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## Code of professional conduct as amended January 14, 1992; Bylaws and implementing resolutions of Council as amended January 14, 1992

American Institute of Certified Public Accountants

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**AICPA**

American Institute of Certified Public Accountants

# Code of Professional Conduct

*as amended January 14, 1992*

# Bylaws and Implementing Resolutions of Council

*as amended January 14, 1992*



**AICPA**

American Institute of Certified Public Accountants

# Code of Professional Conduct

*as amended January 14, 1992*

# Bylaws

and Implementing  
Resolutions of Council

*as amended January 14, 1992*

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# AICPA Mission Statement

The American Institute of Certified Public Accountants is the national professional organization for all certified public accountants. The mission of the AICPA is to act on behalf of its members and provide necessary support to assure that CPAs serve the public interest in performing the highest quality professional services. In fulfilling its mission, the AICPA gives priority to those areas where public reliance on CPA skills is most significant.

To achieve its mission, the AICPA

1. Encourages highly qualified individuals—without regard to race, color, religion, sex, age, national origin, disability, or marital status—to become CPAs and promotes the availability of outstanding academic programs.
2. Promotes uniform certification and licensing standards for CPAs at the highest possible level.
3. Sets requirements for continually improving members' professional competence.
4. Assists members in the continuing improvement of their professional expertise.
5. Provides standards for continually improving professional conduct and performance.
6. Monitors professional performance to enforce professional standards and to assist members to continually improve their performance.
7. Promotes public confidence in the integrity, objectivity, competence, and professionalism of AICPA members and the quality of the services they perform.
8. Unites CPAs—whether in public practice, industry, education or government—in their efforts to better serve the public interest.
9. Serves as the national representative of CPAs to government, regulatory bodies, and other organizations.
10. Assists members in understanding and adjusting to changes in the worldwide economic and political as well as technological environments.
11. Functions at the highest level of quality and efficiency.

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*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.

# **Code of Professional Conduct**

## **Principles Rules**

*as amended January 14, 1992*

*The Principles and Rules as set forth herein are  
further amplified by interpretations and rulings  
contained in AICPA Professional Standards (volume 2)*

# Code of Professional Conduct

as amended January 14, 1992

## 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

The Principles and Rules as set forth herein are further amplified by interpretations and rulings contained in *AICPA Professional Standards* (volume 2).

*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.

*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.

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.

## **Section I—Principles**

### **Preamble**

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.

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.

### **Article I**

#### **Responsibilities**

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

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.

## **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.*

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.

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.

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.

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.

## **Article III**

### **Integrity**

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

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.

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.

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.

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

## **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.*

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.

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.

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.

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.

## **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.*

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.

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.

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.

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.

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

## **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.*

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.

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.

In order to accomplish this, members should

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

## **Section II—Rules**

### **Applicability**

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.



## INTERPRETATION OF APPLICABILITY SECTION

*[The professional ethics executive committee has issued the following interpretation of the applicability section of the Code, effective November 30, 1989.]*

For purposes of the applicability section of the Code, a "member" is a member or international associate of the American Institute of CPAs.

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

## Definitions

**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. The term "employer" for these purposes does not include those entities engaged in the practice of public accounting.

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

**Enterprise.** For purposes of the Code, the term "enterprise" is synonymous with the term "client."

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

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

**Firm.** A form of organization permitted by state law or regulation whose characteristics conform to resolutions of Council that is engaged in the practice of public accounting, including the individual owners thereof.

**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.

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

**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.

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

**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, Statement on Standards for Consulting Services, Statements of Governmental Accounting Standards, Statements on Standards for Attestation Engagements, and Statement on Standards for Accountants' Services on Prospective Financial Information.

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

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

## **Rules**

### **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.

## INTERPRETATION OF RULE 101

*[The professional ethics executive committee issued interpretation 101-1 January 12, 1988, and revised it effective June 30, 1990, and January 1, 1992.]*

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

- A. During the period of a professional engagement or at the time of expressing an opinion, a member or a member's firm
  - 1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise.
  - 2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.
  - 3. Had any joint, closely held business investment with the enterprise or with any officer, director, or principal stockholders thereof that was material in relation to the member's net worth or to the net worth of the member's firm.
  - 4. Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise except as specifically permitted in interpretation 101-5.
- B. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, a member or a member's firm
  - 1. Was connected with the enterprise as a promoter, underwriter or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee.
  - 2. Was a trustee for any pension or profit-sharing trust of the enterprise.

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

*[The professional ethics executive committee issued interpretation 101-5 January 12, 1988, and revised it January 1, 1992.]*

**Interpretation 101-5, Loans From Financial Institution Clients and Related Terminology.** Interpretation 101-1.A.4 provides that, except as permitted in this interpretation, a member's independence shall be considered to be impaired if the member has any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise. This interpretation does not consider independence to be impaired for certain grandfathered loans and other permitted loans from financial institution clients for whom services are performed requiring independence as set forth below under "Grandfathered Loans" and "Other Permitted Loans," respectively.

### *Grandfathered Loans*

This interpretation grandfathers the following types of loans obtained from a financial institution under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein, and (a) that exist as of January 1, 1992; (b) that were obtained from a financial

institution prior to its becoming a client requiring independence; (c) that were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or (d) that were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a member\* with respect to such client. *However, independence will be considered to be impaired if, after January 1, 1992, a member obtains a loan of the type described in this paragraph from an entity that, at the time of obtaining the loan, is a client requiring independence.* Grandfathered loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in (a) through (d) above.

1. Home mortgages.
2. Other secured loans. The collateral on such loans must equal or exceed the remaining balance of the loan at January 1, 1992 and at all times thereafter.
3. Loans not material to the member's net worth.

#### *Other Permitted Loans*

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

1. Automobile loans and leases collateralized by the automobile.
2. Loans of the surrender value under terms of an insurance policy.
3. Borrowings fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").
4. Credit cards and cash advances on checking accounts with an aggregate balance not paid currently of \$5,000 or less.

#### *Terminology*

For purposes of interpretations 101-1.A.4 and 101-5, the following terms are defined:

**Loan.** A loan is considered to be a financial transaction, the characteristics of which generally include, but are not limited to, an agreement that provides for repayment terms and a rate of interest. A loan includes a guarantee of a loan, a letter of credit and a line of credit. A loan to a limited partnership in which members have a combined investment exceeding 50 percent of the total limited partnership interest is considered a loan to those members.

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

**Normal lending procedures, terms, and requirements.** "Normal lending procedures, terms, and requirements" relating to a member's loan from a financial institution are defined as lending procedures, terms, and requirements that

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\*For the definition of "member" see ethics interpretation 101-9, "The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence" (AICPA, *Professional Standards*, vol. 2, ET sec. 101.11).



are reasonably comparable with those relating to loans of a similar character committed to other borrowers during the period in which the loan to the member is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under “normal lending procedures, terms, and requirements,” the member should consider all the circumstances under which the loan was granted, including—

1. The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the member or the member’s firm.
2. Repayment terms.
3. Interest rate, including “points.”
4. 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.

### **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.

### **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.

### **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.

### **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.

### **Rule 301 Confidential Client Information**

A member in public practice shall not disclose any confidential client information without the specific consent of the client.

This rule shall not be construed (1) to relieve a member of his or her professional obligations under rules 202 and 203, (2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, 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.

### **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.

#### **INTERPRETATION OF RULE 302**

*[The professional ethics executive committee issued interpretation 302-1, effective May 20, 1991.]*

**Interpretation 302-1, Contingent Fees in Tax Matters.** This interpretation defines certain terms in rule 302 and provides examples of the application of the rule.

#### *Definitions 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.

**Rule 401** [There are currently no rules in the 400 series.]

### **Rule 501 Acts Discreditable**

A member shall not commit an act discreditable to the profession.

### **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.

### **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.

**Rule 504** [*There is currently no rule 504.*]

#### **Rule 505 Form of Organization and Name**

A member may practice public accounting only in a form of organization permitted by state 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. Also, an owner surviving the death or withdrawal of all other owners may continue to practice under a name which includes the name of past owners for up to two years after becoming a sole practitioner.

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

## **APPENDIX A**

### **Council Resolution Designating Bodies to Promulgate Technical Standards**

#### **Financial Accounting Standards Board**

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

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

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

#### **Governmental Accounting Standards Board**

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

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

RESOLVED: That as of the date hereof, the GASB, with respect to statements of governmental accounting standards adopted and issued in July 1984 and subsequently in accordance with its rules of procedure and the bylaws of the FAF, be, and hereby is, designated by the Council

of the American Institute of Certified Public Accountants as the body to establish financial accounting principles for state and local governmental entities pursuant to rule 203, and standards on disclosure of financial information for such entities outside financial statements in published financial reports containing financial statements under rule 202.

## **AICPA COMMITTEES AND BOARDS**

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

### **Accounting and Review Services Committee**

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

### **Auditing Standards Board**

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

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

### **Management Consulting Services Executive Committee**

RESOLVED: That the AICPA management consulting services executive committee is hereby designated to promulgate standards under rules 201 and 202 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 and 202 must observe an exposure process seeking comment from other affected committees and boards, as well as the general membership.

## **Attestation Standards**

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

## **APPENDIX B**

### **Council Resolution Concerning Form of Organization and Name**

RESOLVED: That, under rule 505, a member may practice public accounting in a business form other than a proprietorship or partnership only if such entity has the following characteristics:

1. *Ownership.* All owners shall be persons who hold themselves out to be certified public accountants or public accountants and who perform for clients one or more types of services performed by certified public accountants or public accountants. 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.
2. *Transfer of Ownership.* Provision shall be made requiring any owner who ceases to be eligible to be an equity owner to dispose of all his or her interest within a reasonable period to a person qualified to be an owner or to the entity.
3. *Directors and Officers.* The principal executive officer shall be an owner and a member of the entity's governing body. Lay governing body members shall not exercise any authority whatsoever over professional matters.
4. *Conduct.* The form of organization shall not change the obligation of its owners, directors, officers, and other employees to comply with the Code of Professional Conduct established by the American Institute of Certified Public Accountants.



# **Bylaws**

**and Implementing  
Resolutions of Council**

*as amended January 14, 1992*

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

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

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

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

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

(See implementing resolution, page 43.)

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

## **2.3 Requirements for Retention of Membership**

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 implementing resolutions, page 44.)

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

(See implementing resolution, page 43.)

**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 implementing resolution, page 45.)

## **2.4 Certificate of Membership**

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

## **2.5 Right of Members to Describe Themselves as Such**

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

## **2.6 International Associates**

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

# **3 Organization and Procedure**

## **3.1 General**

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

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.

## **3.2 Membership**

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

### **3.2.1 Attendance at Meetings**

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

### **3.2.2 Voting Rights**

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

### **3.2.3 Residence for Voting Purposes**

The state from which a member may vote shall be that indicated by his mailing address as carried in the official records of the Institute, and

may be either the state in which he resides or that in which his office is located.

### **3.2.4 Resolutions of the Membership**

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

### **3.2.5 Certain Positions to Be Held Only by Members**

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

## **3.3 Council**

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.

## **3.4 Board of Directors**

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 implementing resolution, page 45.)

### **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.

## **3.5 Officers Elected by Council**

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

(See implementing resolution, page 46.)

### **3.5.1 Officers Appointed by the Board of Directors**

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

## **3.6 Committees**

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

(See implementing resolution, page 46.)

### **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 implementing resolution, page 46.)

### **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 implementing resolutions, pages 47-48.)

**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 quality review executive committee, and the Council, as elsewhere provided in these bylaws, and to apportion among the states directly elected Council seats pursuant to section 6.1.2.

(See implementing resolution, page 47.)

**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 implementing resolution, page 48.)

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

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

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

(See implementing resolution, page 48.)

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

## **4 Financial Management and Controls**

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 implementing resolution, page 49.)

### **4.1 Audit**

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.

#### **4.2 Committee on Audit**

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

#### **4.3 Execution of Instruments on Behalf of the Institute**

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.

#### **4.4 Indemnification**

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

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.

#### **4.5 Dues**

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.

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.



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.

#### **4.6 Fiscal Year**

The fiscal year of the Institute shall be as the Council shall prescribe.  
(See implementing resolution, page 49.)

### **5 Meetings of the Institute and the Council**

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.

#### **5.1 Meetings of the Institute**

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

##### **5.1.1 Regular Meetings of the Institute**

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

##### **5.1.2 Special Meetings of the Institute**

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

##### **5.1.3 Notice of Meetings of the Institute**

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

#### **5.1.4 Resolution of the Membership by Mail Ballot**

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

### **5.2 Meetings of Council**

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

#### **5.2.1 Regular Meetings of Council**

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

#### **5.2.2 Special Meetings of Council**

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

#### **5.2.3 Mail Ballot in Lieu of Special Meeting of Council**

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

#### **5.2.4 Notice**

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

#### **5.2.5 Minutes**

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

### **5.3 General Provisions Governing Meetings**

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.

## **6 Election of Council, Board of Directors, and Officers of the Institute**

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.

### **6.1 Members of Council Directly Elected by Members of the Institute**

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

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

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

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

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

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

**6.1.2.2 Allocation to Be Made by Nominations Committee.** The nominations committee shall make the allocation provided in section 6.1.2. It shall be made at five-year intervals, at least nine months prior to annual meetings to be held each calendar year which ends in one and in six, and shall govern the five annual elections immediately following. It shall be based upon the membership figures and addresses carried on the books of the Institute the last day of the fiscal year immediately preceding the date of such determination.

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

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

### **6.1.3 Term of Office**

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

members in his state to fill such vacancy shall be the remainder of the three-year term with respect to which the vacancy occurred.

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

#### **6.1.4 Number of Council Seats to Be Filled by Election**

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

#### **6.1.5 Nominations**

At least eight months prior to the annual meeting of the Institute, the nominations committee shall request, from the recognized society of certified public accountants in each state for which any vacancies (see section 6.1.4) will arise in the coming year, the names of suggested candidates from the state represented by such society to fill each such vacancy. The committee shall give due consideration to the names so submitted, but shall not be required to select its nominees from among such names. In the absence of a satisfactory response from any such state society, the nominations committee shall select the nominees from such state.

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

#### **6.1.6 Election**

The nominees of the nominations committee for directly elected seats on Council shall be declared elected by the secretary if no independent nominations are filed for such seats as required by section 6.1.5.

The secretary shall mail to all members of the Institute in each state in which there is a contest for a directly elected seat on Council, at least ninety days prior to the annual meeting of the Institute, mail ballots containing the names and relevant background information of nominees

from that state nominated by the nominations committee and the names and relevant background information of nominees independently nominated. Each ballot shall contain an announcement that votes will be counted only if received by the secretary at least forty-five days before the annual meeting of the Institute. Election to contested seats on Council shall be determined by a majority of the votes received from each jurisdiction by that date. Mail ballots shall be counted by the secretary, who shall certify the results for publication to the membership. Newly elected members shall be notified promptly and advised to attend the initial meeting of Council prior to the annual meeting of the Institute. They shall take office as provided in section 6.7.

(See implementing resolution, page 49.)

## **6.2 Selection of Members of Council to Represent State Societies**

Each recognized state society of certified public accountants shall designate, in a manner it deems appropriate, an Institute member to represent it on the Council. The term of each member of the Council so designated shall commence upon notification of the secretary by the society designating him at the meeting of Council immediately preceding the annual meeting of the Institute and shall run for one year or until the designation of his successor, provided that no such member of the Council shall represent a state society for more than six consecutive years.

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

Seven Institute members, without regard to the states in which they reside, shall be elected annually by the Council as members-at-large of the Council, at its meeting immediately preceding the annual meeting of the Institute, and immediately prior to the installation of the members of the Council newly elected under section 6.1, for a term of three years or until the election of their successors. At the same meeting, but subsequent to the installation of such newly elected members of the Council, including members-at-large, the Council shall elect the chairman of the board, the vice chairman of the board, and five Institute members of the Board of Directors. Such five members of the Board of Directors shall serve for a term of three years or until election of their successors. The Council shall also elect one representative of the public, who is not a member of the Institute, to the Board of Directors for a term of three years, or until election of a successor. Nominations for all such positions shall be made by the nominations committee at least six months prior to the annual meeting of the Institute, and notice thereof shall be published

to the membership of the Institute at least five months prior to such annual meeting. Independent nominations may be made by any twenty members of the Council if filed with the secretary at least four months prior to the annual meeting of the Institute. No nominations from the floor will be recognized. A majority of votes shall elect. Nominees may be invited to the meeting at which the election is to be held, and those elected shall take office as prescribed in section 6.7.

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

### **6.3.1 Re-election to Board of Directors**

No elected member of the Board of Directors who has served a full three-year term shall be eligible for re-election to such a term until the meeting of the Council one year after the completion of his full three-year term provided, however, that a public member may be elected to serve a second three-year term.

## **6.4 Election of the President and the Secretary**

Election of the president and the secretary shall be by the Council and shall be conducted as the Council may prescribe.

(See implementing resolution, page 49.)

## **6.5 Forfeiture of Office for Nonattendance**

Any directly elected member or member-at-large of Council who shall be absent from three consecutive meetings shall forfeit his seat.

## **6.6 Vacancies**

Vacancies in the membership of Council, or in the Board of Directors, or in any of the offices of the Institute, occurring between annual meetings of the Institute, may be filled by election of replacements by the Council, either at a meeting of Council or by mail ballot, under such conditions as the Council may prescribe. If the Council should so replace a directly elected member of the Council, such interim appointment will run only until his seat is filled by direct election of the membership of his state as provided in these bylaws.

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

(See implementing resolution, page 49.)

## **6.7 Election Meeting of Council**

At the meeting of the Council immediately preceding the annual meeting of the Institute, following the completion of such other business as the Council may transact, the Council shall elect new members-at-large of the Council pursuant to section 6.3. New members-at-large shall then take office, replacing those members-at-large whose terms shall have expired. Then the presiding officer shall announce the installation of members of the Council newly elected under section 6.1, at which time they shall take office, replacing those directly elected members of Council whose terms shall have expired. Election of officers, new members of the Board of Directors, and others shall then be held, and each officer or member of the Board of Directors so elected shall replace his predecessor upon such election, provided, however, that the retiring chairman of the board shall continue in office through the end of the annual meeting of the Institute.

## **7 Termination of Membership and Disciplinary Sanctions**

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.

### **7.1 Resignation of Membership**

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 implementing resolution, page 50.)

### **7.2 Termination of Membership for Nonpayment of Financial Obligation or for Failure to Comply With Membership-Retention Requirements**

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 implementing resolution, page 50.)

### **7.2.1 Termination of Association of International Associate**

The Council may terminate the affiliation of an international associate in its discretion.

## **7.3 Disciplinary Suspension and Termination of Membership Without Hearing**

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 implementing resolution, page 51.)

### **7.3.1 Criminal Conviction of Member**

Membership in the Institute shall be suspended without a hearing should there be filed with the secretary of the Institute a judgment of conviction imposed upon any member for

**7.3.1.1** A crime punishable by imprisonment for more than one year;

**7.3.1.2** The willful failure to file any income tax return which he, as an individual taxpayer, is required by law to file;

**7.3.1.3** The filing of a false or fraudulent income tax return on his or a client's behalf; or

**7.3.1.4** The willful aiding in the preparation and presentation of a false and fraudulent income tax return of a client; and

shall be terminated in like manner upon the similar filing of a final judgment of conviction; however, the Council shall provide for the consideration and disposition by the trial board, with or without hearing, of a timely written petition of any member that his membership should not be suspended or terminated pursuant to section 7.3.1.1, herein.

### **7.3.2 Suspension or Revocation of Certificate**

Membership in the Institute shall be suspended without a hearing should a member's certificate as a certified public accountant or license or permit to practice as such or to practice public accounting be suspended as a disciplinary measure by any governmental authority; but,

such suspension of membership shall terminate upon reinstatement of the certificate, or such membership in the Institute shall be terminated without hearing should such certificate, license, or permit be revoked, withdrawn, or cancelled as a disciplinary measure by any governmental authority. The Council shall provide for the consideration and disposition by the trial board, with or without hearing, of a timely written petition of any member that his membership should not be suspended or terminated pursuant to this section 7.3.2.

### **7.3.3 Trial Board Disciplining Not Precluded**

Application of the provisions of section 7.3.1 and section 7.3.2 shall not preclude the summoning of the member concerned to appear before a hearing panel of the trial board pursuant to section 7.4.

## **7.4 Disciplining of Member by Trial Board**

Under such conditions and by such procedure as the Council may prescribe, a hearing panel of the trial board, by a two-thirds vote of the members present and voting, may expel a member (except as otherwise provided in section 7.4.3), or by a majority vote of the members present and voting, may suspend a member for a period not to exceed two years not counting any suspension imposed under sections 7.3.1 and 7.3.2, or may impose such lesser sanctions as the Council may prescribe on any member if the member

**7.4.1** Infringes any of these bylaws or any rule of the Code of Professional Conduct;

**7.4.2** Is declared by a court of competent jurisdiction to have committed any fraud;

**7.4.3** Is held by a hearing panel of the trial board to have been guilty of an act discreditable to the profession, or to have been convicted of a criminal offense which tends to discredit the profession; provided that should a hearing panel of the trial board find by a majority vote that he has been convicted by a criminal court of an offense involving moral turpitude, or any of the offenses enumerated in section 7.3.1, the penalty shall be expulsion;

**7.4.4** Is declared by any competent court to be insane or otherwise incompetent;

**7.4.5** Is subject to the suspension, revocation, withdrawal, or cancellation of the member's certificate as a certified public accountant or license or permit to practice as such or to practice public accounting as a disciplinary measure by any governmental authority; or

**7.4.6** Fails to cooperate with the professional ethics division in any disciplinary investigation of the member or a partner or employee of the firm by not making a substantive response to interrogatories or a request for

documents from a committee of the professional ethics division or by not complying with the educational and remedial or corrective action determined to be necessary by the professional ethics executive committee, within thirty days after the posting of notice of such interrogatories, or a request for documents, or directive to take CPE or corrective action by registered or certified mail, postage prepaid, to the member at his or her last known address shown on the books of the Institute.

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 implementing resolution, page 52.)

## **7.5 Reinstatement**

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 implementing resolution, page 55.)

## **7.6 Publication of Disciplinary Action**

Notice of disciplinary action pursuant to section 7.3 or 7.4 or of termination of participation of a member's firm in an Institute-approved practice-monitoring program, together with a statement of the reasons therefor, shall be published in such form and manner as the Council may prescribe.

(See implementing resolution, page 56.)

## **7.7 Disciplinary Sections Not to Be Applied Retroactively**

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.

# **8 Amendments**

Amendments to these bylaws and the Code of Professional Conduct shall be accomplished in a manner consistent with this article.

## **8.1 Proposals to Amend the Bylaws**

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.

## **8.2 Proposals to Amend the Code of Professional Conduct**

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.

## **8.3 Submission to Council via Board of Directors**

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.

## **8.4 Submission to Membership by Mail Ballot**

Amendments proposed under section 8.3.1 and those authorized by the Council under section 8.3 shall be submitted to all of the members of the Institute for a vote by mail ballot on or after ninety days following discussion by the Council, but no later than 180 days following such discussion. If at least two-thirds of those voting approve such proposal, it shall become effective as an amendment to the bylaws or to the Code of Professional Conduct, as applicable. Mail ballots shall be considered valid and counted only if received in the Institute's principal office within sixty days from the date of mailing the ballots to the members.

# Council Resolutions to Implement Bylaws

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

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

**FURTHER RESOLVED:** That in order for members of the Institute engaged in the practice of public accounting to retain their membership beyond the periods set forth in this resolution, they shall be associated as proprietors, partners, shareholders, or employees of firms enrolled in an approved practice review program as designated in this resolution. A member firm of the AICPA division for CPA firms or a firm enrolled in the quality review program established by this resolution shall be deemed to be enrolled in an approved program under sections 2.2.3 and 2.3.4 of the bylaws. A firm which is dropped for disciplinary reasons from enrollment in either section of the division for CPA firms or from the quality review program is ineligible to participate in another component of the AICPA practice-monitoring program until the cause of the disciplinary action is removed.

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

### **Under Section 2.3 Continuing Professional Education for Members in Public Practice**

**RESOLVED:** 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.

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

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

**RESOLVED:** 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-

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, complete sixty hours with a minimum of ten hours in each year and shall, during subsequent three-year reporting periods, complete ninety hours with a minimum of fifteen hours each year 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.

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

#### **Under Section 2.3.5 Definition of "SEC Client"**

**RESOLVED:** 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.

#### **Under Section 3.4 Board of Directors**

**RESOLVED:** 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 and the secretary of the Institute;
- (c) Fifteen 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.

## **Under Section 3.5 Officers**

RESOLVED:

### **Term of Office**

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 his successor. Neither may succeed himself 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**

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

### **Vice Chairman of the Board**

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

### **President**

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

### **Secretary**

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

## **Under Section 3.6 Committees**

RESOLVED:

- (1) That the following be designated as senior committees and boards:
  - Accounting and review services committee
  - Accounting standards executive committee
  - Auditing standards board



- Board of examiners
- Continuing professional education executive committee
- Information technology executive committee
- Management consulting services executive committee
- Personal financial planning executive committee
- Private companies practice executive committee
- Professional ethics executive committee
- Quality review executive committee
- SEC practice section executive committee
- Tax executive committee

and further

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

- Accounting and review services committee
- Accounting standards executive committee
- Auditing standards board
- Management consulting services executive committee
- Personal financial planning executive committee
- Private companies practice executive committee
- Professional ethics executive committee
- Quality review executive committee
- SEC practice section executive committee
- Tax executive committee

### **Under Section 3.6.2.1 Nominations Committee**

**RESOLVED:** 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 preceding the annual meeting, the Board of Directors, after having considered at least ten candidates, shall recommend five members for election to the nominations committee 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.

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

### **Under Section 3.6.2.3 Joint Trial Board**

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

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.

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

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

**RESOLVED:** 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.

#### **Under Article 4 Financial Management and Controls**

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

#### **Under Section 4.6 Fiscal Year**

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

#### **Under Section 6.1.6 Election**

RESOLVED: That the withdrawal of a nomination for whatever reason after the balloting has commenced will not be acted upon until the certification of election has been completed. Vacancies then arising will be filled in accordance with section 6.6 of the bylaws, except that in states where the number of nominees exceeds the number of vacancies, the vacancy created by any withdrawal will be filled by that nominee having the highest number of votes after all other vacancies have been filled.

#### **Under Section 6.4 Election of the President and the Secretary**

RESOLVED: That the Board of Directors shall recommend to the Council persons to be elected as president and secretary, respectively. Other nominations shall be permitted from the floor. Voting may be by voice vote or, upon request of a majority of those present, by written ballot. A majority vote shall elect.

#### **Under Section 6.6 Vacancies**

RESOLVED: That if a vacancy occurs in the membership of Council, or in the Board of Directors, or in any of the offices of the Institute between annual meetings of the Institute, the Board of Directors shall recommend

replacements for election by Council. Voting on such replacement may be conducted by mail ballot, in which case provision shall be made for write-in votes, or at the next meeting of Council, as may appear most desirable in the circumstances. If the voting takes place at a Council meeting, nominations from the floor shall be permitted; voting may be by voice vote or, at the request of a majority of those present, by written ballot. A majority vote shall elect. In any event, persons elected to fill vacancies in the Board of Directors, in the Council, or in any of the offices of the Institute shall serve only for the remainder of the unexpired term of the previous incumbent or until a successor is elected.

### **Under Section 7.1 Resignation of Membership**

RESOLVED: That the Board of Directors shall act upon resignation of members, which shall become effective on the date of acceptance, but no action shall be taken on the resignation of a member with respect to whom charges are under investigation by the professional ethics division, or against whom a complaint is pending before the trial board, unless the division or the trial board, as the case may be, recommends that such resignation be accepted. If a person whose resignation was accepted when he was under investigation or the object of a complaint should subsequently apply for reinstatement, the Board of Directors shall not reinstate such person without the consent of the division or the trial board, as the case may be.

### **Under Section 7.2 Termination of Membership for Nonpayment of Financial Obligation or for Failure to Comply With a Membership-Retention Requirement**

RESOLVED: 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: 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: 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.

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.

### **Under Section 7.3 Disciplinary Suspension and Termination of Membership Without Hearing**

#### **RESOLVED:**

- (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.
- (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.
- (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.
- (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.
- (5) That notices of suspension or termination pursuant to paragraph (1), (2), (3), or (4) of this resolution shall be signed by the secretary of the Institute and mailed by registered or certified mail, postage prepaid, addressed to the member concerned at his last known address according to the records of the Institute.
- (6) That the operation of paragraph (1), (2), (3), or (4) of this resolution shall become postponed if, within thirty days after mailing the notice of suspension or termination, the secretary of the Institute receives a request from the member concerned that the pertinent provision shall not become operative. The request shall state briefly the facts and reasons relied upon. All such requests shall be referred to the trial board for action thereon by the trial board or by an ad hoc committee thereof consisting of at least five members appointed by the chairman of the trial board or vice chairman, when acting as chairman. If the request is denied, the suspension or termination, as the case may be, shall become effective upon such denial, and the member concerned shall be so notified in writing by the secretary. No appeal to the trial board shall be allowable with respect to a denial of such a request by the ad hoc committee. If the request is granted, the suspension or termination, as the case may be, shall not become effective. In such event, the secretary shall transmit the matter to the professional ethics division to take whatever action it considers proper in the circumstances. A determination that paragraph (1), (2), (3), or (4) of this resolution shall not become operative shall be made only when it clearly appears that, because of exceptional or unusual circumstances, it would be inequitable to permit such automatic suspension or termination.

#### **Under Section 7.4 Disciplining of Member by Trial Board**

RESOLVED: That

- (1) Any complaint preferred against a member under section 7.4 of the bylaws shall be submitted to the professional ethics division, which in turn may refer the complaint for investigation and recommendation to an ethics committee (or its equivalent) of a state society of certified public accountants that has made an agreement with the Institute of

the type authorized in section 7.4 of the bylaws. If, upon consideration of the complaint, investigation and/or recommendation thereon, it appears that a prima facie case is established showing a violation of any applicable bylaws or any rule of the Code of Professional Conduct of the Institute or any state society making an agreement with the Institute referred to above or showing any conduct discreditable to a certified public accountant, the professional ethics division or the ethics committee of such state society shall report the matter to the secretary of the trial board who shall summon the member involved to appear in answer at the next convenient meeting of a panel of the trial board appointed to hear the case provided, however, that, with respect to a case falling within the scope of section 7.3 of the bylaws, the division or such state society ethics committee shall have discretion as to when and whether to report the matter to the secretary for such summoning.

- (2) (a) If the professional ethics division or state society ethics committee dismisses any complaint preferred against a member or fails to initiate its inquiry within ninety days after such complaint is presented to it in writing, the member preferring the complaint may present the complaint in writing to the trial board, provided, however, that this provision shall not apply to a case falling within the scope of section 7.3.
  - (b) The chairman of the trial board shall cause such investigation to be made of the matter as he may deem necessary, and shall either dismiss the complaint or refer it to the secretary of the trial board who shall summon the member involved thereby to appear before the panel appointed in paragraph (c) hereof to hear the case.
  - (c) Prior to causing the investigation referred to in paragraph (a), the chairman of the trial board shall designate six members of the trial board who shall not be involved in such investigation in order that five of them may be appointed to an independent hearing panel if necessary. He shall report the names of such members to the secretary of the trial board prior to any action under paragraph (a).
- (3) For the purpose of adjudicating charges against members of the Institute, as provided in the foregoing paragraphs of this resolution, the following must take place:
    - (a) The secretary shall mail to the member concerned, at least thirty days prior to the proposed meeting of the trial board or any sub-board appointed to hear the case, written notice of the charges to be adjudicated. Such notice, when mailed by registered mail, postage prepaid, addressed to the member concerned at the member's last known address, according to the records of the Institute, shall be deemed properly served.

- (b) After hearing the evidence presented by the professional ethics division or other complainant, and by the defense, the trial board or sub-board hearing the case, a quorum present, by vote of the members present and voting, may, in a manner consistent with section 7.4 of the bylaws, admonish, suspend for a period of not more than two years, or expel the member against whom complaint is made, provided that in any case in which the trial board or a sub-board finds that a member has departed from the profession's technical standards it may also direct the member concerned to complete specified professional development courses and to report to the trial board upon such completion.
- (c) In a case decided by a sub-board, the member concerned may request a review by the trial board of the decision of the sub-board, provided such a request for review is filed with the secretary of the trial board at the principal office of the Institute within thirty days after the decision of the sub-board, and that such information as may be required by the rules of the trial board shall be filed with such request. Such a review shall not be a matter of right. Each such request for a review shall be considered by an ad hoc committee to be appointed by the chairman of the trial board, or its vice chairman in the event of his unavailability, and composed of not less than five members of the trial board who did not participate in the prior proceedings in the case. The ad hoc committee shall have power to decide whether or not such request for review by the trial board shall be allowed, and such committee's decision that such request shall not be allowed shall be final and subject to no further review. A quorum of such ad hoc committee shall consist of a majority of those appointed. If such request for review is allowed, the trial board shall review the decision of the sub-board in accordance with its rules of practice and procedure. On review of such decision, the trial board may affirm, modify, or reverse all or any part of such decision or make such other disposition of the case as it deems appropriate. The trial board may, by general rule, indicate the character of reasons that may be considered to be of sufficient importance to warrant an ad hoc committee granting a request for review of a decision of a sub-board.
- (d) Any decision of the trial board, including any decision reviewing a decision of a sub-board, shall become effective when made, unless the trial board's decision indicates otherwise, in which latter event it shall become effective at the time determined by the trial board. Any decision of a sub-board shall become effective as follows:
- (i) Upon the expiration of thirty days after it is made, if no request for review is properly filed within such thirty-day period.



- (ii) Upon the denial of a request for review, if such request has been properly filed within such thirty-day period and is denied by the ad hoc committee.
- (iii) Upon the effective date of a decision of the trial board affirming the decision of a sub-board in cases where a review has been granted by the ad hoc committee.

## **Under Section 7.5 Reinstatement**

### **RESOLVED:**

- (1) That at any time after the publication in a membership periodical of the Institute of a statement of a case and decision, on application of the member concerned, the appropriate panel of the trial board which last heard the case and whose decision provides the basis for the publication, may, by a two-thirds vote of the members present and voting, recall, rescind, or modify such decision, which action shall be published in the membership periodical of the Institute. The denial of an application under this section shall not prevent the member concerned from applying for reinstatement under section (2) hereof.
- (2) That
  - (a) Should a judgment of conviction or an order of a governmental authority on which the suspension or termination of membership was based under section 7.3 of the bylaws be reversed or otherwise set aside or invalidated, such suspension shall terminate or such member shall become reinstated when a certified copy of the order reversing or otherwise setting aside or invalidating such conviction or order is filed with the secretary of the joint trial board, who shall refer the matter to the professional ethics division for whatever action it deems appropriate.
  - (b) A member who has been suspended or expelled by the trial board pursuant to section 7.4 of the bylaws may request that the suspension terminate or may request reinstatement if a judgment of conviction, an order or finding of any court, or an order of the governmental authority on which the suspension or expulsion was based has been reversed or otherwise set aside or invalidated. Such request shall be referred to the trial board whereupon a hearing panel composed of five members designated by the chairman of the trial board may, after investigating all related circumstances, terminate the suspension or reinstate the member concerned by a majority vote of the members present and entitled to vote.
  - (c) Except as provided in subparagraphs (a) and (b) of this paragraph (2), a member whose membership has been automatically terminated under section 7.3, or who has been expelled by or

had his resignation accepted by a panel of the trial board may, at any time after three years from the effective date of such termination, expulsion, or acceptance of resignation, request reinstatement of his membership. Such request shall be referred to the trial board, whereupon the chairman shall designate five members of the board to a hearing panel which may, after investigation, reinstate such member on such terms and conditions as it shall determine to be appropriate. If an application for reinstatement under this subparagraph is denied, the member concerned may again apply for reinstatement at any time after two years from the date of such denial.

### **Under Section 7.6 Publication of Disciplinary Action**

**RESOLVED:** That notice of disciplinary action taken under section 7.3 or 7.4 of the bylaws and the basis therefor shall be published in a membership periodical of the Institute and the professional ethics division shall maintain a record of such information and disclose that information upon request. In the case of a suspension or termination pursuant to section 7.3 of the bylaws, such notice shall be in a form approved by the chairman of the trial board and shall disclose the name of the member concerned. In any action pursuant to section 7.4 of the bylaws, the trial board or sub-board hearing the case shall decide, by a majority vote of the members present and voting, on the form of the notice of the case and the decision to be published, which notice shall disclose the name of the member involved when the member is found guilty. The statement and decision, as released by the chairman, trial board, or hearing panel, shall be published in a membership periodical of the Institute. No such publication shall be made until such decision has become effective.