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Proposed Amendments to Form of Regulatory Public Accountancy Bill Permitting the Corporate Practice of Accounting

American Institute of Certified Public Accountants. Committee on State Legislation

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PROPOSED AMENDMENTS TO FORM OF
REGULATORY PUBLIC ACCOUNTANCY
BILL PERMITTING THE CORPORATE
PRACTICE OF ACCOUNTING.

PROPOSED AMENDMENT TO SECTION 2:
/TO BE INSERTED IMMEDIATELY
FOLLOWING THE LAST PARAGRAPH
OF THE SECTION/:

The Board may issue any further regulations, including but not limited to rules of professional conduct, pertaining to corporations practicing public accounting which it deems consistent with or required by the public welfare. Among other things, the Board may prescribe regulations:

- (a) governing the style, name and title of such corporations;
- (b) governing the affiliation of such corporations with any other organization;
- (c) providing for joint and several liability of the shareholders of such corporations for corporate torts relating to professional services unless a corporation shall maintain liability insurance or unimpaired capital deemed reasonably sufficient by the Board to protect the interest of clients and the public.

PROPOSED NEW SECTION 3A:
CORPORATIONS FOR THE PRACTICE
OF PUBLIC ACCOUNTING.

One or more individual persons may organize a corporation for the practice of public accounting under the general corporation law. The corporation shall not be required to have more directors than shareholders, but at least one director shall be a shareholder. The other directors need not, but may, be shareholders.

PROPOSED AMENDMENT TO SECTION 5:
PARTNERSHIPS AND CORPORATIONS
COMPOSED OF ~~CERTIFIED PUBLIC~~
ACCOUNTANTS -- REGISTRATION
THEREOF.

A partnership engaged in this State in the practice of public accounting may register with the Board as a partnership of certified public accountants provided it meets the following requirements:

- (a) At least one general partner thereof must be a certified public accountant of this State in good standing.
- (b) Each partner thereof personally engaged within this State in the practice of public accounting as a member thereof must be a certified public accountant of this State in good standing.
- (c) Each partner thereof must be a certified public accountant of some state in good standing.
- (d) Each resident manager in charge of an office of the firm in this State must be a certified public accountant of this State in good standing.

A corporation organized for the practice of public accounting may register with the Board as a corporation of certified public accountants provided it meets the following requirements:

- (a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the Public Accountancy Act or the regulations of the Board; provided that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.
- (b) Each shareholder of the corporation must be a certified public accountant of some state in good standing, and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing.

- (c) At least one shareholder of the corporation must be a certified public accountant of this State in good standing.
- (d) Each resident manager in charge of an office of the corporation in this State and each shareholder or director personally engaged within this State in the practice of public accounting must be a certified public accountant of this State in good standing.
- (e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the shareholders or the corporation to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder. The corporation may retire any amount of stock for this purpose, notwithstanding any impairment of its capital, so long as one share remains outstanding.
- (f) The corporation must be in compliance with such other regulations pertaining to corporations practicing public accounting in this State as the Board may prescribe.

Application for such registration must be made upon the affidavit of a general partner or shareholder of such partnership who is a certified public accountant of this State in good standing. The Board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under Section 10 of this Act may use the words "certified public accountants" or the abbreviation "C.P.A.'s" in connection with its partnership name. Notification shall be given the Board, within one month, after the admission or withdrawal of a partner or shareholder from any partnership or corporation so registered.

PROPOSED AMENDMENT TO SECTION 8:
PARTNERSHIPS AND CORPORATIONS
COMPOSED OF PUBLIC ACCOUNTANTS --
REGISTRATION THEREOF.

A partnership engaged in this State in the practice of public accounting may register with the Board as a partnership of public accountants provided it meets the following requirements:

- (a) At least one general partner thereof must be a certified public accountant or a public accountant of this State in good standing.
- (b) Each partner thereof personally engaged within this State in the practice of public accounting as a member thereof must be a certified public accountant or a public accountant of this State in good standing.
- (c) Each resident manager in charge of an office of a firm in this State must be a certified public accountant or a public accountant of this State in good standing.

A corporation organized for the practice of public accounting may register with the Board as a corporation of public accountants provided it meets the following requirements:

- (a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the Public Accountancy Act or the regulations of the Board; provided, that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.
- (b) Each shareholder of the corporation must be a certified public accountant or a public accountant of this State in good standing, and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant or public accountant of this State in good standing.
- (c) Each resident manager in charge of an office of the corporation in this State must be a certified public accountant or a public accountant of this State in good standing.

(d) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the shareholders or the corporation to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder. The corporation may retire any amount of stock for this purpose, notwithstanding any impairment of its capital, so long as one share remains outstanding.

(e) The corporation must be in compliance with such other regulations pertaining to corporations practicing public accounting in this State as the Board may prescribe.

Application for such registration must be made upon the affidavit of a general partner or shareholder of such ~~partnership~~ who holds a permit to practice in this State as a certified public accountant or as a public accountant. The Board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a ~~partnership~~ permit issued under Section 10 of this Act may use the words "public accountants" in connection with its partnership name. Notification shall be given the Board, within one month, after the admission to or withdrawal of a partner or shareholder from any partnership or corporation so registered.

PROPOSED AMENDMENT TO SECTION 9:
REGISTRATION OF OFFICES.

Each office established or maintained in this State for the practice of public accounting in this State by a certified public accountant, or partnership or corporation of certified public accountants, or by a public accountant or a partnership or corporation of public accountants, or by one registered under Section 4, shall be registered annually under this Act with the Board, but no fee shall be charged for such registration. Each such office shall be under the direct supervision of a resident manager who may be either a principal, shareholder or a staff employee holding a permit under Section 10 of this Act, which is in full force and effect; provided that the title or designation "certified public accountant" or the abbreviation "C.P.A." shall not be used in connection with such office unless such resident manager is the holder of a certificate as a certified public accountant under Section 3 of this Act and a permit issued under Section 10 of this Act, both of which are in full force and effect. Such resident manager may serve in such capacity at one office only. The Board shall by regulation prescribe the procedure to be followed in effecting such registrations.

PROPOSED AMENDMENT TO SECTION 10:
ANNUAL PERMITS TO PRACTICE.

Permits to engage in the practice of public accounting in this State shall be issued by the Board to holders of the certificate of certified public accountant issued under Section 3 of this Act and to persons, partnerships and corporations registered under Sections 4, 5, 7 and 8 of this Act; provided all offices of such certificate holder or registrant are maintained and registered as required under Section 9 of this Act. There shall be an annual permit fee in an amount to be determined, from time to time, by the Board, not to exceed \$..... All permits shall expire on the last day of of each year and may be renewed annually for a period of one year by certificate holders and registrants in good standing upon payment of an annual renewal fee of not to exceed \$..... Failure of a certificate holder or registrant to apply for such annual permit to practice within (a) three years from the expiration date of the permit to practice last obtained or renewed, or (b) three years from the date upon which the certificate holder or registrant was granted his certificate or registration, if no permit was ever issued to him, shall deprive him of the right to such permit, unless the Board, in its discretion, determines such failure to have been due to excusable neglect. In

such case the renewal fee or the fee for the issuance of the original permit, as the case may be, shall be such amount as the Board shall, from time to time determine, but not in excess of \$.....

PROPOSED AMENDMENT TO SECTION 12:
REVOCATION OR SUSPENSION OF
PARTNERSHIP REGISTRATION OR
PERMIT.

After notice and hearing as provided in Section 13 of this Act, the Board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this Act under which it qualified for registration.

After notice and hearing as provided in Section 13 of this Act the Board may revoke or suspend the registration of a partnership or corporation or may revoke, suspend or refuse to renew its permit under Section 10 to practice or may censure the holder of any such permit for any of the causes enumerated in Section 11, or for any of the following additional causes:

- (a) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit to practice of any partner or shareholder.
- (b) The cancellation, revocation, suspension or refusal to renew the authority of the partnership or corporation, or any partner or shareholder thereof, to

practice public accounting in any other state for any cause other than failure to pay an annual registration fee in such other state.

PROPOSED AMENDMENT TO SECTION 13:
HEARINGS BEFORE BOARD -- NOTICE
-- PROCEDURE -- REVIEW.

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(d) Counsel -- Witnesses -- Cross-examination.

At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. A corporation may be represented before the Board by counsel or by a shareholder who is a certified public accountant or public accountant of this state in good standing. The accused shall be entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

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PROPOSED AMENDMENT TO SECTION 15:
ACTS DECLARED UNLAWFUL.

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(b) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership or corporation is composed of certified public accountants unless such partnership or corporation is registered as a partnership or corporation of certified public accountants under Section 5 of this Act, holds a live permit issued under Section 10 of this Act and all offices of such partnerships or corporation in this State for the practice of public accounting are maintained and registered as required under Section 9.

...

(d) No partnership or corporation shall assume or use the title or designation "public

accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless such partnership or corporation is registered as a partnership or corporation of public accountants under Section 8 of this Act or as a partnership or corporation of certified public accountants under Section 5 of this Act and holds a live permit issued under Section 10 of this Act and all offices of such partnerships or corporations in this State for the practice of public accounting are maintained and registered as required under Section 9.

- (e) No person, partnership, or corporation shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "CA," "PA," "EA," "RA," or "LA," or similar abbre-

viations likely to be confused with "CPA"; provided, however, that anyone who holds a live permit issued under Section 10 of this Act and all of whose offices in this State for the practice of public accounting are maintained and registered as required under Section 9 may hold himself out to the public as an "accountant" or "auditor"; and provided further that a foreign accountant registered under Section 4, who holds a live permit issued under Section 10 and all of whose offices in this State for the practice of public accounting are maintained and registered as required under Section 9, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

- (f) ~~No corporation shall assume or use the title or designation "certified public accountant," or "public accountant"; nor shall any corporation assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed~~

accountant," "registered-accountant" or any other title or designation likely to be confused with "certified-public-accountant" or "public-accountant," or any of the abbreviations "CPA," "PA," "CA," "EA," "RA," or "LA" or similar abbreviations likely to be confused with "CPA,"

...

- (h) No person shall sign or affix a partnership or corporate name, with any wording indicating that it is a partnership or corporation composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any opinion or certificate attesting in any way to the reliability of any representation in regard to any person or organization embracing (1) financial information or (2) facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the partnership or corporation holds a live permit issued under Section 10 of this Act and all of its offices in this State for the practice of public accounting

are maintained and registered as required under Section 9.

~~(i) - No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement.~~

(j) No person or partnership, or corporation not holding a live permit issued under Section 10 of this Act ~~and no corporation~~, shall hold himself or itself out to the public as an "accountant" or "auditor" by use of either or both of such words on any sign, card, letterhead, or in any advertisement or directory, without indicating thereon or therein that such person, partnership or corporation does not hold such a permit; provided, that this subsection shall not prohibit any officer, employee, partner or principal of any organization from describing himself by

the position, title or office he holds in such organization; nor shall this subsection prohibit any act of public official or public employee in the performance of his duties as such.

- (k) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation, or in conjunction with the designation "and Company," or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under Section 5 or 8 of this Act; provided that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this Act, may continue to do so if he or it otherwise complies with the provisions of this Act.

PROPOSED AMENDMENT TO SECTION 16:
EXCEPTIONS -- ACTS NOT PROHIBITED.

Nothing contained in this Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant, or partnership or corporation composed of certified public accountants or public accountants holding a permit to practice issued under Section 10 of this Act or a foreign accountant registered under Section 4 of this Act; provided that such employee or assistant shall not issue any accounting or financial statement over his name.

Nothing contained in this Act shall prohibit a certified public accountant or a registered public accountant of another state, or any accountant who holds a certificate, degree or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily practicing in this State on professional business incident to his regular practice outside this State; provided, that such temporary practice is conducted in conformity with the regulations and rules of professional conduct promulgated by the Board.

PROPOSED AMENDMENT TO SECTION 20:
OWNERSHIP OF ACCOUNTANTS' WORKING PAPERS.

All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such accountant, in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of such accountant, or to his corporation.