] [Deleted June 1991]

[6.] Member's Spouse as Accountant of Client

[.011–.012] [Deleted November 2001]

[7.] Member Providing Contract Services

[.013–.014] [Deleted May 1999]

8. Member Providing Advisory Services

.015 *Question*—A member provides extensive advisory services for a client. In that connection, the member attends board meetings, interprets financial statements, forecasts and other analyses, counsels on potential expansion plans and on banking relationships. Would independence be considered to be impaired under these circumstances?

.016 *Answer*—Independence would not be considered to be impaired because the member's role is advisory in nature.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

9. Member as Representative of Creditor's Committee

.017 *Question*—A member performs 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:

- Signs or co-signs checks issued by the debtor corporation.
- Signs or co-signs purchase orders in excess of established minimum amounts.
- Exercises 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 independence be considered to be impaired with respect to the debtor corporation?

.018 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm performed any of the functions described, since these are considered to be management functions.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

10. Member as Legislator

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

.020 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm served as an elected legislator for a city at the same time his or her firm was engaged to perform the city's attest engagement, even though the city manager is an elected official rather than an appointee of the legislature.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

11. Member Designated to Serve as Executor or Trustee

.021 *Question*—A member has been designated to serve as an executor or trustee of the estate of an individual who owns the majority of a client's stock. Would independence be considered to be impaired with respect to the client?

.022 *Answer*—The mere designation of a *covered* member as executor or trustee would not be considered to impair independence, however, if a covered member actually served in such capacity, independence would be considered to be impaired.

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[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

12. Member as Trustee of Charitable Foundation

.023 *Question*—A 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 independence be considered to be impaired with respect to (1) the foundation or (2) the estate?

.024 *Answer*—If a *covered* member served as trustee of the foundation, independence would be considered to be impaired with respect to both the foundation and the estate.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[13.] Member as Bank Stockholder

[.025–.026] [Deleted November 1993]

14. Member on Board of Federated Fund-Raising Organization

.027 *Question*—A member serves as a director or officer of a United Way or similar federated fund-raising organization (the organization). Certain local charities receive funds from the organization. Would independence be considered to be impaired with respect to such charities?

.028 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm served as a director or officer of the organization and the organization exercised managerial control over the local charities. (See ethics ruling No. 93 [ET section 191.186–.187] under rule 101 [ET section 101.01] for additional guidance.)

[Replaces previous ruling No. 14, *Member on Board of Directors of United Fund*, April 1991. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[15.] Retired Partner as Director

[.029–.030] [Deleted June 1991]

16. Member on Board of Directors of Nonprofit Social Club

.031 *Question*—Would independence be considered to be impaired if a member served on the board of directors of a nonprofit social club?

.032 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm served on the board of directors since the board has ultimate responsibility for the club's affairs.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

17. Member of Social Club

.033 *Question*—Would independence be considered to be impaired if a member belongs to a social club (for example, country club, tennis club) that requires him or her to acquire a pro rata share of the club's equity or debt securities?

.034 *Answer*—As long as membership in a club is essentially a social matter, a *covered* member's association with the club would not impair independence because such equity or debt ownership would not be considered to be a direct financial interest within the meaning of rule 101 [ET section 101.01]. Also see interpretation 101-1.C [ET section 101.02].

[Replaces previous ruling No. 17, *Member as Stockholder in Country Club*, February 1991. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[18.] Member as City Council Chairman

[.035–.036] [Deleted June 1991]

19. Member on Deferred Compensation Committee

.037 *Question*—Would independence be considered to be impaired if a member served on a committee that administers a client's deferred compensation program?

.038 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm served on the committee since such service constitutes participation in the client's management functions. The partner or professional employee could however render consulting assistance without joining the committee.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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 that the firm audits. The member also serves on a committee appointed to study the financial status of a state. Would independence be considered to be impaired with respect to a county in that state?

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

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

21. Member as Director and Auditor of an Entity's Profit Sharing and Retirement Trust

.041 *Question*—A member serves in the dual capacity of director of an entity and auditor of the financial statements of that entity's profit sharing and retirement trust (the trust). Would independence be considered to be impaired with respect to the trust?

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.042 *Answer*—Service as director of an entity constitutes participation in management functions that affect the entity's trust. Accordingly, independence would be considered to be impaired if *any* partner or professional of the firm served in such capacity.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[22.] Family Relationship, Brother

[.043–.044] [Deleted June 1991]

[23.] Family Relationship, Uncle by Marriage

[.045–.046] [Deleted June 1991]

[24.] Family Relationship, Father

[.047–.048] [Deleted June 1991]

[25.] Family Relationship, Son

[.049–.050] [Deleted June 1991]

[26.] Family Relationship, Son

[.051–.052] [Deleted June 1991]

[27.] Family Relationship, Spouse as Trustee

[.053–.054] [Deleted June 1991]

[28.] Cash Account With Brokerage Client

[.055–.056] [Superseded by ethics ruling No. 59.]

29. Member as Bondholder

.057 *Question*—Would independence be considered to be impaired if a member owned an immaterial amount of a municipal authority's outstanding bonds?

.058 *Answer*—Ownership of a client's bonds constitute a loan to that client. Accordingly, if a *covered* member owned such bonds, independence would be considered to be impaired.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[30.] Financial Interest by Employee

[.059–.060] [Deleted July 1979]

31. Performance of Services for Common Interest Realty Associations (CIRAs), Including Cooperatives, Condominium Associations, Planned Unit Developments, Homeowners Associations, and Timeshare Developments

.061 *Question*—A member belongs to a common interest realty association (CIRA) as the result of the ownership or lease of real estate. Would independence be considered to be impaired with respect to the CIRA?

.062 *Answer*—Independence would be considered to be impaired if a *covered* member was a member of a CIRA unless all of the following conditions are met:

a. The CIRA performs functions similar to local governments, such as public safety, road maintenance, and utilities.

b. The covered member's annual assessment is not material to either the covered member or the CIRA's operating budgeted assessments.

c. The liquidation of the CIRA or the sale of common assets would not result in a distribution to the covered member.

d. The CIRA's creditors would not have recourse to the covered member's assets if the CIRA became insolvent.

Also see interpretation 101-1.C [ET section 101.02] for additional restrictions related to associations with a client.

If the member has a relationship with a real estate developer or management company that is associated with the CIRA, see interpretation 102-2 [ET section 102.03] for guidance.

[Revised, effective May 31, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[32.] Mortgage Loan to Member's Corporation

[.063–.064] [Deleted December 1991]

[33.] Member as Participant in Employee Benefit Plan

[.065–.066] [Deleted May 1998]

[34.] Member as Auditor of Common Trust Funds

[.067–.068] [Deleted February 1991]

35. Stockholder in Mutual Funds

.069 *Question*—A member owns shares in a non-regulated mutual investment fund (the fund) which holds shares of stock in a client. Would independence be considered to be impaired with respect to the client whose stock is held by the fund?

.070 *Answer*—Client securities held by the fund represent indirect financial interests. Accordingly, if a *covered* member has such an indirect financial interest, which is material to the covered member, independence would be considered to be impaired. In addition, if *any* partner or professional employee in the firm has significant influence over the fund, independence would be considered to be impaired.

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[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

36. Participant in Investment Club

.071 *Question*—A member participates in an investment club. Would independence be considered to be impaired with respect to a client in which the investment club holds shares?

.072 *Answer*—Independence would be considered to be impaired if a *covered* member owned stock in a client through an investment club as such holdings would be deemed to be a direct financial interest. Accordingly, any of the club's investments in a client would be deemed to impair independence regardless of materiality of the investment to the covered member's net worth.

See interpretation 101-1.B [ET section 101.02] for additional restrictions relating to all partners and professionals of the firm.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[37.] Retired Partners as Co-Trustee

[.073–.074] [Deleted November 1980]

38. Member as Co-Fiduciary With Client Bank

.075 *Question*—A member serves with a client bank in a co-fiduciary capacity with respect to an estate or trust. Would independence be considered to be impaired with respect to the bank or the bank's trust department?

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

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[39.] Member as Officially Appointed Stock Transfer Agent or Registrar

[.077–.078] [Deleted May 1999]

[40.] Controller Entering Public Practice

[.079–.080] [Deleted June 1979]

41. Financial Services Company Client Has Custody of a Member's Assets

.081 *Question*—A financial services company client (for example, insurance company, investment adviser, broker-dealer, bank, or other depository institution) has custody of a member's assets (other than depository accounts), including retirement plan assets. Would independence be considered to be impaired?

.082 *Answer*—If a covered member's assets were held by a financial services company client, independence would not be considered to be impaired provided the services were rendered under the company's normal terms, procedures, and requirements and any of the covered member's assets subject to the risk of loss were immaterial to the covered member's net worth. Risk of loss may include losses arising from the bankruptcy of or defalcation by the client but would exclude losses due to a market decline in the value of the assets. When considering the materiality of assets subject to the risk of loss, the covered member should consider the following:

- Protection provided by state or federal regulators (for example, state insurance funds)
- Private insurance or other forms of protection (for example, the Securities Investor Protection Corporation) obtained by the financial services company to protect the assets
- Protection from creditors (for example, assets held in a pooled separate account)

For guidance dealing with depository accounts, see ethics ruling No. 70 [ET section 191.140 and .141].

[Replaces previous ruling No. 41, *Member as Auditor of Mutual Insurance Company*, November, 1990. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, effective March 31, 2003, by the Professional Ethics Executive Committee.]

[42.] Member as Life Insurance Policy Holder

[.083–.084] [Deleted April 1991]

[43.] Member's Employee as Treasurer of a Client

[.085–.086] [Deleted June 1991]

[44.] Past Due Billings

[.087–.088] [Superseded by ethics ruling No. 52.]

[45.] Past Due Fees: Client in Bankruptcy

[.089–.090] [Deleted November 1990]

[46.] Member as General Counsel

[.091–.092] [Superseded by ethics ruling No. 51.]

[47.] Member as Auditor of Mutual Fund and Shareholder of Investment Advisor/Manager

[.093–.094] [Deleted February 1991]

48. Faculty Member as Auditor of a Student Fund

.095 *Question*—A full or part-time faculty member employed by a university is asked to audit the financial statements of the Student Senate Fund. The university:

1. Acts as a collection agent for student fees and remits them to the Student Senate.
2. Requires that a university administrator approve and sign Student Senate checks.

Would independence be considered to be impaired under these circumstances?

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.096 *Answer*—Independence would be considered to be impaired with respect to the Student Senate Fund if *any* partner or professional employee (individual) performed the functions described since the individual would be auditing several of the management functions performed by the university, the individual's employer.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[49.] Investor and Investee Companies

[.097–.098] [Superseded by interpretation 101-8.]

[50.] Family Relationship, Brother-in-Law

[.099–.100] [Deleted June 1983]

[51.] Member Providing Legal Services

[.101–.102] [Deleted May 1999]

52. Unpaid Fees

.103 *Question*—A client of the member's firm has not paid fees for previously rendered professional services. Would independence be considered to be impaired for the current year?

.104 *Answer*—Independence is considered to be impaired if, when the report on the client's current year is issued, billed or unbilled fees, or a note receivable arising from such fees, remain unpaid for any professional services provided more than one year prior to the date of the report.

This ruling does not apply to fees outstanding from a client in bankruptcy.

[Replaces previous ruling No. 52, *Past Due Fees*, November 1990. Revised, effective November 30, 1997, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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

[.105–.106] [Deleted June 1991]

[54.] Member Providing Appraisal, Valuation, or Actuarial Services

[.107–.108] [Deleted May 1999]

[55.] Independence During Systems Implementation

[.109–.110] [Deleted May 1999]

[56.] Executive Search

[.111–.112] [Deleted May 1999]

[57.] MAS Engagement to Evaluate Service Bureaus

[.113–.114] [Deleted August 1995]

[58.] Member as Lessor

[.115–.116] [Deleted May 1998]

[59.] Account With Brokerage Client

[.117–.118] [Deleted November 1987]

60. Employee Benefit Plans—Member's Relationships With Participating Employer

.119 *Question*—A member has been asked to audit the financial statements of an employee benefit plan ("the plan") that may have one or more participating employer(s). Would independence be considered to be impaired with respect to the plan if the member had financial or other relationships with a participating employer(s)?

.120 *Answer*—Independence would be considered to be impaired with respect to the plan if *any* partner or professional employee of the firm had significant influence over such employer, was in a key position with the employer, or was associated with the employer as a promoter, underwriter, or voting trustee.

When auditing plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), Department of Labor (DOL) regulations must be followed.[1]

[Replaces previous ruling No. 60, *Employee Benefit Plans—Member's Relationships With Participating Employer(s)*, November 1993. Revised, effective November 30, 2001, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[61.] Participation of Member's Spouse in Client's Stock Ownership Plans (Including an ESOP)

[.121–.122] [Deleted May 1998]

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

[.123–.124] [Deleted April 1991]

[63.] Review of Prospective Financial Information—Member's Independence of Promotors

[.125–.127] [Deleted August 1992]

64. Member Serves on Board of Organization for Which Client Raises Funds

.128 *Question*—A member serves on the board of directors of an organization. A fund-raising foundation functions solely to raise funds for that organization. Would independence be considered to be impaired with respect to the fund-raising foundation?

.129 *Answer*—Independence would be considered to be impaired with respect to the fund-raising foundation if *any* partner or professional employee of the firm served on the organization's board of directors. However, if the directorship were clearly honorary (in accordance with ET section 101.06, *Honorary directorships and trusteeships of not-for-profit organization*), independence would not be considered to be impaired.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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[1] Currently, DOL regulations are more restrictive than the position taken in this ruling.

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

.130 *Question*—A member who is not in public practice wishes to use his or her CPA designation in connection with financial statements and correspondence of the member's employer. The member also wants to use the CPA designation along with employment title on business cards. Is it permissible for the member to use the CPA designation in these manners?

.131 *Answer*—Yes. However, if the member uses the CPA designation in a manner to imply that he or she is independent of the employer, the member would be knowingly misrepresenting facts in violation of rule 102 [ET section 102.01]. Therefore, it is advisable that in any transmittal within which the member uses his or her CPA designation, he or she clearly indicate the employment title. In addition, if the member states affirmatively in any transmittal that a financial statement is presented in conformity with generally accepted accounting principles, the member is subject to rule 203 [ET section 203.01].

[Replaces previous ruling No. 65, *Use of the CPA Designation by Member Not in Public Practice*, February 1996, effective February 29, 1996.]

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

.132 *Question*—A member's retirement or savings plan has a financial interest in a client. Would independence be considered to be impaired?

.133 *Answer*—Any direct or material indirect financial interest in a client held through a retirement or savings plan would be considered to be a direct or material indirect financial interest in the client. Accordingly, if a *covered* member had such a financial interest, independence would be considered to be impaired.

See interpretation 101-1.B [ET section 101.02] for additional restrictions relating to all partners and professionals of the firm.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

67. Servicing of Loan

.134 *Question*—Would the mere servicing of a loan by a client financial institution impair independence with respect to the client?

.135 *Answer*—No.

[Replaces previous ruling No. 67, *Servicing of Loan*, November 1993. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

68. Blind Trust

.136 *Question*—Would independence be considered to be impaired if a member transferred a direct financial interest in a client into a blind trust?

.137 *Answer*—Independence would be considered impaired if a *covered* member had a direct financial interest in a client, whether or not the interest was placed in a blind trust. Further, the covered member should ensure that any blind trust for which he or she is a beneficiary does not hold a direct or material indirect financial interest in any clients with respect to which he or she is a covered member.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

69. Investment With a General Partner

.138 *Question*—A private, closely held entity is the general partner and controls (as defined in Generally Accepted Accounting Principles) limited partnership A. The member has a material financial interest in limited partnership A. The member's firm has been asked to perform an attest engagement for a new limited partnership (B), which has the same general partner as limited partnership A. Would independence be considered to be impaired with respect to limited partnership B?

.139 *Answer*—Because the general partner has control over limited partnership A, the *covered* member would be considered to have a joint closely held investment with the general partner, who has significant influence over limited partnership B, the proposed client. Accordingly, independence would be considered to be impaired with respect to limited partnership B if the covered member had a material investment in limited partnership A.

[Replaces previous ruling No. 69, *Joint Investment With a Promoter and/or General Partner*, April 1991, effective April 30, 1991. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

70. Member's Depository Relationship With Client Financial Institution

.140 *Question*—A member maintains checking or savings accounts, certificates of deposit, or money market accounts at a client financial institution. Would these depository relationships impair independence?

.141 *Answer*—If an individual is a covered member, independence would not be considered to be impaired 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 or by any other insurer; or
- The uninsured amounts, in the aggregate, were not material to the net worth of the covered member. (When insured amounts were considered material, independence would not be considered impaired provided the uninsured balance was reduced to an immaterial amount no later than 30 days from the date the uninsured amount becomes material.)

A firm's depository relationship would not impair its independence provided that the likelihood of the financial institution experiencing financial difficulties was considered to be remote.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, effective March 31, 2003, by the Professional Ethics Executive Committee.]

71. Use of Nonindependent CPA Firm on an Engagement

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

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

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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.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

72. Member on Advisory Board of Client

.144 *Question*—Would service on a client's advisory board impair independence?

.145 *Answer*—Independence would be considered to be impaired if *any* partner or professional employee of the firm served on the advisory board 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.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[73.] Meaning of the Period of a Professional Engagement

[.146–.147] [Deleted February 1998]

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

.148 *Question*—If a member or his or her firm is not independent with respect to a client, is it permissible to issue an audit, review, or compilation report for that client?

.149 *Answer*—A member or his or her firm may not issue an audit or review report if not independent of the client. A compilation report may be issued provided that the report specifically discloses the lack of independence without giving reasons for the impairment.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

75. Membership in Client Credit Union

.150 *Question*—Does membership in a client credit union impair independence?

.151 *Answer*—A *covered* member's association with a client credit union would not impair independence provided all of the following criteria are met:

1. The covered member individually qualifies to join the credit union (other than by virtue of the professional services provided to the client).
2. Any loans from the credit union to the covered member meet the conditions specified in interpretation 101-1.A.4 [ET section 101.02] and are made under normal lending procedures, terms, and requirements (see interpretation 101-5 [ET section 101.07]).
3. Any deposits with the credit union meet the conditions specified in ruling No. 70 [ET section 191.140–.141] under rule 101 [ET section 101.01].

Partners and professional employees may be subject to additional restrictions as described in interpretation 101-1.B [ET section 101.02].

[Effective February 28, 1992, earlier application is encouraged. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[76.] Guarantee of Loan

[.152–.153] [Deleted December 1991]

[77.] Individual Considering or Accepting Employment With the Client

[.154–.155] [Deleted April 2003]

[78.] Service on Governmental Board

[.156–.157] [Deleted August 1995]

79. Member's Investment in a Partnership That Invests in Client

.158 *Question*—Would independence be considered to be impaired if a member had a direct financial interest in a partnership that invests in a client?

.159 *Answer*—If a *covered* member is a general partner, or functions in a capacity similar to that of a general partner, in a partnership that invests in a client, the covered member is deemed to have a direct financial interest in the client. Independence is considered to be impaired.

If a *covered* member is a limited partner in a partnership that invests in a client, the covered member is considered to have an indirect financial interest in the client. Independence would be considered to be impaired if the indirect financial interest is material to the covered member's net worth.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[80.] The Meaning of a Joint Closely Held Business Investment

[.160–.161] [Deleted November 2001]

81. Member's Investment in a Limited Partnership

.162 *Question*—A member is a limited partner in a limited partnership (LP), including a master limited partnership. A client is a general partner in the same LP. Is independence considered to be impaired with respect to (1) the LP, (2) the client, and (3) any subsidiaries of the LP?

.163 *Answer*— **1.** A *covered* member's limited partnership interest in the LP is a direct financial interest in the LP that would impair independence under interpretation 101-1.A.1 [ET section 101.02].

2. The LP is an investee of the client because the client is a general partner in the LP. Therefore, under interpretation 101-8 [ET section 101.10], if the investment in the LP were material to the client, a *covered* member's financial interest in the LP would impair independence. However, if the client's financial interest in the LP were not material to the client, a *covered* member's immaterial financial interest in the LP would not impair independence.
3. If the *covered* member is a limited partner in the LP, the covered member is considered to have an indirect financial interest in all subsidiaries of the LP. If the indirect financial interest in the subsidiaries were material to the covered member, independence would be considered to be impaired with respect to those subsidiaries under interpretation 101-1.A.1 [ET section 101.02].

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If the covered member or client general partner, individually or together can control the LP, the LP would be considered a joint closely held investment under ET section 92.16.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

82. Campaign Treasurer

.164 *Question*—A member serves as the campaign treasurer of a mayoral candidate. Would independence be considered to be impaired with respect to (1) the political party with which the candidate is associated, (2) the municipality of which the candidate may become mayor, or (3) the campaign organization?

.165 *Answer*—Independence would not be considered to be impaired with respect to the political party or municipality. However, if *any* partner or professional employee of the firm served as campaign treasurer, independence would be considered to be impaired with respect to the campaign organization.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[83.] Member on Board of Component Unit and Auditor of Oversight Entity

[.166–.167] [Deleted January 1996]

[84.] Member on Board of Material Component Unit and Auditor of Another Material Component Unit

[.168–.169] [Deleted January 1996]

85. Bank Director

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

.171 *Answer*—Yes; however, before accepting a bank directorship, the member should carefully consider the implications of such service if the member has clients that are customers of the bank.

These implications fall into two categories:

a. Confidential Client Information—Rule 301 [ET section 301.01] provides that a member in public practice shall not disclose any confidential client information without the specific consent of the client. This ethical requirement applies even though failure to disclose information may constitute a breach of the member's fiduciary responsibility as a director.

b. Conflicts of Interest—Interpretation 102-2 [ET section 102.03] provides that a conflict of interest may occur if a member performs a professional service (including service as a director) and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity and the relationship is disclosed to and consent is obtained from all appropriate parties, performance of the service shall not be prohibited.

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, the member should avoid the high probability of a conflict of interest and the appearance that the member's fiduciary obligations and responsibilities to the bank may conflict with or interfere with the member's ability to serve the client's 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 the member's public practice to serve as a consultant to the bank's board. Under such an arrangement, the member could limit activities to those which did not involve conflicts of interest or confidentiality problems.

[86.] Partially Secured Loans

[.172–.173] [Deleted February 1998]

[87.] Loan Commitment or Line of Credit

[.174–.175] [Deleted February 1998]

[88.] Loans to Partnership in Which Members are Limited Partners

[.176–.177] [Deleted February 1998]

[89.] Loan to Partnership in Which Members are General Partners

[.178–.179] [Deleted February 1998]

[90.] Credit Card Balances and Cash Advances

[.180–.181] [Deleted February 1998]

91. Member Leasing Property to or From a Client

.182 *Question*—Would independence be considered to be impaired if a member leased property to or from a client?

.183 *Answer*—Independence would not be considered to be impaired if the lease meets the criteria of an operating lease (as described in Generally Accepted Accounting Principles), the terms and conditions set forth in the lease agreement are comparable with other leases of a similar nature, and all amounts are paid in accordance with the terms of the lease.

Independence would be considered to be impaired if a *covered* member had a lease that meets the criteria of a capital lease (as described in Generally Accepted Accounting Principles) unless the lease is in compliance with interpretations 101-1.A.4 [ET section 101.02] and 101-5 [ET section 101.07], because the lease would be considered to be a loan to or from the client.

[Revised, effective May 31, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

92. Joint Interest in Vacation Home

.184 *Question*—A member has a joint interest in a vacation home with a client (or one of the client's officers or directors, or any owner who has the ability to exercise significant influence over the client). Would the vacation home constitute a "joint closely held investment" as defined in ET section 92.16?

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.185 *Answer*—Yes. The vacation home, even if solely intended for the personal use of the owners, would be considered a joint closely held investment as defined in ET section 92.16 if it meets the criteria described in the aforementioned definition.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

93. Service on Board of Directors of Federated Fund-Raising Organization

.186 *Question*—A member serves as a director or officer of a local United Way or similar organization that operates as a federated fund-raising organization from which local charities receive funds. Some of those charities are clients of the member's firm. Does the member have a conflict of interest under rule 102 [ET section 102.01]?

.187 *Answer*—Interpretation 102-2 [ET section 102.03] provides that a conflict of interest may occur if a member performs a professional service for a client and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by the client or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity and the relationship is disclosed to and consent is obtained from the appropriate parties, performance of the service shall not be prohibited. (If the service being provided is an attest engagement, consult ethics ruling No. 14 [ET section 191.027-.028] under rule 101 [ET section 101.01]).

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

94. Indemnification Clause in Engagement Letters

.188 *Question*—A member or his or her firm proposes to include in engagement letters a clause that provides that the client would release, indemnify, defend, and hold the member (and his or her partners, heirs, executors, personal representatives, successors, and assigns) harmless from any liability and costs resulting from knowing misrepresentations by management. Would inclusion of such an indemnification clause in engagement letters impair independence?

.189 *Answer*—No.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

95. Agreement With Attest Client to Use ADR Techniques

.190 *Question*—Alternative dispute resolution (ADR) techniques are used to resolve disputes (in lieu of litigation) relating to past services, but are not used as a substitute for the exercise of professional judgment for current services. Would a predispute agreement to use ADR techniques between a member or his or her firm and a client cause independence to be impaired?

.191 *Answer*—No. Such an agreement would not cause independence to be impaired since the member (or the firm) and the client would not be in threatened or actual positions of material adverse interests by reason of threatened or actual litigation.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

96. Commencement of ADR Proceeding

.192 *Question*—Would the commencement of an alternative dispute resolution (ADR) proceeding impair independence?

.193 *Answer*—Except as stated in the next sentence, independence would not be considered to be impaired because many of the ADR techniques designed to facilitate negotiation and the actual conduct of those negotiations do not place the member or his or her firm and the client in threatened or actual positions of material adverse interests. Nevertheless, if a *covered* member and the client are in a position of material adverse interests because the ADR proceedings are sufficiently similar to litigation, ethics interpretation 101-6 [ET section 101.08] should be applied. Such a position would exist if binding arbitration were used.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[97.] Performance of Certain Extended Audit Services

[.194–.195] [Deleted August 1996]

98. Member's Loan From a Nonclient Subsidiary or Parent of an Attest Client

.196 *Question*—A member has obtained a loan from a nonclient. The member's firm performs an attest engagement for the parent or a subsidiary of the nonclient. Does the loan from the nonclient subsidiary or parent impair independence?

.197 *Answer*—A *covered* member's loan that is not a "grandfathered" or "permitted" loan under interpretation 101-5 [ET section 101.07] from a nonclient subsidiary would impair independence with respect to the client parent. However, a loan from a nonclient parent would not impair independence with respect to the client subsidiary as long as the subsidiary is not material to its parent.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

99. Member Providing Services for Company Executives

.198 *Question*—A member has been approached by a company, for which he or she may or may not perform other professional services, to provide personal financial planning or tax services for its executives. The executives are aware of the company's relationship with the member, if any, and have also consented to the arrangement. The performance of the services could result in the member recommending to the executives actions that may be adverse to the company. What rules of conduct should the member consider before accepting and during the performance of the engagement?

.199 *Answer*—Before accepting and during the performance of the engagement, the member should consider the applicability of Rule 102, *Integrity and Objectivity* [ET section 102.01]. If the member believes that he or she can perform the personal financial planning or tax services with objectivity, the member would not be prohibited from accepting the engagement. The member should also consider informing the company and the executives of possible results of the engagement. During the performance of the services, the member should consider his or her professional responsibility to the clients (that is, the company and the executives) under Rule 301, *Confidential Client Information* [ET section 301.01].

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100. Actions Permitted When Independence Is Impaired

.200 *Question*—If a member or a member's firm (member) was independent when its report was initially issued, may the member re-sign the report or consent to its use at a later date when his or her independence is considered to be impaired?

.201 *Answer*—Yes. A member may re-sign the report or consent to its use at a later date when his or her independence is considered to be impaired, provided that no "post-audit work" is performed by the member during the period of impairment. The term "post-audit work," in this context, does not include inquiries of successor 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 the member's previously issued report.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

101. Client Advocacy and Expert Witness Services

.202 *Question*—Would the performance of expert witness services be considered as acting as an advocate for a client as discussed in interpretation 102-6 [ET section 102.07]?

.203 *Answer*—No. A member serving as an expert witness does not serve as an advocate but as someone with specialized knowledge, training, and experience in a particular area who should arrive at and present positions objectively.

102. Indemnification of a Client

.204 *Question*—As a condition to retaining a member or his or her firm to perform an attest engagement, a client or prospective client requests that the member (or the firm) enter into an agreement providing, among other things, that the member (or the firm) indemnify the client for damages, losses, or costs arising from lawsuits, claims, or settlements that relate, directly or indirectly, to client acts. Would entering into such an agreement impair independence?

.205 *Answer*—Yes. Such an agreement would impair independence under interpretation 101-1.A [ET section 101.02] and interpretation 101-1.C [ET section 101.02].

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

103. Attest Report on Internal Controls

.206 *Question*—If a member or his or her firm provides extended audit services for a client in compliance with interpretation 101-13 [ET section 101.15], would the firm be considered to be independent in the performance of an attestation engagement to report on the client's assertion regarding the effectiveness of its internal control over financial reporting?

.207 *Answer*—Independence would not be considered to be impaired with respect to the issuance of such a report if both of the following conditions are met:

1. Management has assumed responsibility to establish and maintain internal control.
2. Management does not rely on the firm's work as the primary basis for its assertion and accordingly has (*a*) evaluated the results of its ongoing monitoring procedures built into the normal recurring activities of the entity (including regular management and supervisory activities) and (*b*) evaluated the findings and results of the firm's work and other separate evaluations of controls, if any.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

104. Operational Auditing Services

.208 *Question*—As part of an extended audit engagement, a member or his or her firm reviews certain of the client's business processes, as selected by the client, for how well they function, their efficiency, or their effectiveness. For example, a member (or the firm) may assess whether performance is in compliance with management's policies and procedures, to identify opportunities for improvement, and to develop recommendations for improvement or further action for management consideration and decision making. Would independence be considered to be impaired in performing such services?

.209 *Answer*—Independence would not be considered to be impaired provided that during the course of the review the member (and other members of his or her firm) is not employed by the client and does not act or appear to act in any capacity equivalent to that of a member of client management. The decision as to whether any of the member's (or the firm's) recommendations will be implemented must rest entirely with management.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

105. Frequency of Performance of Extended Audit Procedures

.210 *Question*—In providing extended audit services, would the frequency with which a member or his or her firm performs an audit procedure impair independence?

.211 *Answer*—Independence would not be considered to be impaired provided that the member's (or the firm's) activities have been limited in a manner consistent with interpretation 101-13 [ET section 101.15] and the procedures performed constituted separate evaluations of the effectiveness of the ongoing control and monitoring activities/procedures that are built into the client's normal recurring activities.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

106. Member Has Significant Influence Over an Entity That Has Significant Influence Over a Client

.212 *Question*—Would independence be considered to be impaired if a member or his or her firm had significant influence, as defined in ET section 92.27, over an entity that has significant influence over a client?

.213 *Answer*—Independence would be considered to be impaired if *any* partner or professional of the firm had significant influence over an entity that has significant influence over a client. By having such influence over the nonclient entity, the partner or professional employee would also be considered to have significant influence over the client.

See interpretation 101-8 [ET section 101.10] for further guidance.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

107. Participation in Health and Welfare Plan Sponsored by Client

.214 *Question*—A member participates in or receives benefits from a health and welfare plan (the "plan") sponsored by a client. Would independence be considered to be impaired with respect to the client sponsor or the plan?

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.215 *Answer*—A *covered* member's participation in a plan sponsored by a client would impair independence with respect to the client sponsor and the plan. However, if the covered member's participation in the plan, or benefits received thereunder, arises as a result of the permitted employment of the covered member's immediate family in accordance with interpretation 101-1 [ET section 101.02], independence would not be considered to be impaired provided that the plan is normally offered to all employees in equivalent employment positions.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, November 2002, by the Professional Ethics Executive Committee.]

[108.] Participation of Member, Spouse or Dependent in Retirement, Savings, or Similar Plan Sponsored by, or That Invests in, Client

[.216–.217] [Deleted November 2001]

109. Member's Investment in Financial Services Products That Invest in Clients

.218 *Question*—Amounts contributed by a member or a member's firm (member) for investment purposes, including retirement plans, are invested or managed by a nonclient financial services company that offers financial services products, for example, insurance contracts and other investment arrangements, which allow the member to direct his or her investment into debt or equity securities. Under what circumstances would independence be considered to be impaired?

.219 *Answer*—If a *covered* member is able to direct and does direct his or her investment through a financial services product into a client, independence would be considered to be impaired because such investment is considered to be a direct financial interest in the client. If the covered member does not exercise his or her ability to direct the investment but the financial services product were to invest in a client, such investment would be a direct financial interest in the client and independence would be considered to be impaired.

If the covered member is not able to direct the investment and the financial services product invests in a client, the covered member is considered to have an indirect financial interest in the client. Independence would be considered to be impaired if the indirect financial interest becomes material to the covered member. (See ethics ruling No. 35 under rule 101 [ET section 191.069–.070] for additional guidance with respect to investments in mutual funds.)

Further, an investment in a financial services product that invests only in clients with respect to which an individual is considered to be a covered member would be considered to be a direct financial interest in such client, and independence would be considered to be impaired.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

110. Member is Connected With an Entity That Has a Loan to or From a Client

.220 *Question*—A member is associated with an entity as an officer, director, or a shareholder who is able to exercise significant influence over an entity. That entity has a loan to or from a client of the member's firm. Would independence be considered to be impaired with respect to the client?

.221 *Answer*—If a *covered* member has control over the entity (as defined in Generally Accepted Accounting Principles) the existence of a loan to or from the client would impair independence unless the loan from the client is specifically permitted under interpretation 101-5 [ET section 101.07].

If *any* partner or professional employee of the firm is connected with the entity as an officer, director, or shareholder who is able to exercise significant influence over the entity, but is unable to control the entity, he or she should consider interpretation 102-2 [ET section 102.03]. Interpretation 102-2 provides that a conflict of interest may occur if a member performs a professional service for a client and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by the client or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client and other appropriate parties, the rule shall not operate to prohibit the performance of the professional service.

When making the decision as to whether to perform a professional service and in making disclosure to the appropriate parties, the member should consider Rule 301, *Confidential Client Information* [ET section 301.01].

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

111. Employee Benefit Plan Sponsored by Client

.222 *Question*—A member or his or her firm provides asset management or investment services that may include having custody of assets, performing management functions, or making management decisions for an employee benefit plan (the plan) sponsored by a client. Would independence be considered to be impaired with respect to the plan and the client sponsor?

.223 *Answer*—The performance of investment management or custodial services for a plan would be considered to impair independence with respect to the plan. Independence would also be considered to be impaired with respect to the client sponsor of a defined benefit plan if the assets under management or in the custody of the member are material to the plan or the client sponsor.

Independence would not be considered to be impaired with respect to the client sponsor of a defined contribution plan provided the member does not make any management decisions or perform management functions on behalf of the client sponsor or have custody of the sponsor's assets.

[Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

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ET Section 200

GENERAL STANDARDS ACCOUNTING PRINCIPLES

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291 Ethics Rulings on General and Technical Standards—continued

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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.]

(See appendix A.)

Interpretations under Rule 201—General Standards

.02 201-1—Competence. A member's agreement to perform professional services implies that the member has the necessary competence to complete those professional services according to professional standards, applying his or her knowledge and skill with reasonable care and diligence, but the member does not assume a responsibility for infallibility of knowledge or judgment.

Competence to perform professional services involves both the technical qualifications of the member and the member's staff and the 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 in the performance of professional services.

The member may have the knowledge required to complete the services in accordance with professional standards prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services. This does not ordinarily represent a lack of competence, but rather is a normal part of the performance of professional services.

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

[.03] [201-2]—[Deleted]

[.04] [201-3]—[Deleted]

[.05] [201-4]—[Deleted]

[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 consulting, tax, or other professional services shall comply with standards promulgated by bodies designated by Council.

[As adopted January 12, 1988.]

(See appendix A.)

Interpretation under Rule 202—Compliance With Standards

[.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

.02 203-1—Departures from established accounting principles. Rule 203 [ET section 203.01] 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 [ET section 203.01] 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 [ET section 203.01].

.03 203-2—Status of FASB, GASB and FASAB interpretations. Council is authorized under rule 203 [ET section 203.01] to designate bodies to establish accounting principles. Council has designated the Financial Accounting Standards Board (FASB) as such a body and 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 [ET section 203.01]. Council has also designated the Governmental Accounting Standards Board (GASB), with respect to Statements of Governmental Accounting Standards issued in July 1984 and thereafter, as the body to establish financial accounting principles for state and local governmental entities pursuant to rule 203 [ET section 203.01]. Council has also designated the Federal Accounting Standards Advisory Board (FASAB), with respect to Statements of Federal Accounting Standards adopted and issued in March 1993 and subsequently, as the body to establish accounting principles for federal government entities pursuant to rule 203 [ET section 203.01].

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 [ET section 203.01], or the existence of a departure from an accounting principle established by a Statement of Governmental Accounting Standards or a Statement of Federal Accounting Standards encompassed by rule 203 [ET section 203.01], the division of professional ethics will construe such Statements, Bulletin or Opinion in the light of any interpretations thereof issued by the FASB or the GASB.

[As amended April 30, 2000.]

[.04] [203-3]—[Deleted]

.05 203-4—Responsibility of employees for the preparation of financial statements in conformity with GAAP. Rule 203 [ET section 203.01] provides, in part, that a member shall not state affirmatively that financial statements or other financial data of an entity are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by a body designated by Council to establish such principles that has a material effect on the statements or data taken as a whole.

Rule 203 [ET section 203.01] applies to all members with respect to any affirmation that financial statements or other financial data are presented in conformity with GAAP. Representation regarding GAAP conformity included in a letter or other communication from a client entity to its auditor or others related to that entity's financial statements is subject to rule 203 [ET section 203.01] and may be considered an affirmative statement within the meaning of the rule with respect to members who signed the letter or other communication; for example, signing reports to regulatory authorities, creditors and auditors.

[Effective November 30, 1993.]

[The next page is 4601.]

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ET Section 291

Ethics Rulings on General and Technical Standards

[1.] Association of Name With Unaudited Statements When Member Is Not Independent

[.001–.002] [Deleted September 1995]

[2.] Opinion by Member Not in Public Practice

[.003–.004] [Deleted December 1986]

[3.] Controller, Preparation of Financial Statements

[.005–.006] [Deleted May 1995]

[4.] Two-Year Opinion—Prior Year Previously Unaudited

[.007–.008] [Deleted May 1995]

[5.] Interim Financial Statements

[.009–.010] [Deleted October 1995]

[6.] Letterhead

[.011–.012] [Deleted September 1995]

[7.] Non-CPA Partner

[.013–.014] [Transferred to section 591.379–.380 as ethics ruling No. 190 under section 591, April 1995.]

8. Subcontractor Selection for Management Consulting Service Engagements

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

.016 *Answer*—When selecting subcontractors the member has a responsibility to ensure that the subcontractors 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 member's personal evaluation of the subcontractor.

9. Supervision of Technical Specialist on Management Consulting Services Engagements

.017 *Question*—A member would like to add to the member's 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 the specialist?

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

10. Submission of Financial Statements by a Member in Public Practice

.019 *Question*—A member in public practice is also a stockholder, partner, director, officer, or employee of an entity and in this capacity submits the entity's financial statements to third parties. What are the ethical considerations?

.020 *Answer*—If the member submits the financial statements in his or her capacity as a stockholder, partner, director, officer, or employee to a third party, the member should clearly communicate, preferably in writing, the relationship of the member to the entity and should not imply that the member is independent of the entity [ET section 191.130–.131]. In addition, if the communication states affirmatively that the financial statements are presented in conformity with generally accepted accounting principles, the member is subject to rule 203 [ET section 203.01] of the Code of Professional Conduct.

If the member prepares financial statements as a member in public practice and/or submits them using the member's public practitioner's letterhead or other identification, the member should comply with applicable standards, including any requirement to disclose a lack of independence.

[Revised, effective July 31, 2002, by the Professional Ethics Executive Committee.]

11. Applicability of Rule 203 to Members Performing Litigation Support Services

.021 *Question*—Does Rule 203, *Accounting Principles* [ET section 203.01], apply to members performing litigation support services?

.022 *Answer*—Yes.

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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 [ET section 202.01] and 203 [ET section 203.01], (2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a member's compliance with applicable laws and government regulations, (3) to prohibit review of a member's professional practice under AICPA or state CPA society or Board of Accountancy authorization, or (4) to preclude a member from initiating a complaint with, or responding to any inquiry made by, the professional ethics division or trial board of the Institute or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy.

Members of any of the bodies identified in (4) above and members involved with professional practice reviews identified in (3) above shall not use to their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict members' exchange of information in connection with the investigative or disciplinary proceedings described in (4) above or the professional practice reviews described in (3) above.

[As amended January 14, 1992.]

Interpretations Under Rule 301—Confidential Client Information

[.02] [301-1]—[Deleted]

[.03] [301-2]—[Deleted]

.04 301-3—Confidential information and the purchase, sale, or merger of a practice. Rule 301 [ET section 301.01] 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 [ET section 301.01], 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. A member in public practice shall not

(1) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom the member or the member's firm performs,

(*a*) an audit or review of a financial statement; or

(*b*) a compilation of a financial statement when the member expects, or reasonably might expect, that a third party will use the financial statement and the member's compilation report does not disclose a lack of independence; or

(*c*) an examination of prospective financial information;

or

(2) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

The prohibition in (1) above applies during the period in which the member or the member's firm is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, 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.

A member's fees may vary depending, for example, on the complexity of services rendered.

[As adopted May 20, 1991.]

Interpretation under Rule 302—Contingent Fees

.02 302-1—Contingent fees in tax matters. This interpretation defines certain terms in rule 302 [ET section 302.01] and provides examples of the application of the rule.

Definition of Terms

(*a*) Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund.

(*b*) A fee is considered determined based on the findings of governmental agencies if the member can demonstrate a reasonable expectation, at the time of a fee arrangement, of substantive consideration by an agency with respect to the member's client. Such an expectation is deemed not reasonable in the case of preparation of original tax returns.

Examples

The following are examples, not all-inclusive, of circumstances where a contingent fee would be permitted:

1. Representing a client in an examination by a revenue agent of the client's federal or state income tax return.
2. Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case (involving a different taxpayer) or with respect to which the taxing authority is developing a position.
3. Filing an amended federal or state income tax return (or refund claim) claiming a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Taxation ($1 million at March 1991) or state taxing authority.
4. Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests.
5. Requesting, by means of "protest" or similar document, consideration by the state or local taxing authority of a reduction in the "assessed value" of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value.
6. Representing a client in connection with obtaining a private letter ruling or influencing the drafting of a regulation or statute.

The following is an example of a circumstance where a contingent fee would not be permitted:

1. Preparing an amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed. There is no question as to the propriety of the deduction; rather the claim is filed to correct an omission.

[The next page is 4691.]

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ET Section 391

Ethics Rulings on Responsibilities to Clients

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 [ET section 301.01] 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 [ET section 301.01] 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.] Prior Client Relationship

[.007-.008] [Deleted August 1989]

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 [ET section 301.01] 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 [ET section 301.01] 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–.016] [Deleted June 1991]

[9.] Finder's Fee

[.017–.018] [Deleted June 1991]

[10.] Fee as Expert Witness

[.019–.020] [Deleted June 1991]

[11.] Fee Contingent on Mortgage Commitment

[.021–.022] [Deleted June 1991]

[12.] Fee as Percentage of Tax Savings

[.023–.024] [Deleted June 1991]

[13.] Contingent Fees to Fire Adjuster

[.025–.026] [Deleted June 1991]

14. Use of Confidential Information on Management Consulting Service Engagements

.027 *Question*—In the course of performing a feasibility study a nonclient 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?

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.028 *Answer*—Rule of conduct 301 [ET section 301.01] regarding confidential client information is not directly applicable to the circumstances described; however, Rule of conduct 501, *Acts Discreditable* [ET section 501.01], 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 Management Consulting Service 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 [ET section 301.01] 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.

16. Disclosure of Confidential Client Information

.031 *Question*—A member has prepared a married couple's joint tax returns for several years. The member was engaged by and has dealt exclusively with spouse A. Divorce proceedings are now under way and spouse B has approached the member with requests for confidential information relating to prior tax returns. Spouse A has directed the member not to comply with spouse B's requests. Would release of this information by the member to spouse B constitute a violation of rule 301 [ET section 301.01]?

.032 *Answer*—As defined by the Code of Professional Conduct, spouse B would be considered to be a client with respect to the prior tax returns in question. Therefore, release of the requested information to spouse B would not be prohibited by rule 301 [ET section 301.01]. The member should consider, however, reviewing the legal implications of such a disclosure with an attorney.

17. Definition of the Receipt of a Contingent Fee or a Commission

.033 *Question*—Rules 302 [ET section 302.01] and 503 [ET section 503.01] prohibit, among other acts, the receipt of contingent fees for the performance of certain services and the receipt of a commission for the referral of products or services under certain circumstances. When is a contingent fee or commission deemed to be received?

.034 *Answer*—A contingent fee or a commission is deemed to be received when the performance of the related services is complete and the fee or the commission is determined. For example, if in one year a member sells a life insurance policy to a client and the member's commission payments are determined to be a fixed percentage of future years' renewal premiums, the commission is deemed to be received in the year the policy is sold.

18. Bank Director

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

.036 *Answer*—Yes; however, before accepting a bank directorship, the member should carefully consider the implications of such service if the member has clients that are customers of the bank.

These implications fall into two categories:

a. Confidential Client Information—Rule 301 [ET section 301.01] provides that a member in public practice shall not disclose any confidential client information without the specific consent of the client. This ethical requirement applies even though failure to disclose information may constitute a breach of the member's fiduciary responsibility as a director.

b. Conflicts of Interest—Interpretation 102-2 [ET section 102.03] provides that a conflict of interest may occur if a member performs a professional service (including service as a director) and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity and the relationship is disclosed to and consent is obtained from all appropriate parties, performance of the service shall not be prohibited.

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, the member should avoid the high probability of a conflict of interest and the appearance that the member's fiduciary obligations and responsibilities to the bank may conflict with or interfere with the member's ability to serve the client's 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 the member's public practice to serve as a consultant to the bank's board. Under such an arrangement, the member could limit activities to those which did not involve conflicts of interest or confidentiality problems.

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19. Receipt of Contingent Fees or Commissions by Member's Spouse

.037 *Question*—May a member's spouse provide services to the member's attest client for a contingent fee or refer products or services for a commission to or from the member's attest client without causing the member to be in violation of rule 302 [ET section 302.01] or rule 503 [ET section 503.01]?

.038 *Answer*—Yes, if the activities of the member's spouse are separate from the member's practice and the member is not significantly involved in those activities. The member, however, should consider whether a conflict of interest may exist as described in rule 102 [ET section 102.01] and interpretation 102-2 [ET section 102.03].

20. Disclosure of Confidential Client Information to Professional Liability Insurance Carrier

.039 *Question*—A member has learned of a potential claim that may be filed against the member. The member's professional liability insurance policy requires that the carrier be promptly notified of actual or potential claims. If the member notifies the carrier and complies with its request for documents that would constitute confidential client information without the client's permission, would the member be in violation of rule 301 [ET section 301.01]?

.040 *Answer*—No. Rule 301 [ET section 301.01] is not intended to prohibit a member from releasing confidential client information to the member's liability insurance carrier solely to assist the defense against an actual or potential claim against the member.

21. Member Providing Services for Company Executives

.041 *Question*—A member has been approached by a company, for which he or she may or may not perform other professional services, to provide personal financial planning or tax services for its executives. The executives are aware of the company's relationship with the member, if any, and have also consented to the arrangement. The performance of the services could result in the member recommending to the executives actions that may be adverse to the company. What rules of conduct should the member consider before accepting and during the performance of the engagement?

.042 *Answer*—Before accepting and during the performance of the engagement, the member should consider the applicability of Rule 102, *Integrity and Objectivity* [ET section 102.01]. If the member believes that he or she can perform the personal financial planning or tax services with objectivity, the member would not be prohibited from accepting the engagement. The member should also consider informing the company and the executives of possible results of the engagement. During the performance of the services, the member should consider his or her professional responsibility to the clients (that is, the company and the executives) under Rule 301, *Confidential Client Information* [ET section 301.01].

[22.] Member Removing Client Files From an Accounting Firm

[.043–.044] [Deleted December 1998]

23. Disclosure of Confidential Client Information in Legal or Alternative Dispute Resolution Proceedings

.045 *Question*—A member discloses confidential client information to the member's attorney or a court or in documents or proceedings in connection with an actual or threatened lawsuit or alternative dispute resolution proceeding relating to that client. Would the member be in violation of rule 301 [ET section 301.01] of the Code of Professional Conduct?

.046 *Answer*—No. Rule 301 [ET section 301.01] is not intended to prohibit a member from disclosing the information necessary to initiate, pursue or defend himself or herself in such proceedings.

This ruling is not intended to prohibit a member's compliance with applicable federal or state laws or regulations.

24. Investment Advisory Services

.047 *Question*—A member or member's firm ("member") provides investment advisory services for an attest client for a fee based on a percentage of the client's investment portfolio. Would the member be considered to be in violation of rule 302, *Contingent Fees* [ET section 302.01]?

.048 *Answer*—Yes. However, the fee would not be contingent upon portfolio performance and, therefore, would not be in violation of rule 302 [ET section 302.01] if all of the following conditions are met:

1. The fee is determined as a specified percentage of the client's investment portfolio.
2. The dollar amount of the portfolio on which the fee is based is determined at the beginning of each quarterly period (or longer period of time as may be agreed upon) and is adjusted only for additions or withdrawals made by the client during the period.
3. The fee arrangement is not renewed with the client more frequently than on a quarterly basis.

When performing such services, the member should also consider rule 101, *Independence* [ET section 101.01], especially interpretation 101-3 [ET section 101.05].

25. Commission and Contingent Fee Arrangements With Nonattest Client

.049 *Question*—A member or member's firm (member) provides for a contingent fee investment advisory services, or refers for a commission products or services of a nonclient or a nonattest client, to the owners, officers, or employees of an attest client or to a nonattest client employee benefit plan sponsored by an attest client. Would the member be considered to be in violation of either rule 302 [ET section 302.01] or rule 503 [ET section 503.01]?

.050 *Answer*—No. The member would not be in violation of either rule 302 [ET section 302.01] or rule 503 [ET section 503.01] provided that, with respect to rule 503 [ET section 503.01], the member discloses the commission to the owners, officers, or employees or to the employee benefit plan. The member should also consider the applicability of interpretation 102-2, *Conflicts of Interest* [ET section 102.03], and his or her professional responsibility to clients under rule 301, *Confidential Client Information* [ET section 301.01].

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ET Section 400

RESPONSIBILITIES TO COLLEAGUES

[*Reserved.*]

[The next page is 4801.]

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

.02 501-1—Retention of client records. Retention of client records after a demand is made for them is an act discreditable to the profession in violation of rule 501 [ET section 501.01]. The fact that the statutes of the state in which a member practices may grant the member a lien on certain records in his or her possession does not change this ethical standard.

A client's records are any accounting or other records belonging to the client that were provided to the member by or on behalf of the client. If an engagement is terminated prior to completion, the member is required to return only client records.

A member's workpapers—including, but not limited to, analyses and schedules prepared by the client at the request of the member—are the member's property, not client records, and need not be made available.

In some instances a member's workpapers contain information that is not reflected in the client's books and records, with the result that the client's financial information is incomplete. This would include, for example, (1) adjusting, closing, combining or consolidating journal entries, (2) information normally contained in books of original entry and general ledgers or subsidiary ledgers and (3) tax and depreciation carryforward information. In those instances when an engagement has been completed, such information should also be made available to the client upon request. The information should be provided in the medium in which it is requested, provided it exists in that medium. The member is not required to convert information that is not in electronic format to an electronic form. The member may require that all fees due the member, including the fees for the above services, be paid before such information is provided.

Once the member has complied with the foregoing requirements, he or she need not comply with any subsequent requests to again provide such information.

[Revised, effective April 30, 2000, by the Professional Ethics Executive Committee.]

.03 501-2—Discrimination and harassment in employment practices. Whenever a member is finally determined by a court of competent jurisdiction to have violated any of the antidiscrimination laws of the United States or any state or municipality thereof, including those related to sexual and other forms of harassment, or has waived or lost his/her right of appeal after a hearing by an administrative agency, the member will be presumed to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].

[Revised, effective November 30, 1997, by the Professional Ethics Executive Committee.]

.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 [ET section 501.01], 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 shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such member—

a. Makes, or permits or directs another to make, materially false and misleading entries in the financial statements or records of an entity; or

b. Fails to correct an entity's financial statements that are materially false and misleading when the member has the authority to record an entry; or

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information.

[Revised, effective May 31, 1999, by the Professional Ethics Executive Committee.]

.06 501-5—Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies. 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 the preparation of financial statements or related information, or in performing attest or similar services for entities 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.

If a member prepares financial statements or related information (for example, management's discussion and analysis) for purposes of reporting to such bodies, commissions, or regulatory agencies, the member should follow the requirements of such organizations in addition to generally accepted accounting principles. If 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). A material departure from such requirements is an act discreditable to the profession, unless the member discloses in the financial statements or his or her report, as applicable, that such requirements were not followed and the reasons therefore.

[Effective August 31, 1989. Revised, effective October 31, 2000, by the Professional Ethics Executive Committee.]

.07 501-6—Solicitation or disclosure of CPA examination questions and answers. A member who solicits or knowingly discloses the May

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1996 or later Uniform CPA Examination question(s) and/or answer(s) without the written authorization of the AICPA shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].

[Effective January 31, 1996. Revised, effective May 31, 1996, by the Professional Ethics Executive Committee.]

.08 501-7—Failure to file tax return or pay tax liability. A member who fails to comply with applicable federal, state, or local laws or regulations regarding the timely filing of his or her personal tax returns or tax returns of the member's firm, or the timely remittance of all payroll and other taxes collected on behalf of others, may be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].

[Effective May 31, 1999]

[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

[.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. 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.
4. Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived.

[Revised, November 30, 1990, 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 and Referral Fees

.01 Rule 503—Commissions and referral fees.

A. *Prohibited commissions*

A member in public practice shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the member or the member's firm also performs for that client

(*a*) an audit or review of a financial statement; or

(*b*) a compilation of a financial statement when the member expects, or reasonably might expect, that a third party will use the financial statement and the member's compilation report does not disclose a lack of independence; or

(*c*) an examination of prospective financial information.

This prohibition applies during the period in which the member is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

B. *Disclosure of permitted commissions*

A member in public practice who is not prohibited by this rule from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the member recommends or refers a product or service to which the commission relates.

C. *Referral fees*

Any member who accepts a referral fee for recommending or referring any service of a CPA to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

[As adopted May 23, 1990, effective August 9, 1990.]

Interpretation under Rule 503—Commissions and Referral Fees

[.02] [503-1]—[Deleted]

[The next page is 4891.]

ET Section 505

Form of Organization and Name

.01 Rule 505—Form of organization and name. A member may practice public accounting only in a form of organization permitted by law or regulation 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 owners may be included in the firm name of a successor organization.

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

[As amended January 14, 1992 and October 28, 1997. Revised May 15, 2000.]

(See appendix B.)

Interpretations Under Rule 505—Form of Organization and Name

[.02] [505-1]—[Deleted]

.03 505-2—Application of rules of conduct to members who own a separate business. A member in the practice of public accounting may own an interest in a separate business that performs for clients any of the professional services of accounting, tax, personal financial planning, litigation support services, and those services for which standards are promulgated by bodies designated by Council (see ET section 92.25). If the member, individually or collectively with his or her firm or with members of his or her firm controls the separate business (as defined by generally accepted accounting principles [GAAP] in the United States of America), the entity and all its owners (including the member) and employees must comply with all of the provisions of the Code of Professional Conduct. For example, in applying Rule 503, *Commissions and Referral Fees* [ET section 503.01], if one or more members individually or collectively can control the separate business, such business would be subject to rule 503 [ET section 503.01], its interpretations and rulings. With respect to an attest client, rule 101 [ET section 101.01] and all its interpretations and rulings would apply to the separate business, its owners and employees.

If the member, individually or collectively with his or her firm or with members of his or her firm, does not control the separate business, the provisions of the Code would apply to the member for his or her actions but not apply to the entity, its other owners and employees. For example, the entity could enter into a contingent fee arrangement with an attest client of the member or accept commissions for the referral of products or services to such attest client.

[Replaces previous interpretation 505-2, with the same title, March 1993, effective March 31, 1993. Revised, effective December 31, 1998, by the Professional Ethics Executive Committee. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1. Revised, effective April 30, 2003, by the Professional Ethics Executive Committee.]

.04 505-3—Application of rule 505 to alternative practice structures. Rule 505, *Form of Organization and Name* [ET section 505.01], states, "A member may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of Council." The Council Resolution (the Resolution) requires, among other things, that a majority of the financial interests in a firm engaged in attest services (as defined therein) be owned by CPAs. In the context of alternative practice structures (APS) in which (1) the majority of the financial interests in the attest firm is owned by CPAs and (2) all or substantially all of the revenues are paid to another entity in return for services and the lease of employees, equipment, and office space, questions have arisen as to the applicability of rule 505 [ET section 505.01].

The overriding focus of the Resolution is that CPAs remain responsible, financially and otherwise, for the attest work performed to protect the public interest. The Resolution contains many requirements that were developed to ensure that responsibility. In addition to the provisions of the Resolution, other requirements of the Code of Professional Conduct and bylaws ensure that responsibility:

a. Compliance with all aspects of applicable state law or regulation

b. Enrollment in an AICPA-approved practice monitoring program

c. Membership in the SEC practice section if the attest work is for SEC clients (as defined by Council)

d. Compliance with the independence rules prescribed by Rule 101, *Independence* [ET section 101.01]

e. Compliance with applicable standards promulgated by Council-designated bodies (Rule 202, *Compliance With Standards* [ET section 202.01]) and all other provisions of the Code, including ET section 91, *Applicability*

Taken in the context of all the above-mentioned safeguards of the public interest, if the CPAs who own the attest firm remain financially responsible, under applicable law or regulation, the member is considered to be in compliance with the financial interests provision of the Resolution.

[Effective December 31, 1998. Revised, July 2002, to reflect conforming changes necessary due to the revision of interpretation 101-1.]

[The next page is 4901.]

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ET Section 591

Ethics Rulings on Other Responsibilities and Practices

[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.] Association Employee

[.007–.008] [Deleted March 1978]

[5.] Association as an Agent

[.009–.010] [Deleted March 1978]

[6.] Associations, Speaking Engagements

[.011–.012] [Deleted March 1978]

[7.] Trading Pool

[.013–.014] [Deleted March 1978]

[8.] Change of Control of Client Company

[.015–.016] [Deleted September 1981]

[9.] Charity Solicitation by Phone

[.017–.018] [Deleted March 1978]

[10.] Church Bulletin

[.019–.020] [Deleted March 1978]

[11.] Attorney, Clients

[.021–.022] [Deleted March 1978]

[12.] Confirmation Requests

[.023–.024] [Deleted March 1978]

[13.] Confirmation Stickers

[.025–.026] [Deleted March 1978]

[14.] Estate Planning

[.027–.028] [Deleted March 1978]

[15.] Golf Outing

[.029–.030] [Deleted March 1978]

[16.] Letter on Behalf of Client

[.031–.032] [Deleted March 1978]

[17.] Letterhead for Estate Practice

[.033–.034] [Deleted March 1978]

[18.] Letterhead for Promotional Material

[.035–.036] [Deleted March 1978]

[19.] Mailings to Accountants

[.037–.038] [Deleted March 1978]

[20.] Trade Association Analysis

[.039–.040] [Deleted September 1981]

[21.] Trade Association Survey

[.041–.042] [Deleted September 1981]

[22.] Management Consultant

[.043–.044] [Deleted March 1978]

[23.] Tax Work Obtained Through Bookkeeper

[.045–.046] [Deleted March 1978]

[24.] Advertising on Tax Broadcast

[.047–.048] [Deleted March 1978]

[25.] Alumni Magazine Announcement

[.049–.050] [Deleted March 1978]

[26.] Brochure Showing Use of Equipment

[.051–.052] [Deleted March 1978]

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[27.] Client Publishing Article on Member's Software Program

[.053–.054] [Deleted March 1978]

[28.] Business Card on Newsletter

[.055–.056] [Deleted March 1978]

[29.] Computer Print-Out

[.057–.058] [Deleted March 1978]

[30.] Charitable Contribution

[.059–.060] [Deleted March 1978]

[31.] Congratulatory Message

[.061–.062] [Deleted March 1978]

[32.] Copyright for Wheel Computer and Tax Withholding Tables

[.063–.064] [Deleted March 1978]

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 [ET section 502.01].

[34.] Course Promotional Circular

[.067–.068] [Deleted March 1978]

[35.] CPA-Author Credits

[.069–.070] [Deleted March 1978]

[36.] CPA-Author of Book Review

[.071–.072] [Deleted March 1978]

[37.] CPA-Authored Articles

[.073–.074] [Deleted March 1978]

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.] CPA Title Imprinted on Checks

[.077–.078] [Deleted March 1978]

[40.] CPA Title in Campaign for School Board Membership

[.079–.080] [Deleted March 1978]

[41.] CPA Title in Lecture Ad

[.081–.082] [Deleted March 1978]

[42.] CPA Title in Political Endorsement

[.083–.084] [Deleted March 1978]

[43.] CPA Designation in Speaker's Qualifications

[.085–.086] [Deleted March 1978]

[44.] CPA Designation of Speaker Named in Tax Forum Ad

[.087–.088] [Deleted March 1978]

[45.] CPA Title on Agency Letterhead

[.089–.090] [Superseded August 1975]

[46.] CPA Title on Employment Agency Letterhead

[.091–.092] [Deleted March 1978]

[47.] Low-Income Taxpayers

[.093–.094] [Deleted March 1978]

[48.] CPA Title on Public Official's Match Folder

[.095–.096] [Deleted March 1978]

[49.] CPA Designation on Research Reports

[.097–.098] [Deleted March 1978]

[50.] Data Processing Program Ad in Technical Publications

[.099–.100] [Deleted March 1978]

[51.] Directories in Elevator

[.101–.102] [Deleted March 1978]

[52.] Directory, Alphabetical

[.103–.104] [Deleted March 1978]

[53.] Directory, Chamber of Commerce Buyer's Guide

[.105–.106] [Deleted March 1978]

[54.] Directory, Trade Association

[.107–.108] [Deleted March 1978]

[55.] Directory Listing, Bank Auditors

[.109–.110] [Deleted March 1978]

[56.] Directory Listing, Change in Telephone Number Announcements

[.111–.112] [Deleted March 1978]

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[57.] Directory Listing, Fraternity

[.113–.114] [Deleted March 1978]

[58.] Directory Listing, "Lawyer-CPA-Tax Attorney"

[.115–.116] [Deleted March 1978]

[59.] Directory Listing, Membership Designation

[.117–.118] [Deleted March 1978]

[60.] Directory Listing, Multiple

[.119–.120] [Deleted March 1978]

[61.] Directory Listings

[.121–.122] [Deleted March 1978]

[62.] Directory Listing, Partners' Names

[.123–.124] [Deleted March 1978]

[63.] Directory Listing, White Pages

[.125–.126] [Superseded February 1976]

[64.] Directory, Trade Association

[.127–.128] [Deleted March 1978]

[65.] Distribution of Firm Bulletin to Publisher

[.129–.130] [Deleted March 1978]

[66.] Distribution of Firm Literature

[.131–.132] [Deleted March 1978]

[67.] Firm Publications: Annual Financial Report

[.133–.134] [Deleted March 1978]

[68.] Employment Ads: "Situations Wanted"

[.135–.136] [Deleted March 1978]

[69.] Firm Name in Staff Training Manual

[.137–.138] [Deleted March 1978]

[70.] CPA Title on License Plates

[.139–.140] [Deleted March 1978]

[71.] Firm Name on Bowling Shirts

[.141–.142] [Deleted March 1978]

[72.] Firm Name on Desk Calendars

[.143–.144] [Deleted March 1978]

[73.] Firm Name on EDP Publication

[.145–.146] [Deleted March 1978]

[74.] Firm Name on Tax Booklet

[.147–.148] [Deleted September 1981]

[75.] Greeting Cards to Clients

[.149–.150] [Deleted March 1978]

[76.] Letterhead

[.151–.152] [Deleted March 1978]

[77.] Letterhead: Academic Degrees

[.153–.154] [Deleted March 1978]

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 [ET section 502.01]. However, the member should also consult the rules of the applicable Bar Association.

[79.] Letterhead: Tax Specialization

[.157–.158] [Deleted March 1978]

[80.] Management Letter

[.159–.160] [Deleted March 1978]

[81.] Medicare Booklet

[.161–.162] [Deleted March 1978]

[82.] Newsletter

[.163–.164] [Deleted November 1997]

[83.] Nonpractitioner in Sales Brochure

[.165–.166] [Deleted March 1978]

[84.] Paid for by Others, Member's Testimonial Letter

[.167–.168] [Deleted March 1978]

[85.] Paid for by Others, Member's Testimonial Letter

[.169–.170] [Deleted March 1978]

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[86.] Paid for by Others, Name in Client Ad

[.171–.172] [Deleted August 1989]

[87.] Paid for by Others, Radio Program Dedication

[.173–.174] [Deleted March 1978]

[88.] Political Endorsement

[.175–.176] [Deleted March 1978]

[89.] Postage Meter Machines

[.177–.178] [Deleted March 1978]

[90.] Open House

[.179–.180] [Deleted March 1978]

[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.] Press Release on Society Chapter Meeting

[.185–.186] [Deleted March 1978]

[94.] Professorship Named After CPA

[.187–.188] [Deleted March 1978]

[95.] Qualifications as Attachment to Report

[.189–.190] [Deleted March 1978]

[96.] Resume for Lender's Information

[.191–.192] [Deleted March 1978]

[97.] Seminar Announcement

[.193–.194] [Deleted March 1978]

[98.] Signs on Office Premises

[.195–.196] [Deleted March 1978]

[99.] Signs on Office Premises

[.197–.198] [Deleted March 1978]

[100.] Specialization on Business Card

[.199–.200] [Deleted March 1978]

[101.] Specialization, Acquisitions & Mergers

[.201–.202] [Deleted June 1982]

[102.] Specialization: "Tax Accountant" Designation by Nonpractitioner

[.203–.204] [Deleted March 1978]

[103.] Recruiting Ad in Employment Guide or Career Opportunity Guide

[.205–.206] [Deleted March 1978]

[104.] Staff Recruiting in University Publication

[.207–.208] [Deleted March 1978]

[105.] Announcement Card: Elected to Vice Presidency

[.209–.210] [Deleted March 1978]

[106.] Information Under Telephone Directory Heading

[.211–.212] [Deleted March 1978]

[107.] Member as Consultant for Client's Customers

[.213–.214] [Deleted March 1978]

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–.218] [Deleted June 1991]

[110.] Computer Service Franchise

[.219–.220] [Deleted June 1991]

[111.] Purchase of Bookkeeping Practice

[.221–.222] [Deleted June 1991]

[112.] Referral

[.223–.224] [Deleted June 1991]

[113.] Member's Spouse as Insurance Agent

[.225–.226] [Deleted June 1991]

[114.] Member's Firm Paying Employee Bonuses

[.227–.228] [Deleted June 1991]

[115.] Actuary

[.229–.230] [Deleted December 1992]

[116.] Bank Director

[.231–.232] [Superseded June 1976]

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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.] Employment Agency

[.235–.236] [Deleted March 1978]

[119.] Finance Company

[.237–.238] [Deleted March 1978]

[120.] Insurance Broker

[.239–.240] [Deleted March 1978]

[121.] Insurance Salesman

[.241–.242] [Deleted March 1978]

[122.] Investment Advisor

[.243–.244] [Deleted March 1978]

[123.] Loan Broker

[.245–.246] [Deleted March 1978]

[124.] Mutual Fund Salesman

[.247–.248] [Deleted March 1978]

[125.] Private Investor in Business and Real Estate

[.249–.250] [Deleted March 1978]

[126.] Real Estate Broker

[.251–.252] [Deleted March 1978]

[127.] State Controller

[.253–.254] [Deleted August 1989]

[128.] State Secretary of Revenue

[.255–.256] [Deleted March 1978]

[129.] Travel Agency

[.257–.258] [Deleted March 1978]

[130.] Collection Agent

[.259–.260] [Deleted March 1978]

[131.] Bookkeeping Service as Feeder

[.261–.262] [Deleted March 1978]

[132.] Tax Practice: Conflict of Interest

[.263–.264] [Deleted August 1989]

[133.] Member Employed by Incorporated Law Firm

[.265–.266] [Deleted March 1978]

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 [ET section 505.01] 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 non-certified 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 "non-proprietary partner" to describe certain high-ranking staff 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?

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.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 [ET section 505.01] 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–.278] [Deleted December 1998]

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.] Retired Partners

[.283–.284] [Deleted March 1978]

[143.] Partnership With Non-CPA

[.285–.286] [Deleted March 1978]

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 [ET section 505.01].

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 [ET section 505.01] of the Code of Professional Conduct 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–.292] [Deleted September 1999]

[147.] Firm Designation

[.293–.294] [Deleted November 1989]

[148.] Firm Designation

[.295–.296] [Deleted November 1989]

[149.] Data Processing: Accounting and Bookkeeping Assistance

[.297–.298] [Deleted March 1978]

[150.] Data Processing: Billing Service

[.299–.300] [Deleted March 1978]

[151.] Data Processing: Computer Center

[.301–.302] [Deleted March 1978]

[152.] Data Processing: Computer Center

[.303–.304] [Deleted March 1978]

[153.] Data Processing: Computer Center

[.305–.306] [Deleted March 1978]

[154.] Data Processing: Computer Center, Service Bureau as Client

[.307–.308] [Deleted March 1978]

[155.] Data Processing: Computer Corporation

[.309–.310] [Deleted December 1992]

[156.] Data Processing: Consultant to Service Bureaus

[.311–.312] [Deleted December 1992]

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[157.] Data Processing: Employee Not in Practice

[.313–.314] [Deleted March 1978]

[158.] Operation of Separate Data Processing Business by a Public Practitioner

[.315–.316] [Deleted December 1998]

[159.] Data Processing: Fees Paid to Other CPAs

[.317–.318] [Deleted June 1991]

[160.] Data Processing: Forwarding Fees

[.319–.320] [Deleted March 1978]

[161.] Time-Sharing Computer Programs Developed by Member's Firm

[.321–.322] [Deleted March 1978]

[162.] CPA Designation on Professional Organization Letterhead

[.323–.324] [Superseded August 1975]

[163.] Distribution of Firm Publications to News Media

[.325–.326] [Deleted March 1978]

[164.] Nonclients on Firm Publication Mailing List

[.327–.328] [Deleted March 1978]

[165.] Sale of Firm Publications

[.329–.330] [Deleted March 1978]

[166.] Announcement of Member's Withdrawal from Firm

[.331–.332] [Deleted March 1978]

[167.] Member Receiving Payment for Referral of Client to Others

[.333–.334] [Deleted June 1991]

[168.] Audit Guides Issued by Governmental Agencies

[.335–.336] [Superseded by interpretation 501-3.]

[169.] Firm Publications, Distribution to Client's Board of Directors

[.337–.338] [Deleted March 1978]

[170.] Sponsor's Announcement of Member's Participation in Educational Seminar

[.339–.340] [Deleted March 1978]

[171.] CPA Designation on Professional Organization or Corporation Letterhead

[.341–.342] [Deleted March 1978]

[172.] Outside Review of Firm Publication

[.343–.344] [Deleted March 1978]

[173.] Use of Credit Cards for Payment of Professional Services

[.345–.346] [Deleted March 1978]

[174.] Directory Listing, White Pages

[.347–.348] [Deleted March 1978]

[175.] Bank Director

[.349–.350] [Replaced by ruling No. 85 under rule of conduct 102 and ruling No. 18 under rule of conduct 301.]

176. Member's Association With Newsletters and Publications

.351 *Question*—May a newsletter, tax booklet, or similar publication be attributed to a member or a member's firm (member) if it has not been prepared by the member?

.352 *Answer*—Yes, provided that the member has a reasonable basis to conclude that the information contained therein that is attributed to the member is not false, misleading, or deceptive.

[Replaces previous ruling No. 176, *Newsletters and Publications Prepared by Others*, effective August 31, 1989. Revised, effective November 30, 1997, by the Professional Ethics Executive Committee.]

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 [ET section 502.01] and 505 [ET section 505.01] 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–.356] [Deleted December 1992]

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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 Business Which Offers Services of a Type Performed by CPAs

[.359–.360] [Deleted November 1993]

[181.] Sale of a Practice—Purchase of Accounts

[.361–.362] [Deleted June 1991]

182. Termination of Engagement Prior to Completion

.363 *Question*—Does rule 501 [ET section 501.01] 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 [ET section 501.02], 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.

183. Use of the AICPA Personal Financial Specialist Designation

.365 *Question*—In what circumstances may a firm include the AICPA-awarded designation "Personal Financial Specialists" on the firm's letterhead and in marketing materials?

.366 *Answer*—It is permissible under rule 502 [ET section 502.01] for the designation "Personal Financial Specialists" (PFS) to be used on a firm's letterhead and in marketing materials if all partners or shareholders of the firm currently have the AICPA-awarded designation. An individual member who holds the designation may use it after his or her name.

184. Definition of the Receipt of a Contingent Fee or a Commission

.367 *Question*—Rules 302 [ET section 302.01] and 503 [ET section 503.01] prohibit, among other acts, the receipt of contingent fees for the performance of certain services and the receipt of a commission for the referral of products or services under certain circumstances. When is a contingent fee or commission deemed to be received?

.368 *Answer*—A contingent fee or commission is deemed to be received when the performance of the related services is complete and the fee or the commission is determined. For example, if in one year a member sells a life insurance policy to a client and the member's commission payments are determined to be a fixed percentage of future years' renewal premiums, the commission is deemed to be received in the year the policy is sold.

185. Sale of Products to Clients

.369 *Question*—May a member purchase a product from a third-party supplier and resell the product to a client without violating rule 503 [ET section 503.01]?

.370 *Answer*—Yes. If a member purchases a product and resells it to a client, any profit on the sale would not constitute a commission. Purchasing entails taking title to the product and having all the associated risks of ownership.

186. Billing for Subcontractor's Services

.371 *Question*—A member has contracted with a computer-hardware maintenance servicer to provide support for a client's computer operations. Would it be a violation of rule 503 [ET section 503.01] for that member to bill the client a higher service fee than that charged the member by the service provider?

.372 *Answer*—No. The increased fee would not constitute a commission.

187. Receipt of Contingent Fees or Commissions by Member's Spouse

.373 *Question*—May a member's spouse provide services to the member's attest client for a contingent fee or refer products or services for a commission to or from the member's attest client without causing the member to be in violation of rule 302 [ET section 302.01] or rule 503 [ET section 503.01]?

.374 *Answer*—Yes, if the activities of the member's spouse are separate from the member's practice and the member is not significantly involved in those activities. The member, however, should consider whether a conflict of interest may exist as described in rule 102 [ET section 102.01] and interpretation 102-2 [ET section 102.03].

188. Referral of Products of Others

.375 *Question*—A member refers computer products of wholesalers to clients of the firm through distributors and agents. A payment is received by the member from the wholesaler if the clients purchase the computer products. Must the member consider rule 503 [ET section 503.01] in connection with this payment?

.376 *Answer*—Yes. Section 91.02 [ET section 91.02] of the Code of Professional Conduct provides that a member shall not permit others to perform acts on behalf of the member that, if carried out by the member, would place the member in violation of the rules. Therefore, the member would be held responsible for the actions of the distributors and agents.

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Rule 503 [ET section 503.01] provides that, if a member or the member's firm performs for a client a service described in rule 503 [ET section 503.01], the member may not recommend or refer to that client for a commission any product or service, or receive a commission for a recommendation or referral. This prohibition applies during the period in which the member is engaged to perform any of the services described in rule 503 [ET section 503.01] and during the period covered by any historical financial statements in such services.

If the products are referred on a commission basis to clients for which the member is not engaged to perform any of the services described in rule 503 [ET section 503.01], rule 503 [ET section 503.01] would not be violated as long as the commission is disclosed to the client. However, any subsequent performance of services described in rule 503 [ET section 503.01] during a period in which the commission was received would constitute a violation of rule 503 [ET section 503.01].

189. Requests for Client Records and Other Information

.377 *Question*—Individuals associated with a client entity who are currently on opposing sides in an internal dispute have each issued separate requests calling for the member to supply them with client records and other information that, pursuant to interpretation 501-1 [ET section 501.02], is required to be provided in certain circumstances. What ethical obligations exist under interpretation 501-1 [ET section 501.02] with respect to complying with such requests?

.378 *Answer*—In providing professional services to individuals, partnerships, or corporations, a member will often deal with an individual who has been designated or held out as the client's representative. Such a representative might include, for example, a general partner or a majority shareholder. A member will have satisfied his or her obligations under interpretation 501-1 [ET section 501.02] when all client records and other information, as defined therein, have been supplied, where required, to the individual who has been previously designated or held out as the client's representative. The member need only supply such information once and need not comply with subsequent requests from the representative, or from other individuals associated with the client entity, to again provide this information.

190. Non-CPA Partner

.379 *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"?

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

[Formerly ruling No. 7 under section 291. Transferred from section 291.013–.014, April 1995.]

191. Member Removing Client Files From an Accounting Firm

.381 *Question*—If the relationship of a member who is not an owner of a firm is terminated, may he or she take or retain originals or copies from the firm's client files or proprietary information without the firm's permission?

.382 *Answer*—No, except where permitted by contractual arrangement.

[Revised, effective December 31, 1998, by the Professional Ethics Executive Committee.]

192. Commission and Contingent Fee Arrangements With Nonattest Client

.383 *Question*—A member or member's firm (member) provides for a contingent fee investment advisory services, or refers for a commission products or services of a nonclient or a nonattest client, to the owners, officers, or employees of an attest client or to a nonattest client employee benefit plan sponsored by an attest client. Would the member be considered to be in violation of either rule 302 [ET section 302.01] or rule 503 [ET section 503.01]?

.384 *Answer*—No. The member would not be in violation of either rule 302 [ET section 302.01] or rule 503 [ET section 503.01] provided that, with respect to rule 503 [ET section 503.01], the member discloses the commission to the owners, officers, or employees or to the employee benefit plan. The member should also consider the applicability of interpretation 102-2, *Conflicts of Interest* [ET section 102.03], and his or her professional responsibility to clients under rule 301, *Confidential Client Information* [ET section 301.01].

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ET Appendix A

Council Resolution Designating Bodies to Promulgate Technical Standards

[As amended January 12, 1988; Revised April 1992 and October 1999.]

Federal Accounting Standards Advisory Board

RESOLVED: That the Federal Accounting Standards Advisory Board, with respect to its statements of federal accounting standards and concepts adopted and issued in March of 1993 and subsequently, in accordance with its rules of procedure, the memorandum of understanding and public notice designating the FASAB's standards and concepts as having substantial authoritative support, 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 federal governmental entities pursuant to rule 203 [ET section 203.01].

[Added by Council, October 1999.]

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 [ET section 203.01] and standards on disclosure of financial information for such entities outside financial statements in published financial reports containing financial statements under rule 202 [ET section 202.01] 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 [ET section 203.01] 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 [ET section 203.01], and standards on disclosure of financial information for such entities outside financial statements in published financial reports containing financial statements under rule 202 [ET section 202.01].

AICPA COMMITTEES AND BOARDS

WHEREAS: The membership of the Institute has adopted rules 201 [ET section 201.01] and 202 [ET section 202.01] 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 [ET section 201.01] and 202 [ET section 202.01] 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 [ET section 201.01] and 202 [ET section 202.01] 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 Consulting Services Executive Committee

RESOLVED: That the AICPA management consulting services executive committee is hereby designated to promulgate standards under rules 201 [ET section 201.01] and 202 [ET section 202.01] with respect to the offering of management consulting 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 [ET section 201.01] and 202 [ET section 202.01] must observe an exposure process seeking comment from other affected committees and boards, as well as the general membership.

[Revised April 1992.]

Attestation Standards

RESOLVED: That the AICPA accounting and review services committee, auditing standards board, and management consulting services executive committee are hereby designated as bodies authorized under rules 201 [ET section 201.01] and 202 [ET section 202.01] to promulgate attestation standards in their respective areas of responsibility.

[Added by Council, May 1988; revised April 1992.]

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Tax Executive Committee

RESOLVED: That the Tax Executive Committee is hereby designated as the body authorized under AICPA Rules 201 [ET section 201.01] and 202 [ET section 202.01] to promulgate professional practice standards with respect to tax services.

[Added by Council, October 1999.]

[The next page is 5131.]

ET Appendix B

Council Resolution Concerning Rule 505—Form of Organization and Name

[As revised May 7, 1997 and May 15, 2000.]

A. RESOLVED: That with respect to a member engaged in the practice of public accounting in a firm or organization which performs (1) any audit or other engagement performed in accordance with the Statements on Auditing Standards, (2) any review of a financial statement performed in accordance with the Statements on Standards for Accounting and Review Services, or (3) any examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements, or which holds itself out as a firm of certified public accountants or uses the term "certified public accountant(s)" or the designation "CPA" in connection with its name, the characteristics of such a firm or organization under rule 505 [ET section 505.01] are as set forth below.

1. A majority of the ownership of the firm in terms of financial interests and voting rights must belong to CPAs. The non-CPA owner would have to be actively engaged as a firm member in providing services to the firm's clients as his or her principal occupation. Ownership by investors or commercial enterprises not actively engaged as firm members in providing services to the firm's clients as their principal occupation is against the public interest and continues to be prohibited.

2. There must be a CPA who has ultimate responsibility for all the services provided by the firm and by each business unit[1] performing the services described in A above, compilation services and other engagements governed by Statements on Auditing Standards or Statements on Standards for Accounting and Review Services and non-CPA owners could not assume ultimate responsibility for any such services or engagements.

3. Non-CPAs becoming owners after adoption of Council's resolution would have to possess a baccalaureate degree and, beginning in the year 2010, have obtained 150 semester hours of education at an accredited college or university.

4. Non-CPA owners would be permitted to use the title "principal," "owner," "officer," "member" or "shareholder," or any other title permitted by state law, but not hold themselves out to be CPAs.

5. Non-CPA owners would have to abide by the AICPA Code of Professional Conduct. AICPA members may be held responsible under the Code for acts of co-owners.

6. Non-CPA owners would have to complete the same work-related CPE requirements as set forth under AICPA bylaw section 2.3 [BL section 230] for AICPA members.

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[1] "Business unit" is meant to indicate geographic (such as offices) and functional arrangements (such as tax and management consulting services).

7. Owners shall at all times own their equity in their own right and shall be the beneficial owners of the equity capital ascribed to them. Provision would have to be made for the ownership to be transferred, within a reasonable period of time, to the firm or to other qualified owners if the owner ceases to be actively engaged in the firm.

8. Non-CPA owners would not be eligible for membership in the AICPA.

B. RESOLVED: The characteristics of all other firms or organizations are deemed to be whatever is legally permissible under applicable law or regulation except as otherwise provided in paragraph C below.

C. RESOLVED: That with respect to a member engaged in the practice of public accounting in a firm or organization which is not within the description of a firm or organization set forth in paragraph A above, but who performs compilations of financial statements performed in accordance with the Statements on Standards for Accounting and Review Services, the characteristics of such a firm or organization under Rule 505 [ET section 505.01] are as set forth below.

1. There must be a CPA who has ultimate responsibility for any financial statement compilation services provided by the firm and by each business unit performing such compilation services and non-CPA owners could not assume ultimate responsibility for any such services.

2. Any compilation report must be signed individually by a CPA, and may not be signed in the name of the firm or organization.

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Bylaws of the American Institute of Certified Public Accountants

As Amended October 28, 1997, unless otherwise indicated

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; "firm" shall be understood to mean any organization permitted by law or regulation; "owner" shall be understood to include partners, partner equivalents, shareholders, or other equity owners of a firm; "official records of the Institute" shall be understood to mean the records of the membership department; and "committee" shall be understood to include any board (except the AICPA Board of Directors), division, task force, or any subdivision thereof.

[As revised May 15, 2000.]

[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.

[The next page is 5321.]

BL Section 200

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

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[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.

[The next page is 5341.]

BL Section 220

2.2 Requirements for Admission to Membership

As amended January 12, 1988, unless otherwise indicated

.01 Persons may qualify for admission as members of the Institute if they satisfy the criteria listed below:

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

2.2.2 They have passed an examination in accounting and other related subjects satisfactory to the Board of Directors, and

2.2.3 With respect to those persons who are engaged in the practice of public accounting as an owner or as an employee who has been licensed as a CPA for more than two years, either they are practicing in a firm that is enrolled in an Institute-approved practice-monitoring program if the services performed by such a firm are within the scope of the AICPA's practice-monitoring standards and the firm issues reports purporting to be in accordance with AICPA professional standards, or if authorized by Council, are themselves enrolled in such a program.

[As amended October 28, 1997.]

(See section 220R.)

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

[As revised May 15, 2000.]

[The next page is 5351.]

BL Section 220R

Implementing Resolution Under Section 2.2 Requirements for Admission to Membership

As amended October 24, 1994, unless otherwise indicated

Under Sections 2.2.3 and 2.3.4 to Implement the Practice-Monitoring Requirement

Resolved:

.01 That the Board of Directors is authorized to establish within the Institute a peer review division governed by an executive committee named the "peer review board" having senior status with authority to carry out the activities of the division. The primary activities of the division will be to establish and conduct, in cooperation with state CPA societies, practice-monitoring programs for AICPA and state society members engaged in the practice of public accounting. 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 peer review board shall be selected by the AICPA nominations committee and elected by Council.

[As revised by Council May 15, 2000.]

Further Resolved:

.02 A firm within the description of subparagraph A of Council Resolution Concerning Rule 505 shall be required to enroll in an Institute-approved practice-monitoring program. An individual engaged in the practice of public accounting in a firm not within the description of Subparagraph A of Council Resolution Concerning Rule 505, but who performs compilations of financial statements in accordance with the Statements on Standards for Accounting and Review Services shall be enrolled in an Institute-approved practice-monitoring program. A member firm of the SEC Practice Section or a firm or individual enrolled in a practice-monitoring program established herein shall be deemed to be enrolled in an approved practice-monitoring program under sections 2.2.3 and 2.3.4 of the bylaws. A firm or individual which is dropped for disciplinary reasons from enrollment in either the SEC Practice Section or a practice-monitoring program established herein is ineligible to participate in another Institute-approved practice-monitoring program until the cause of the disciplinary action is removed.

[As amended by Council October 28, 1997; revised May 15, 2000.]

Further Resolved:

[.03] [Deleted May 15, 2000.]

[The next page is 5361.]

BL Section 230

2.3 Requirements for Retention of Membership

As amended January 8, 1990, 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 230R.)

2.3.4 Engage in the practice of public accounting with a firm that is enrolled in an Institute-approved practice-monitoring program if the services performed by such a firm are within the scope of the AICPA's practice-monitoring standards and the firm issues reports purporting to be in accordance with AICPA professional standards or, if authorized by Council, themselves enroll in such a program.

[As amended October 28, 1997; revised May 15, 2000.]

(See section 220R, as amended October 24, 1994.)

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 230R.)

[The next page is 5371.]

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 Implement the Practice-Monitoring Requirement

[.01–.03] [Deleted March 1995. See section 220R.]

Under Section 2.3.3 Continuing Professional Education for Members in Public Practice

Effective January 1, 2001

The following resolution replaces existing Council resolution in paragraph .04 regarding the basic continuing professional education requirements for members in public practice and not in public practice as of January 1, 2001.

Under Section 2.3.3 Continuing Professional Education for Members

Resolved:

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

From January 1, 2001, forward and for each three-year reporting period thereafter, all AICPA members shall complete 120 hours, or its equivalent, of continuing professional education. Compliance can be achieved either by a formal program of education or by any other means, however measured, that would be reasonably expected to maintain professional competencies in the member's area of practice or employment. Members shall report compliance with such requirement to the AICPA each year and shall keep appropriate records and submit copies of such on request of the Institute.

[As adopted by Council May 7, 1997.]

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 1990 calendar year, AICPA members in public practice, except those in retirement, shall complete acceptable continuing education as follows:

a. 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 completes at least twenty hours each year and reports such compliance to the AICPA for each calendar year.

b. A member in public practice who has not complied with a state licensing or state society membership continuing education requirement or if such a requirement is for an average of less than forty hours per year, at a minimum, shall, during each three-year reporting period, complete 120 hours with a minimum of twenty hours each year and shall report such completion to the AICPA for each calendar year.

Members shall keep appropriate records and submit copies of such on request of the Institute.

[As amended by Council September 23, 1989.]

Further Resolved:

.05 That the Board of Directors, or a body designated or appointed by it, shall have the power and authority to

a. Identify and accept methods of learning to meet and measure this continuing professional education requirement.

b. Grant exceptions for reasons such as retirement, inactive dues status, health, military service, foreign residency, or any other reason it deems appropriate.

[As amended by Council May 7, 1997.]

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

Effective January 1, 2001

The following resolution replaces existing Council resolution in paragraph .06 regarding the basic continuing professional education requirements for members in public practice and not in public practice as of January 1, 2001.

Under Section 2.3.3 Continuing Professional Education for Members

Resolved:

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

From January 1, 2001, forward and for each three-year reporting period thereafter, all AICPA members shall complete 120 hours, or its equivalent, of continuing professional education. Compliance can be achieved either by a formal program of education or by any other means, however measured, that would be reasonably expected to maintain professional competencies in the member's area of practice or employment. Members shall report compliance with such requirement to the AICPA each year and shall keep appropriate records and submit copies of such on request of the Institute.

[As adopted by Council May 7, 1997.]

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 1990 calendar year, AICPA members not in public practice, except those in retirement, shall complete acceptable continuing education as follows:

a. 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 (20 hours per year in the first three years unit engaged in public practice shall, during the first three-year reporting period), at a minimum, and provided the member completes at least 15 hours each year (ten hours per year in the first reporting period) and reports such compliance to the AICPA for each calendar year.

b. A member not in public practice who has not complied with a state licensing or state society membership continuing education requirement or if such a requirement is for an average of less than twenty hours per year, at a minimum, for the first three-year reporting period and for an average of thirty hours, at a minimum, for all subsequent reporting periods, shall, during the first three-year reporting period ending with the calendar year 1992, completes 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 and shall report such completion to the AICPA for each calendar year.

Members shall keep appropriate records and submit copies of such on request of the Institute.

[As amended by Council September 23, 1989.]

Further Resolved:

.07 That the Board of Directors, or a body designated or appointed by it, shall have the power and authority to

a. Identify and accept methods of learning to meet and measure this continuing professional education requirement.

b. Grant exceptions for reasons such as retirement, inactive dues status, health, military service, foreign residency, or any other reason it deems appropriate.

[As amended by Council May 7, 1997.]

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 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 by Council January 8, 1990.]

[The next page is 5381.]

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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 the person 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.

[The next page is 5391.]

BL Section 250

2.5 Right of Members to Describe Themselves as Such

As amended January 12, 1988, unless otherwise indicated

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

[As revised May 15, 2000.]

[The next page is 5401.]

BL Section 260

2.6 International Associates

As amended January 12, 1988, unless otherwise indicated

.01 International associates shall include those who were international associates on or before January 12, 1988. 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.

[As revised May 15, 2000.]

(See section 260R.)

[The next page is 5411.]

BL Section 260R

Implementing Resolution Under Section 2.6 International Associates

As adopted May 7, 1997

Resolved:

.01 That a new category of nonvoting international associate be created pursuant to bylaw section 2.6 and made available to all certified public accountants or chartered accountants, or their equivalents, who are members of associations belonging to the International Federation of Accountants (IFAC) and who are of good moral character and do not hold a CPA certificate issued by a U.S. jurisdiction. If reasonably practicable and appropriate, except for voting, eligibility for a seat on Council or as a nonpublic member of the Board of Directors, all other member benefits will be made available to international associates.

[The next page is 5421.]

BL Section 300

3. ORGANIZATION AND PROCEDURE

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[The next page is 5431.]

BL Section 310

3.1 General

As amended January 12, 1988, unless otherwise indicated

.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.

3.1.1 Communications With Members

Any communication, notification or other action required by these bylaws to be provided or undertaken by mail or in writing, to or from the members, may be provided or undertaken by any means including but not limited to electronic or telephonic means, as authorized by Council. Except for determining a member's residence for voting purposes under section 3.2.3, a member's mailing address for purposes of these bylaws may be an electronic or other form of address, in lieu of a postal address.

[As adopted May 15, 2000.]

[The next page is 5441.]

BL Section 320

3.2 Membership

As amended June 17, 1996, unless otherwise indicated

.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 the member's mailing address as carried in the official records of the Institute, and may be either the state in which the member resides or that in which the member's 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

With the exceptions noted below, only members of the Institute, as defined in section 2.1, may serve as members of the Council, the Board of Directors, or any committee or board designated as "senior" by the Council (see section 3.6.1) or as "permanent" by these bylaws (see section 3.6.2). Exceptions to this rule are as follows:

1. Three representatives of the public, none of whom shall be members of the Institute, shall be members of the Board of Directors and Council.
2. Council may authorize the appointment of persons who are not Institute members to any senior or permanent committee or board provided the non-Institute members do not constitute more than twenty-five percent of its membership.

[As revised May 15, 2000.]

[The next page is 5445.]

BL Section 320R

Implementing Resolution Under Section 3.2 Membership

As adopted
May 15, 2000

Under Section 3.2.5 Certain Positions to be Held Only By Members

Resolved:

.01 That pursuant to bylaw section 3.2.5, persons who are not Institute members may be appointed to the following senior or permanent committees or boards:

- Board of Examiners
- Professional Ethics Executive Committee

Further Resolved:

.02 That except as otherwise provided by Council, and except for committees of the Board of Directors, such as the Committee on Audit, no public member on a senior or permanent committee or board may serve as its chair.

[The next page is 5451.]

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 5461.]

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 340R.)

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.

[The next page is 5471.]

BL Section 340R

Implementing Resolution Under Section 3.4 Board of Directors

As amended May 23, 1994

Resolved:

.01 That the Board of Directors shall be composed of

(*a*) The chairman, the vice chairman, and the immediate past chairman of the Board of Directors;

(*b*) The president of the Institute;

(*c*) Sixteen present or former members of the Council elected 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 5481.]

BL Section 350

3.5 Officers Elected by Council

As amended
June 17, 1996

.01 The officers of the Institute elected by the Council shall be a chairman of the Board of Directors and a vice chairman of the board, who shall be the chairman of the board nominee, both of whom shall be members possessing valid and unrevoked certified public accountant certificates. The chairman and the vice chairman of the board shall have such terms of office, powers, and privileges as the Council may prescribe.

(See section 350R.)

3.5.1 Officers Appointed by the Board of Directors

The officers of the Institute appointed by the Board of Directors shall be a president, who shall be a full-time employee of the Institute and who shall be a member possessing a valid and unrevoked certified public accountant certificate, and a secretary, who shall be a full-time employee of the Institute, but need not be a member of the Institute. The president and the secretary shall have such terms of office, powers, and privileges as the Board of Directors may prescribe. The Board of Directors may also 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 5491.]

BL Section 350R

Implementing Resolution Under Section 3.5 Officers Elected by Council

As amended January 14, 1992

Resolved:

Term of Office

.01 That the chairman and the vice chairman of the Board of Directors shall each be elected annually by the Council for a term of one year or until the election of that person's successor. Neither may succeed oneself in the same office after serving a full term of one year. The term of the president and the 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. The chairman shall appoint committees and boards as provided in section 3.6 of the bylaws. The chairman shall act as a spokesperson 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. The vice chairman shall familiarize oneself with the duties of the office of chairman and shall perform such other related duties as may be assigned to the vice chairman by the chairman.

President

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

Secretary

.05 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 the secretary by the president. An assistant secretary to serve in the secretary's absence, who need not be a member of the Institute, may be appointed by the Board of Directors.

[The next page is 5501.]

BL Section 360

3.6 Committees

As amended
June 17, 1996

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

(See section 360R.)

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 360R.)

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 360R.)

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, the elected members of the Board of Directors, the joint trial board, the peer review board, 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 members possessing a valid and unrevoked certified public accountant certificate, each of whom shall have been a member for at least five consecutive years prior to that person's appointment to the joint trial board, 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 360R.)

3.6.2.4 Board of Examiners

There shall be a board of examiners, that, in addition to any appointed pursuant to bylaw 3.2.5, shall consist 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 5511.]

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BL Section 360R

Implementing Resolutions Under Section 3.6 Committees

As amended January 12, 1988, unless otherwise indicated

Resolved:

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

- Accounting and review services committee
- Accounting standards executive committee
- Assurance services executive committee
- Auditing standards board
- Board of examiners
- Continuing professional education board of management
- Information technology executive committee
- Management consulting services executive committee
- Peer review board
- Personal financial planning executive committee
- Private companies practice executive committee
- Professional ethics executive committee
- SEC practice section executive committee
- Tax executive committee

and further

[As amended by Council May, 1988 and May, 1991; revised April, 1992; amended October, 1994; revised June, 1996; revised May, 1997.]

.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
- Assurance services executive committee
- Auditing standards board
- Management consulting services executive committee

- Peer review board
- Personal financial planning executive committee
- Private companies practice executive committee
- Professional ethics executive committee
- SEC practice section executive committee
- Tax executive committee

[As amended by Council May, 1988 and May, 1991; revised April, 1992; amended October 24, 1994; revised May, 1997]

Under Section 3.6.2.1 Nominations Committee

Resolved:

.03 That the nominations committee shall be chaired by the immediate past chairman of the Board and shall consist of ten additional members serving two-year terms. At the Council meeting held in conjunction with the annual meeting, the Board of Directors, after having considered at least ten candidates, shall recommend five members for election to the nominations committee, each for a two-year term. At any one time, no more than seven members shall be members of Council, and none except the chairman 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. With the exception of its chairman, no member, having served on the nominations committee, shall be eligible again to serve on the nominations committee until the passage of five years.

[As amended by Council May, 1991; revised May 15, 2000.]

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.

Further Resolved:

.06 That in cases where there is prima facie evidence of one or more actions by or with respect to a member as described in subparagraphs 7.4.1 through and including 7.4.6 of bylaw section 7.4, the professional ethics executive

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committee may decide to offer the member or members concerned the opportunity to avoid further investigation and a possible hearing before the trial board by entering into a settlement agreement under such terms and conditions as the committee deems appropriate including but not limited to agreement by the member or members (*a*) to resign from membership or (*b*) to complete specified continuing professional education courses and/or to submit to independent preissuance review of some or all financial statements and accountant's reports and/or submit to an accelerated quality or peer review, and/or to perform other remedial or corrective action as the committee may determine and/or (*c*) to submit to disciplinary action with publication by the Institute as provided in Council resolutions under bylaw section 7.6. The committee shall monitor compliance with the settlement agreement and may initiate an investigation where it finds there has been noncompliance.

[As revised by Council April 28, 2003.]

.07 A member's rejection of the terms and conditions of a proposed settlement agreement will not in any way affect the rights of a member under the bylaws and implementing resolutions in any subsequent investigation by the professional ethics executive committee in a hearing before the trial board.

[As adopted by Council May 26, 1993.]

Under Section 3.6.2.3 Joint Trial Board

Resolved:

.08 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 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.

[As revised by Council June 17, 1996.]

.09 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.

.10 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 consisting of not less than three members, which may, but need not, include the chairman to sit as a hearing panel 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 hearing panels 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.

[As revised by Council May 15, 2000.]

Resolved:

.11 That the trial board is authorized to receive and act on petitions requesting review of a decision of the peer review board 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 peer review board's decision, but it may not increase the severity of the peer review board's sanction.

[As revised by Council June 17, 1996.]

Resolved:

.12 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.

[The next page is 5521.]

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BL Section 400

4. FINANCIAL MANAGEMENT AND CONTROLS

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[The next page is 5531.]

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 401R.)

[The next page is 5541.]

BL Section 401R

Implementing Resolution Under Article 4 Financial Management and Controls

As amended January 12, 1988, unless otherwise indicated

Resolved:

.01 That annual budget of revenues and expenditures for the succeeding fiscal year shall be prepared by the Institute's staff, reviewed and approved by the Board of Directors, and presented to Council for approval; 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 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 to Council, 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.

[As revised by Council May 15, 2000.]

[The next page is 5551.]

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.

[The next page is 5561.]

BL Section 420

4.2 Committee on Audit

As amended January 12, 1988, unless otherwise indicated

.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, to review the audit report, and to perform such other duties appropriate for such a committee as directed by the Board of Directors.

[As revised May 15, 2000.]

[The next page is 5571.]

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.

[The next page is 5581.]

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 the person's 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 5591.]

BL Section 450

4.5 Dues

As amended
January 14, 1992

.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 chairman of the Finance Committee.

[The next page is 5601.]

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 460R.)

[The next page is 5611.]

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.

[The next page is 5621.]

BL Section 500

5. MEETINGS OF THE INSTITUTE AND THE COUNCIL

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[The next page is 5631.]

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.

[The next page is 5641.]

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 the member's 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 5651.]

BL Section 520

5.2 Meetings of Council

As amended January 12, 1988, unless otherwise indicated

.01 Meetings of the Council shall be governed by sections 5.2.1 through 5.2.5, section 5.3, and section 6.6.

5.2.1 Regular Meetings of Council

A regular meeting of the Council shall be held in conjunction with the annual meeting of the Institute and on such other dates as the Council or the Board of Directors may designate.

[As revised May 15, 2000.]

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 the member's 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.

[The next page is 5661.]

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.

[The next page is 5701.]

BL Section 600

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

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[The next page is 5711.]

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 5721.]

BL Section 610

6.1 Members of Council Directly Elected by Members of the Institute

As amended June 17, 1996, unless otherwise indicated

.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 the member's seat for the term the member 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 the member's election is announced by the chairman of the Board of Directors at the meeting of the Council held in conjunction with the annual meeting of the Institute, as prescribed by section 6.6, and shall run until the announcement of the election of new directly elected members of the Council at the meeting of the Council held in conjunction with the annual meeting of the Institute three years after the member's election. If any such member of the Council shall not serve that member's full term, the vacancy so created may be filled pursuant to section 6.5. The term of office of any member directly elected by the members in that member's 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 the member's 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

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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.

If independent nominations are received, 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 meeting of Council held in conjunction with the annual meeting of the Institute. They shall take office as provided in section 6.6.

[As revised May 15, 2000.]

(See section 610R.)

[The next page is 5731.]

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 6.5 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.

[The next page is 5741.]

BL Section 620

6.2 Selection of Members of Council to Represent State Societies

As amended June 17, 1996, unless otherwise indicated

.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 at the meeting of Council held in conjunction with the annual meeting of the Institute after notification to the secretary by the society designating the member. The term shall run for one year or until the commencement of the successor's term, provided that no such member of the Council shall represent a state society for more than six consecutive years.

[As revised May 15, 2000.]

[The next page is 5751.]

BL Section 630

6.3 Election of Members-at-Large of Council, Board of Directors, Chairman of the Board, and Vice Chairman of the Board

As amended January 14, 1992, unless otherwise indicated

.01 At the meeting of the Council held in conjunction with the annual meeting of the Institute, following the completion of such other business as the Council may transact, 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. This election shall occur prior to the installation of the members of the Council newly elected under section 6.1. The at-large members shall serve a term of three years or until the election of their successors. At the same meeting, but after all newly elected and designated Council members have been installed, the Council shall elect the chairman of the board, the vice chairman of the board, and one-third (or as near to one-third as mathematically possible) of the elected members of the Board of Directors. The elected 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 these positions on the Board of Directors positions shall be made by the nominations committee at least six months prior to the annual meeting of the Institute. Notice of those nominations 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 6.6.

[As amended June 17, 1996; revised May 15, 2000.]

.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 the member's 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 the member's full three-year term, provided, however, that a public member may be elected to serve a second three-year term.

[The next page is 5781.]

BL Section 640

6.4 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 that member's seat.

[Section renumbered as a result of the deletion of the former sections 640 and 640R on June 17, 1996.]

[The next page is 5791.]

BL Section 650

6.5 Vacancies

As amended June 17, 1996

.01 Vacancies in the membership of Council, or in the Board of Directors, or in any of the offices of the Institute elected by the Council, 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 the member's seat is filled by direct election of the membership of that member's state as provided in these bylaws.

.02 Pending action by the Council to fill a vacancy among any of the officers of the Institute who are elected by the Council, the Board of Directors may appoint a temporary successor to act in the capacity indicated.

(See section 650R.)

[Section renumbered as a result of the deletion of the former sections 640 and 640R on June 17, 1996.]

[The next page is 5801.]

BL Section 650R

Implementing Resolution Under Section 6.5 Vacancies

As amended June 17, 1996

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 elected by the Council 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 elected by the Council shall serve only for the remainder of the unexpired term of the previous incumbent or until a successor is elected.

[Section renumbered as a result of the deletion of the former sections 640 and 640R on June 17, 1996.]

[The next page is 5811.]

BL Section 660

6.6 Election Meeting of Council

As amended June 17, 1996, unless otherwise indicated

.01 New members-at-large of Council elected pursuant to section 6.3 shall take office as soon as their election is completed, 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 who are elected by the Council, 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 that person's 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.

[Section renumbered as a result of the deletion of the former sections 640 and 640R on June 17, 1996; as revised May 15, 2000.]

[The next page is 5851.]

BL Section 700

7. TERMINATION OF MEMBERSHIP AND DISCIPLINARY SANCTIONS

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[The next page is 5861.]

BL Section 701

Termination of Membership 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.

[The next page is 5871.]

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 710R.)

[The next page is 5881.]

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 that person 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.

[The next page is 5891.]

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, unless otherwise indicated

.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 720R.)

7.2.1 Termination of Association of International Associate

The Board of Directors may terminate the affiliation of an international associate at its discretion.

[As revised May 15, 2000.]

[The next page is 5901.]

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 5911.]

BL Section 730

7.3 Disciplinary Suspension and Termination of Membership Without a 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 730R.)

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 the member, 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 the member's 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 the member's 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 the member's 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 5921.]

BL Section 730R

Implementing Resolution Under Section 7.3 Disciplinary Suspension and Termination of Membership Without a Hearing

As amended January 12, 1988, unless otherwise indicated

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 reasonable 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 the member's last known address according to the official records of the Institute, which are the records of the membership department.

[As revised by Council June 17, 1996.]

.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 three 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.

[As revised by Council May 15, 2000.]

[The next page is 5931.]

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BL Section 740

7.4 Disciplining of Member by Trial Board

As amended January 12, 1988, unless otherwise indicated

.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 the member 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, owner 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 the member's last known address shown in the official records of the Institute.

[As revised May 15, 2000.]

.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 740R.)

[The next page is 5941.]

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BL Section 740R

Implementing Resolution Under Section 7.4 Disciplining of Member by Trial Board

As amended January 12, 1988, unless otherwise indicated

Resolved:

.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, except as provided in the implementing resolution under section 3.6.2.2 of the bylaws, shall report the matter to the secretary of the joint trial board who shall summon the member involved to respond to the charges preferred against the member, which response may include the entering of a plea of guilty without a hearing, in accordance with rules established by the trial board, provided, however, that with respect to a case in which the trial board has granted a request that automatic suspension or termination shall not become operative under the provisions of paragraph (6) in the implementing resolution under section 7.3.2 of the bylaws, the division or such state society ethics committee shall have discretion as to whether and when 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 shall fail 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 the chairman may deem necessary, and shall either dismiss the complaint or refer it to the secretary of the trial board who shall summon the member to answer the complaint in accordance with the provisions in paragraph (1) hereof.

(*c*) Prior to causing the investigation referred to in paragraph (*b*), 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 not less than three of them may be appointed to an independent hearing panel if necessary. The chairman shall report the names of such members to the secretary of the trial board prior to any action under paragraph (*b*).

[As revised by Council May 15, 2000.]

.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 a panel appointed to hear the case, written notice of the charges to be adjudicated. Such notice, when mailed by registered or certified mail, postage prepaid, addressed to the member concerned at the member's last known address according to the official records of the Institute, which are the records of the membership department, shall be deemed properly served.

(*b*) After considering the evidence presented by the professional ethics division or other complainant and by the defense, the panel 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 the complaint is made and take such other disciplinary, remedial or corrective action as the panel deems appropriate.

(*c*) In a case decided by a panel, the member concerned may request a review by the trial board of the decision of the panel, provided such a request for review is filed with the secretary of the trial board within thirty days after the decision of the panel, 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 the chairman's unavailability, and to consist of not less than three 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 such request for review by the trial board shall be granted, and such committee's decision that such request shall not be granted shall be final and subject to no further review. A quorum of such ad hoc committee shall consist of a majority of the appointed. If such request for review is granted, the trial board shall review the decision of the panel 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 panel.

[As revised by Council May 15, 2000.]

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(*d*) Any decision of the trial board, including any decision reviewing a decision of a panel, 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 panel 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 an ad hoc committee.

(iii) Upon the date of a decision of a review panel affirming the decision of a hearing panel in cases where a review has been granted by an ad hoc committee.

(*e*) A plea of guilty, if it conforms to the rules and procedures of the trial board, shall become effective upon acceptance by the trial board.

[As revised by Council June 17, 1996.]

.04 (4) In the case of a settlement agreement between a member and the professional ethics executive committee that provides for disciplinary action pursuant to the Council resolution implementing bylaw section 3.6.2.2, the matter shall be referred to a panel of the trial board which, upon finding that there has been a waiver of the member's rights under Article 7.4, shall recognize such settlement agreement and arrange for publication of such disciplinary action under section 7.6 of the bylaws.

[As revised by Council May 26, 1993; revised April 28, 2003.]

[The next page is 5951.]

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 750R.)

[The next page is 5961.]

BL Section 750R

Implementing Resolution Under Section 7.5 Reinstatement

As amended January 12, 1988, unless otherwise indicated

Resolved:

.01 (1) That at any time after the publication by the Institute of a statement of a case and decision, including cases in which a guilty plea was entered without a hearing, on application of the member concerned to the secretary of the trial board, the appropriate panel of the trial board that last heard the case and whose decision provided the basis for the publication or where the original panel cannot be reappointed or in the case of a guilty plea, a newly formed panel, may, by a two-thirds vote of the members present and voting, rescind or modify such decision. Any such action shall be published by the Institute. The denial of an application under this section shall not be published and shall not prevent the member concerned from applying for reinstatement under section (2) hereof.

[As revised by Council May 26, 1993; revised May 15, 2000.]

.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 the member's 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 their 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 5971.]

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BL Section 760

7.6 Publication of Disciplinary Action

As amended January 12, 1988, unless otherwise indicated

.01 Notice of disciplinary action pursuant to section 7.3 or 7.4 or of termination of participation of a member or 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.

[As revised May 15, 2000.]

(See section 760R.)

[The next page is 5981.]

BL Section 760R

Implementing Resolution Under Section 7.6 Publication of Disciplinary Action

As amended May 26, 1993, unless otherwise indicated

Resolved:

.01 That notice of disciplinary action taken under section 7.3 or 7.4 of the bylaws or of termination of participation of a member or a member's firm in an Institute-approved practice monitoring program, and the basis therefor shall be published by 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 in which the member is found guilty or has entered into a settlement agreement with the professional ethics executive committee, the trial board or panel hearing the case shall decide on the form of the notice of the case and the decision to be published, which notice shall disclose the name of the member involved and the terms and conditions of any settlement agreement and the nature of the violation. The statement and decision, as released by the chairman, trial board, or hearing panel, shall be published by the Institute. No such publication shall be made until such decision has become effective.

[As revised by Council May 15, 2000.]

[The next page is 5991.]

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.

[The next page is 6021.]

BL Section 800

8. AMENDMENTS

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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.

[The next page is 6041.]

BL Section 810

8.1 Proposals to Amend the Bylaws

As amended
June 17, 1996

.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. Any such petition shall include the member's name (typed or printed), membership number and the date it is signed, and the signature of a member on such a petition shall be valid for one year from the date thereof. The changes to this provision will not apply to petitions, regardless of when they are signed, submitted pursuant to efforts to gather such petitions which were ongoing as of July 13, 1995.

[The next page is 6051.]

BL Section 820

8.2 Proposals to Amend the Code of Professional Conduct

As amended
June 17, 1996

.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. Any such petition shall include the member's name (typed or printed), membership number and the date it is signed, and the signature of a member on such a petition shall be valid for one year from the date thereof. The changes to this provision will not apply to petitions, regardless of when they are signed, submitted pursuant to efforts to gather such petitions which were ongoing as of July 13, 1995.

[The next page is 6061.]

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 6071.]

BL Section 840

8.4 Submission to Membership by Mail Ballot

As amended January 12, 1988, unless otherwise indicated

.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 or authorization by the Council, but no later than 180 days following such discussion or authorization. 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 as instructed by the Institute for the return of such votes within sixty days from the date of mailing the ballots to the members.

[As revised May 15, 2000.]

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BL Section 911

*AICPA Mission Statement**

.01 The American Institute of Certified Public Accountants is the national professional organization for all Certified Public Accountants. Its mission is to provide members with the resources, information, and leadership that enable them to provide valuable services in the highest professional manner to benefit the public as well as employers and clients.

In fulfilling its mission, the AICPA works with state CPA organizations and gives priority to those areas where public reliance on CPA skills is most significant.

To achieve its mission, the Institute:

Advocacy

- Serves as the national representative of CPAs before governments, regulatory bodies and other organizations in protecting and promoting members' interests.

Certification and Licensing

- Seeks the highest possible level of uniform certification and licensing standards and promotes and protects the CPA designation.

Communications

- Promotes public awareness and confidence in the integrity, objectivity, competence, and professionalism of CPAs and monitors the needs and views of CPAs.

Recruiting and Education

- Encourages highly qualified individuals to become CPAs and supports the development and outstanding academic programs.

Standards and Performance

- Establishes professional standards; assists members in continually improving their professional conduct, performance, and expertise; and monitors such performance to enforce current standards and requirements.

[The next page is 6151.]

* *Note:* The Mission Statement, developed in 1986 by the Mission of AICPA Special Committee, was revised by the Strategic Planning Committee and approved by Council in May 1991. The Strategic Objectives were revised in November 1993 and again in November 1995.

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 auditing 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. [Revised, July 1997, to reflect conforming changes necessary due to the issuance of Statement on Auditing Standards No. 58.]

.09 The audit 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. [Revised, July 1997, to reflect conforming changes necessary due to the issuance of Statement on Auditing Standards No. 58.]

.10 In addition to furnishing advice in conjunction with their independent audits 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. [Revised, July 1997, to reflect conforming changes necessary due to the issuance of Statement on Auditing Standards No. 58.]

.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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