

ETHICS FOR DELAWARE



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CHAPTER 1

ETHICS DEFINED

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Define ethics.
2. Differentiate between amoral and ethical values.
3. List and characterize two systems of ethics.
4. Differentiate between legal versus ethical codes.
5. Discuss the development of law and ethics.

Ethics is the “science of morals”. A moral is an accepted rule or standard of human behavior. The understanding of “accepted” is “accepted by society”, and accepted only insofar as the behavior in question being behavior that affects others in the society, even if only indirectly. The implication of this definition is therefore that private actions that have no impact on others are a matter for personal morality, which is not of business or organizational concern.

However, the distinction between personal morality and business morality may not always be so clearly defined. This is because individuals bring personal values to their jobs and to the real or perceived problems of moral choice that confront them at work. Moral choices sometimes must be made because of tensions within individuals, between individuals, or between individuals and what they believe to be the values that drive their organizations.

Furthermore, business organizations do not operate in a social vacuum. Because of the ways business organizations can and do affect the lives and livelihoods of society at large, some would argue that business organizations are kind of “moral agents” in society. Therefore managers and general public alike often wrestle with defining exactly what constitutes the ethical way of doing business, and what constitutes proper constraints on individual self-interests, and by whom shall these constraints be imposed.

A further complexity results from the fact that businesses are increasingly becoming global in nature. Different countries have or seem to have vastly different customs and values. Understanding and assessing whether and how these different cultural and ethical conflicts should be taken into account is often most difficult.

ATTITUDES TOWARD ETHICS

AMORAL:	Condone any actions that contribute to the corporate aim. Getting away with it is the key. No set of values other than greed.
LEGALISTIC:	Obey the letter of the law but not the spirit of it,

	especially if it conflicts with profits. Ethics ignored until it becomes a problem
RESPONSIVE:	Take the view that there is something to gain from ethical behavior, Using ethics as a tool to attain corporate aim.
EMERGING:	Ethical values becoming part of the culture. Codes of ethics being action documents, and likely to contain statements reflecting core value,
ETHICAL:	Total ethical profile. Everything done is ethical, and the right thing always done by everyone. The ideal.

In general, a key focus of ethics is the concept of integrity (or honesty). Integrity in broad terms will imply that no business-persons in the course of their business functions should be party to the falsification of any facts or information or make any statement which knowingly is misleading, false or deceptive in a material particular.

Another major focus of ethics is professional competence and due care, which implies that business professionals should always perform their functions in accordance with law and regulations. In other words, business transactions and professional functions should not be undertaken unless one possesses the required competence and technical skills.

A more controversial focus is the area of freedom from conflicts of interests. The preferred position of many is that one should always avoid concurrent involvement in any business, occupation or activity, which might result in the compromising of integrity, objectivity and independence of decision making.

ETHICAL SYSTEMS

Utilitarianism (teleological ethics)	The promotion that the best long-term interest of everyone concerned should be the moral standard: one should take those actions that lead to the greatest balance of good versus bad consequences
Deontology (Kantian ethics)	It deals with the concept of duty and the rightness of acts. It emphasizes maxims, duties, rules, and principles that are so important that they should be followed whatever the consequences.

In defining law and ethics and their relationship to each other it is necessary to distinguish between moral and legal rights and duties. Morally, a person's rights consist of claims that he can

justly make to the conditions of well-being; his duties consist of what he can justly contribute to well being. Legal rights and duties - that is, claims and obligations enforceable at law - may or may not be fully in harmony with prevalent moral opinion systems in which law and ethics and religion are closely interwoven. The impact of moral opinion on law varies with the type of political structure and influence of public opinion.

In free societies the ultimate justification of law is that it serves moral ends. But the dependence of law on moral principles must not be taken to imply that there is a set of moral principles which can be laid down for guidance. However, most free societies are coming to be more or less consistent in principles that draw the line between law and morals. The task of ethics becomes two-fold: to bring out what is involved in the notion of a principle or norm of action and to recognize ideals that serve as agencies of guidance and control.

A number of consistent principles recognized in modern society are the individual, responsibility and equity. The end of law is to secure the greatest possible general individual self-assertion. In the Judeo-Christian ethic responsibility is a given: the best ordering of human society in which the individual may come to full manhood and satisfying existence. On the basis of equitable doctrine we can say confidently that morality is inseparable from the legal order; that right and wrong is part of the legal order.

HISTORICAL FOUNDATIONS OF LAW AND ETHICS

The great religions of the world gave birth to several concepts that evolved into structural precepts for society. A commonality of precepts evolved with the passing of tribal customs and tribal belief systems and the rise of the great religions of the world.

"The monotheistic idea of God unifies and coordinates the spiritual goods of the race. The unity of GOD involves the unity of all classes of men. This is a long step toward equality. The sense of sin became part and parcel of the common consciousness. It is a leveler and equalizer." For the good of the tribal society now becomes for the good of the individual. It must come to pass that a given society, if it is to retain the right to exist, must be continually extending the experience of its best things to men who were at one time outside, the pale of the best. The principle of individuality, once established, draws after it the principle of progress." "If it amounts to this, that wherever you find man, you find the eternal goods, and therefore the highest worth. The scale of market prices for the common man is forever disarranged by the discovery in him of something that is above price."

Two of the primary maxims in ethics are the utilitarian rule "Each man is to count for one, nobody for more than one". The second is Kant's--Always treat humanity, whether in yourself or another, as a person, and never as a thing."

"The only ground for counting every body as one, and nobody as more than one is the presence in all men of a something or other which possesses such value that existing social forms and

economic accumulations cannot bid against it."

"The social question is the moral question, first, because its ultimate root is a choice between divergent ideals of the state, that , between different ways of viewing and organizing the total human life in time and space; and secondly, because, as a consequence, the question concerning the worth of the labor turns into the question concerning the worth of the laborer". The history of conscience is the history of the individual where 'conscience' means knowing along with " ...nothing can be good for one man that is not law for all men."

CONCLUSIONS

In the historical development of law there are many different points of view. It is for this reason that the law is unable to accept without modification many of the results of ethical inquiry. In modern terminology law creates a duty "...there are no properties of goodness and badness that states of affairs an inherently possess, and no properties of rightness or wrongness that inhere in actions."

Value judgment in a broad sense compares contrasted ways of life; rationality, prudence and stability, (one of pleasure and happiness) versus the state of anxiety, confusion, inner turmoil and impulsive rashness. The first is a "good" way of life; the other is a "bad" way in terms of value. The best way of life involves the guidance of reason, and also the way of knowledge, of understanding, of relative freedom from error.

Moral responsibility rests solely on the attitude displayed in so-called "choice". The act of choosing is essentially a proper and stringent expression of the ethical. Whenever in a stricter sense there is a question of an either/or one can always be sure that the ethical is involved.

An ethic must first decide upon the kind of social effects which it desires to achieve and the kind which it desires to avoid. It must then decide, as far as our knowledge permits, what acts will promote the desired consequences; these acts it will praise, while those having a contrary tendency it will condemn. To the extent to which man has freedom, he needs a personal morality to guide his conduct. "Good and evil grow up together and are bound in an equilibrium that cannot be surrendered. The most we can do is try to tilt the equilibrium toward the good." The least we can do is be aware of our standards of conduct least "....the habit of being amoral should make the immoral come to seem right."

CHAPTER 2

AICPA ETHICS

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Differentiate between rulings and principles of the AICPA' Code of Professional Conduct.
2. Briefly describe the six principles.
3. List the eleven rules.
4. Outline ethics rulings on independence.
5. List consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002.
6. Outline the standards for tax services
7. Explain disciplinary mechanisms within the profession.
8. List the key features of corporate responsibility law (Sarbanes-Oxley act).

This chapter covers the AICPA's *Code of Professional Conduct*, Statements on Standards for Consulting Services, and the disciplinary systems within the accounting profession. This chapter has six subunits. The first section is a condensed but comprehensive summary of the AICPA Code of Conduct. The second section contains summaries of AICPA Ethics Interpretations and Professional Ethics Rulings under the 11 Rules of Conduct. The third section addresses Statements on Standards for Tax Services. The fourth section lists some of the consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002. The fifth section covers disciplinary systems within the profession. The final section outlines the key features of the SOX.

AICPA's CODE OF PROFESSIONAL CONDUCT

It consists of two sections: Principles and Rules. The six principles, which provide the framework for the rules, are goal-oriented and aspirational but nonbinding.

Synopses of the Six Principles

1. *Responsibilities.* Members should exercise sensitive professional and moral judgments when carrying out their professional responsibilities. 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.
2. *The Public Interest.* Members should act to benefit the public interest, honor the public trust, and demonstrate commitment to professionalism. The AICPA adopted the ethical

standards because a distinguishing mark of a profession is an acceptance of responsibility to the public.

3. *Integrity.* Members should perform all professional responsibilities with the highest sense of integrity to maintain public confidence.
4. *Objectivity and Independence.* A member should maintain objectivity and be free of conflicts of interest. A member in public practice should be independent in fact and appearance when providing attestation services. Objectivity is a state of mind, a quality that lends itself 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.
5. *Due Care.* A member should follow the profession's technical and ethical standards, strive for improved competence and quality services, and discharge professional responsibility to the best of the member's ability. Members must adequately plan and supervise any activity for which they are responsible.
6. *Scope and Nature of Services.* A member in public practice should follow the Principles of the *Code of Professional Conduct* in determining the nature and scope of services.

Synopses of the Eleven Rules

Rule 101 — Independence. A member in public practice should be independent when performing professional services as required by standards-setting bodies.

- (1) In this context, rules of the state boards of accountancy, state CPA societies, the Independence Standards Board, the SEC, the General Accounting Office, and other bodies may be relevant.
- (2) Relevant AICPA standards-setting bodies are the Auditing Standards Board (ASB), Accounting and Review Services Committee, and Management Consulting Services Executive Committee. The foregoing bodies are all authorized to promulgate attestation standards.
- (3) The ASB issues Statements on Auditing Standards. Thus, SAS 1 is consistent with the requirement for auditors to maintain an independence in mental attitude. To inspire public confidence, an auditor must not only be independent (intellectually honest) but also be recognized as independent (free of any obligation to, or interest in, the client).
- (4) The fourth general attestation standard likewise requires practitioners to maintain an independence in mental attitude when performing attest engagements.

- (5) Under Statements on Standards for Accounting and Review Services, an accountant may not report on a review of the financial statements of a nonpublic entity if (s)he is not independent.
- (6) According to the AICPA's Statements on Standards for Attestation Engagements, a practitioner must also be independent to examine or apply agreed-upon procedures to prospective financial statements.
- (7) SEC independence regulations were revised in accordance with the Sarbanes-Oxley Act of 2002.
 - (a) Audit committees must preapprove the services performed by accountants (permissible nonaudit services and all audit, review, and attest engagements). Approval must be either explicit or in accordance with detailed policies and procedures. If approval is by the latter, the audit committee must be informed, and no delegation of its authority to management is allowed. However, preapproval is not needed for nonaudit services representing less than 5% of the annual amount paid to the accountant if (1) the services were not recognized as nonaudit at the time of the engagement, and (2) the audit committee approves prior to completion of the audit.
 - (b) An issuer must disclose in its proxy statement or annual filing fees paid to the accountant segregated into four categories: (1) audit, (2) audit-related, (3) tax, and (4) all other. The disclosure is for the two most recent years and must describe the services in (2)-(4).
 - (c) The lead and concurring (reviewing) audit partners must rotate every 5 years, with a 5-year time-out period. Other audit partners must rotate every 7 years, with a 2-year time-out.
 - (d) An accountant is not independent if, during the audit and the period of the professional engagement, any audit partner (excluding specialty partners such as tax partners) earns or receives compensation for selling services (excluding audit, review, or attest services) to the audit client.
 - (e) Conflicts of interest. An accounting firm is not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee accepts employment with a client if (s)he has a continuing financial interest in the firm or is in a position to influence the firm's operations or financial policies. Moreover, an accounting firm is not independent if a CEO, CFO, controller, or person in an equivalent position for an issuer was employed by that firm and participated in any capacity in the audit of that issuer during the year before the

beginning of the audit.

- (f) Communications with the audit committee by the accounting firm must include (1) all critical accounting policies and practices; (2) all material alternative accounting policies and practices within GAAP that were discussed with management; and (3) other material written communications with management, such as management representations and schedules of unadjusted audit differences. These communications must be prior to filing the audit report with the SEC.

Rule 102 — *Integrity and Objectivity.* A member shall maintain objectivity and integrity, be free of conflicts of interest, not knowingly misrepresent facts, and not subordinate his/her judgment to others when performing professional services.

Rule 201 — *General Standards.* A member shall comply with the following:

- (1) Undertake only those services that the member can reasonably expect to complete with professional competence.
- (2) Exercise due professional care when performing professional services.
- (3) Adequately plan and supervise performance of professional services.
- (4) Obtain sufficient relevant data to provide a reasonable basis for conclusions in relation to any professional service.
 - (a) Proficiency. Auditors must have adequate technical training and proficiency. According to SAS 1, both education and experience, as well as proper supervision, are necessary. Objectivity and independent judgment are necessary in the preparation of the audit opinion. An auditor must have experience and seasoned judgment to accept final responsibility for an audit opinion.
 - (b) Due professional care must be exercised in the planning and performance of the audit and the preparation of the report. According to SAS 1, an auditor should have the degree of skill commonly possessed by other auditors and must exercise it with reasonable care and diligence. An auditor should also exercise professional skepticism. The exercise of due professional care allows the auditor to obtain reasonable assurance. Absolute assurance is impracticable due to characteristics of fraud such as concealment by collusion, withheld or falsified documentation, or management override of controls.

Rule 202 — *Compliance with Standards.* A member who performs professional services must comply with promulgated standards.

Rule 203 — *Accounting Principles.* A member shall not express an opinion or make an affirmative statement about conformity with GAAP or state that (s)he is not aware of any material modifications that should be made to achieve conformity with GAAP, given any departure from an accounting principle promulgated by bodies designated by the AICPA Council to establish such principles that has a material effect on the financial statements or data taken as a whole. However, if the member can demonstrate that, due to unusual circumstances, the financial statements or data would have been misleading without a departure from GAAP, the member can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons compliance with the principle would be misleading.

Rule 301 — *Confidential Client Information.* A member in public practice cannot disclose confidential client information without the client's consent. However, this Rule does not affect a CPA's obligations

- (1) To comply with a validly issued and enforceable subpoena or summons or with applicable laws and regulations
- (2) To discharge his/her professional obligations properly under Conduct Rules 202 and 203
- (3) To cooperate in a review of the CPA's professional practice under AICPA or state CPA society or board of accountancy authorization
- (4) To initiate a complaint with or respond to any inquiry made by the professional ethics division, trial board of the AICPA, or an investigative or disciplinary body of a state society or board of accountancy

Rule 302 — *Contingent Fees.* A contingent fee is established as part of an agreement under which the amount of the fee is dependent upon the finding or result.

- (1) The receipt of contingent fees by a member is prohibited when the member performs an audit, a review, a compilation when the report will be used by third parties and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.
- (2) A contingent fee is not permitted for preparing an original or amended tax return or claim.
- (3) Fees are not deemed to be contingent if fixed by courts or other public authorities, or in tax matters, if they are based on the results of judicial proceedings or the findings of governmental agencies.

Rule 501 — *Acts Discreditable.* A member shall not commit an act that is discreditable to the

profession. Withholding as a result of nonpayment of fees for a completed engagement certain information contained in the client's books would not be considered such an act. The member's duty to return client records is absolute. However, the duty to return other information not related to the client's books and records is not absolute. Although the client's financial information may be incomplete as a result, if fees for a completed engagement have not been paid, such other information may be withheld. Thus, the duty to return is conditional upon payment of fees with respect to information such as adjusting, closing, combining, or consolidating entries and information normally found in books of original entry and general or subsidiary ledgers.

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 done in a false, misleading, or deceptive manner. Solicitation through coercion, overreaching, or harassing conduct is prohibited.

Rule 503 — *Commissions and Referral Fees.* A member in public practice shall not accept a commission for recommending or referring to a client any product or service, or for recommending or referring any product or service to be supplied by a client, if the member performs for that client an audit, a review, a compilation when a third party will use the financial statement and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.

- (1) Permitted commissions must be disclosed to any person or entity to whom the member recommends a product or service.
- (2) A member who accepts a referral fee for recommending services of a CPA or who pays a referral fee to obtain a client must disclose the arrangement to the client. A referral fee is compensation for recommending or referring any service of a CPA to any person. Referral fees are not considered commissions.

Rule 505 — *Form of Organization and Name.* A member may practice public accounting only in a form of organization allowed by law or regulation that conforms with resolutions of the AICPA Council.

- 1) The firm name must not be misleading.
- 2) Names of past owners may be included in the name of the successor organization.
- 3) A firm cannot designate itself as "members of the AICPA" unless all CPA owners are members.

INTERPRETATIONS AND RULINGS

Interpretations and rulings are presented for each of the eleven Rules. The Interpretations are in outline format followed by brief summaries of the Rulings.

Rule 101 — *Independence.*

A. Interpretation 101-1 (Interpretation of Rule 101)

1. Independence is impaired if, during the period of the professional engagement, a covered member

- 1) Had a direct financial interest or a material indirect financial interest in the client.
- 2) Was a trustee of any trust or executor of any estate that had a direct or material indirect financial interest in the client AND (1) the covered member's position conferred investment authority, (2) the trust/estate owned more than 10% of the client, or (3) the interest of the trust/estate was more than 10% of its total assets.
- 3) Had any joint, closely held investment that was material to the covered member.
- 4) Had a loan to or from a client, any of its officers or directors, or an individual owning at least 10% of the client. Exceptions are grandfathered loans and certain other permitted loans.

2. Independence is impaired if, during the period of the professional engagement, a firm partner or professional employee, such individual's immediate family, or a group of these individuals acting together owned more than 5% of the client.

3. Independence is impaired if, during the period covered by the financial statements or during the period of the professional engagement, a firm, or partner or professional employee of the firm, was

- 1) Also associated with the client as an officer, director, employee, promoter, underwriter, or voting trustee, or in a management capacity.
- 2) A trustee for any pension or profit-sharing trust of the client.

4. An individual may have been employed by the client or associated with the client in a capacity listed in Interpretation 101-3. Independence is impaired if (1) the employment or association overlapped the engagement, and (2) the individual participated in the engagement or was able to influence it. Independence is also impaired if the individual was otherwise a covered member relative to the client unless the individual dissociates from the client by

- 1) Ending any relationship described in Interpretation 101-3.

- 2) Disposing of any direct or material indirect financial interest in the client,
- 3) Collecting or repaying any loans to or from the client (except as permitted under the rules for grandfathered loans),
- 4) Ceasing participation in any client-sponsored employee benefit plan (unless the client is legally required to allow participation and the individual pays the full cost), and
- 5) Liquidating or transferring any vested benefits in a client plan as soon as legally permitted. This is not required if a large penalty would result.

5. A covered member's immediate family is subject to Rule 101. However, independence is not impaired solely because

- 1) An immediate family member was employed by the client in a non-key position.
- 2) As part of his or her employment, an immediate family member of one of the following participated in a benefit plan that is a client, is sponsored by a client, or invests in a client if the plan is offered to all similarly situated employees:
 - a) A partner or manager who provided at least 10 hours of nonattest services to the client
 - b) Any partner in the office where the lead engagement partner primarily practiced in relation to the engagement

6. Independence is impaired if an individual who is participating on the engagement team, who can influence the engagement, or who is a partner in the office where the lead engagement partner primarily practices, has a close relative who

- 1) Occupied a key position with the client,
- 2) Held a material financial interest in the client that was known to the individual, or
- 3) Held a financial interest that permitted significant influence over the client.

7. Because listing all situations in which an appearance of a lack of independence might arise is not feasible, members also should consider whether a relationship between the member and the client or an associate of the client might lead to a reasonable conclusion that independence is lacking.

8. Under Rule 101, materiality is determined by aggregating the interests of the covered member and his/her immediate family.

B. Interpretation 101-2 (Employment or association with attest clients)

A former partner or professional employee (POPE) of the firm who is employed by or associated with an attest client in a key position impairs the firm's independence unless

- (1) Amounts due to the former POPE are not material to the firm, and the payment formula is fixed during the payout period. Retirement benefits may also be adjusted for inflation, and interest may be paid.
- (2) The former POPE cannot influence the firm's operations or financial policies.
- (3) Once employed or associated with the client, the former POPE does not participate or appear to participate in, and is not associated with, the firm, regardless of compensation, for example, by consulting, use of an office, or inclusion in membership lists.
- (4) The engagement team considers the risk that the POPE's knowledge of the audit plan will reduce audit effectiveness.
- (5) The firm assesses when team members can effectively deal with the POPE.
- (6) The engagement is reviewed to determine whether team members maintained professional skepticism in dealings with the POPE.

A team member's consideration of employment or association with the client impairs independence absent prompt reporting to the firm and removal from the team.

C. Interpretation 101-3 (Performance of nonattest services)

- 1) Before a member and his or her firm performs nonattest services (such as tax or consulting services) for an attest client, (s)he must comply with Interpretation 101-3 to avoid impairment of independence. If the applicable independence rules of an authoritative body (e.g., the SEC or a state board of accountancy) are more restrictive, the member must comply with them.
- 2) General Requirements. Performing management functions or making management decisions impairs independence, but providing advice, research, and recommendations does not.
 - a) The member should be satisfied that the client will make an informed judgment about the results of nonattest services and be able to designate a competent employee (preferably a senior manager) to oversee the services; evaluate their adequacy and results; make management decisions and perform management functions; accept responsibility for results; and establish and maintain internal controls.
 - b) The member and client should agree about the objectives and limitations of the engagement, the services to be performed, and mutual responsibilities.

The understanding should be documented in writing. This requirement does not apply to routine services, those provided before the client became an attest client, and those performed before 2005.

- 3) General activities that impair independence include
 - a) Exercise or possession of authority over transactions on a client's behalf
 - b) Preparing source documents evidencing transactions
 - c) Custody of client assets
 - d) Supervision of client employees in normal activities
 - e) Determining member recommendations to be implemented
 - f) Reporting to the board on behalf of management
 - g) Service as a stock transfer or escrow agent, registrar, or general counsel
- 4) Examples of nonattest services that may not impair independence if the general requirements are met include bookkeeping, disbursement, benefit plan administration (e.g., preparing participant account valuations and statements), investment advisory, finance, executive search, business risk consulting, and IT (but designing a system or operating a network impairs independence).
- 5) An appraisal, valuation, or actuarial service impairs independence if the results are material to the financial statements and significant subjectivity is involved. For example, a valuation for a business combination, but not an actuarial valuation for a pension liability, usually involves significant subjectivity. Furthermore, appraisal, valuation, and actuarial services not performed for financial statement purposes do not impair independence if the other requirements of Interpretation 101-3 are satisfied.
- 6) Internal audit assistance services impair independence unless the member ensures that the client understands its responsibility for internal control and managing the internal audit function. Accordingly, the member must ensure that the client designates a competent individual to oversee internal audit; determines the scope, risk, and frequency of its activities; evaluates its findings; and evaluates the adequacy of its procedures.
 - a) The member should be satisfied that the client's governing body is informed about his/her role so that it can develop proper guidelines.
 - b) The member may assist in preliminary risk assessment, preparation of the audit plan, and recommendation of priorities.
 - c) Independence is impaired if the member, among other things, performs an ongoing monitoring or control function, determines which control recommendations are adopted, reports to the board on behalf of management, approves or is responsible for the overall audit work plan, or

- is a client employee or manager (or the equivalent).
 - d) Services that are normal extensions of the external audit scope (e.g., confirming receivables or analyzing balances) and engagements under the attestation standards do not impair independence.
- 7) SEC regulations promulgated under the Sarbanes-Oxley Act of 2002 prohibit auditors of public companies from performing certain nonaudit services:
- a) Appraisal and other valuation services.
 - b) Designing and implementing financial information systems.
 - c) Internal auditing or actuarial functions unless the firm reasonably concludes it will not examine such work during the financial statement audit.
 - d) Management services.
 - e) Human resource services.
 - f) Bookkeeping if the firm also conducts an audit.
 - g) Expert services not pertaining to the audit.
 - h) Investment banking or advisory services.
 - i) Broker-dealer services.

D. Interpretation 101-4 (Honorary directorships and trusteeships of non-for-profit organizations)

A member in an honorary position will not impair independence if (s)he is associated with the financial statements of a not-for-profit organization that (s)he allows to use his/her name on letterheads and circulated materials to lend prestige to the organization. However, the member should not be able to vote or participate in board or management decisions and should be identified as an honorary director or trustee.

E Interpretation 101-5 (Loans from financial institution clients)

- 1) Grandfathered loans. Independence is not impaired by (a) unsecured loans that are not material to the covered member's net worth or (b) secured loans (including home mortgages) provided that the loans were obtained from a financial institution under its normal lending procedures, terms, and requirements. However, loans are grandfathered only if
 - a) They were kept fully current at all times after the borrower became a covered member, and the terms did not change in a way not allowed in the original agreement.
 - b) They were obtained
 - i) From a financial institution before it became a client requiring

- independence;
 - ii) From a client not requiring independence and were sold to one requiring independence;
 - iii) Prior to February 5, 2001 and satisfied the requirements of the Interpretation then effective;
 - iv) During the period from February 5, 2001 through May 31, 2002, and the covered member complied with SEC regulations then effective;
 - or
 - v) After May 31, 2002 from a client requiring independence before the borrower became a covered member relative to the client.
- 2) The date a grandfathered loan is obtained is the date a loan commitment or line of credit was granted.
- 3) The collateral for a secured grandfathered loan must equal or exceed the remaining balance of the loan during its term. If the loan exceeds the value of collateral, this excess must not be material to the covered member's net worth.
- 4) In the case of a limited partnership in which covered members have a combined interest exceeding 50% or a general partnership in which covered members control the partnership, the loan is ascribed to each covered member based on his/her legal liability as a limited or general partner. Even if this amount is zero, renegotiating the loan or entering into a new loan that is not an "other permitted loan" is deemed to impair independence.
- 5) Other permitted loans. The following loans are permitted even if the client is one for which independence is required, provided that they are obtained under normal lending procedures, terms, and requirements and are always kept current:
 - a) Automobile loans and leases collateralized by the automobile
 - b) Loans fully collateralized by the cash surrender value of insurance
 - c) Loans fully collateralized by cash deposits
 - d) Credit cards and overdraft reserve accounts with an aggregate outstanding balance of \$10,000 or less on a current basis by the payment due date

F. Interpretation 101-6 (Effect of actual or threatened litigation)

- 1) Litigation between client and member
 - a) Independence is impaired when litigation is begun by
 - i) The present management alleging deficiencies in audit work
 - ii) The member alleging management fraud or deceit
 - b) An expressed intention by the management to litigate against the member

for alleged deficiencies in audit work will impair independence if it is probable that the claim will be filed.

- c) Independence is not impaired when the threatened or actual litigation is not related to the audit and the amount is not material. Examples include disputes over billings for services and results of tax advice.

2) Litigation by security holders (primary litigation)

- a) Shareholders may bring a class action against the client company or its management without impairing independence. Often the member and the client are both defendants, but if cross-claims are filed, adverse interests may arise and independence may be impaired.
- b) Cross-claims filed by the client to protect a right to legal redress in the event of a future adverse decision do not impair independence in the absence of a significant risk of a material settlement.
- c) Cross-claims against the member by an underwriter do not impair independence if no similar claims are made by the client.
- d) Cross-claims filed against the member by persons who are also officers or directors of other clients do not usually impair independence with respect to the other clients.

3) Other third-party litigation

- a) Litigation may be commenced against the member by a creditor or insurer that alleges reliance on financial statements of the client. This litigation does not affect independence if the client is not the plaintiff or is a nominal plaintiff. Independence may be impaired if the third party (e.g., an insurance company) is also a client of the member and there is a significant risk of a material settlement.
- 4) If a reasonable person would conclude that litigation poses an unacceptable risk of impairment of independence, the member should disengage or disclaim an opinion for lack of independence.

G. Interpretation 101-8 (Financial interests in nonclients having investor or investee relationships with the client)

- 1) Independence is impaired when
 - a) A member has a direct or material indirect financial interest in the nonclient if the investee is material to the investor.
 - b) A member has a material interest in a nonclient who is an immaterial investee of the client investor.

- c) A member can exercise significant influence over a nonclient investor who has an immaterial interest in the client investee.
- 2) Independence is not impaired if a member did not know about the financial interests described above.

H. Interpretation 101-10 (Effect on independence of relationships with entities included in governmental financial statements)

- 1) A financial reporting entity's basic financial statements (BFS) issued in accordance with U.S. GAAP include the government-wide statements (reporting governmental activities, business-type activities, and discretely presented component units), fund financial statements (reporting major funds, nonmajor governmental and enterprise funds, internal service funds, blended component units, and fiduciary funds), and other entities disclosed in the notes of the BFS. Disclosures should be made in the notes to the BFS about related organizations, joint ventures, jointly governed organizations, etc.
- 2) An auditor of the BFS of the entity must be independent of it. Nevertheless, a primary auditor need not be independent with respect to any fund, component unit, or disclosed entity if (s)he explicitly relies on reports by other auditors on such fund, etc. Moreover, (s)he need not be independent of a disclosed entity if the reporting entity is not financially accountable for it and the required disclosure does not include financial information.
 - a) Neither the covered member nor a member of his/her immediate family should occupy a key position with a fund, component unit, or disclosed entity.
- 3) An auditor of the statements of a fund, component unit, or disclosed entity who is not auditing the primary government must be independent only of the statements reported on. Nevertheless, the covered member or a member of his/her immediate family may not occupy a key position with the primary government.

I. Interpretation 101-11 (Independence and attest engagements)

- 1) This interpretation applies only to engagements, other than examinations and reviews, covered by SSAEs when the use of the report is restricted.
- 2) The following covered members and their immediate families must be independent in relation to the responsible party:

- a) An individual on the attest engagement team.
 - b) An individual who directly supervises or manages the attest engagement partner.
 - c) Individuals who consult with the attest engagement team about technical or industry-related matters specific to the engagement.
- 3) Independence is impaired if the firm had a material relationship with the responsible party prohibited under Rule 101.
 - 4) A firm may provide nonattest services to the responsible party that are prohibited due to an association as an employer, director, officer, promoter, voting trustee, or pension trustee. However, if they do not relate directly to the subject matter of the attest engagement, independence is not impaired.
 - 5) When the party that engages the firm is not the responsible party or associated therewith, individuals on the attest engagement need not be independent of the party that engaged the firm. However, they should consider their responsibilities regarding conflicts of interest.

J. Interpretation 101-12 (Independence and cooperative arrangements with clients)

- 1) Independence is impaired if, during the engagement or at the time of expressing an opinion, a member's firm had any material cooperative arrangement with the client.
 - a) A cooperative arrangement means joint participation in a business activity.

K. Interpretation 101-14 (Effect of APSs on independence rules)

- 1) The independence rules for an alternative practice structure (APS) apply to all structures in which "the 'traditional firm' engaged in attest services is closely aligned with another organization, public or private, that performs other professional services." For example, a CPA firm may be sold to another entity having subsidiaries or divisions such as a bank, an insurance company, a broker-dealer, and entities providing nonattest services (tax, management consulting, etc.). The owners and employees of the CPA firm become employees of one of the parent's subsidiaries or divisions and may offer nonattest services. Moreover, the

original owners of the acquired CPA firm create a new CPA firm to offer attest services. The majority ownership of the new firm must be held by CPAs, but it leases employees, offices, and equipment from the parent, which may also provide advertising and perform back office functions. The owners of the new CPA firm pay a negotiated amount for such services.

- 2) In the example above, the term “member or a member’s firm” includes the new CPA firm (the firm) and any leased or employed person or entity.
- 3) When two or more new CPA firms are “closely aligned” with another organization, issues arise as to whether owners of one perform services or have significant economic interests in another. Thus, if an owner of one performs services for another, (s)he is deemed to be an owner of both. Similar issues arise regarding managers (leased or otherwise).
- 4) In an APS, persons and entities included in “member or a member’s firm” are closely aligned with other persons and entities. The latter include direct superiors who can directly control the activities of an owner or manager. A direct superior is an immediate superior who can direct the activities of an owner or manager so as to be able to directly or indirectly derive a benefit. Direct superiors are subject to the same independence rules as persons included in “member or a member’s firm.”
- 5) An indirect superior (defined to include a spouse, cohabitant, or dependents of an indirect superior) is one or more levels above a direct superior and does not have a direct reporting relationship with the new CPA firm’s owners and managers. Less restrictive standards apply to indirect superiors and to other entities in the consolidated group.
 - a) These parties may not have a relationship involving a direct financial interest or an indirect material financial interest with an attest client of the new CPA firm that is material.
 - b) These parties also should not exercise significant influence over the attest client.
 - c) Other entities in the consolidated group and their employees may not be promoters, underwriters, directors, officers, or voting trustees of an attest client. However, with the foregoing exceptions, indirect superiors and other consolidated entities may provide services to an attest client that a member could not without impairing independence.

- 6) The new CPA firm may not perform a service requiring independence for any entity in the consolidated group.
- 7) Independence is impaired with regard to an attest client who exercises significant influence over, or has a material investment in, the parent.
- 8) Referrals within the consolidated group are subject to the provisions regarding conflicts of interest.

Rule 102— *Integrity and Objectivity.*

- a. Interpretation 102-1. Knowing misrepresentations of facts include knowingly making materially false and misleading entries in financial statements or records, failing to make corrections in materially false or misleading statements or records when the member has such authority, or signing a document with materially false and misleading information.
- b. Interpretation 102-2. If a conflict of interest arises that could impair objectivity When a member performs a professional service, Rule 102 will not prohibit the service if disclosure is made to and permission is obtained from the appropriate parties. However, an independence objection cannot be overcome by disclosure and consent. The following are examples of situations in which objectivity may be impaired:
 - 1) Performing litigation services for the plaintiff when the defendant is a client
 - 2) Providing tax or personal financial planning (PFP) services to both parties to a divorce
 - 3) Suggesting that a PFP client invest in a business in which the member has an interest
 - 4) Providing tax or PFP services to family members with conflicting interests
 - 5) Performing consulting services for a client that is a major competitor of a company in which the member has a significant financial interest, occupies a management position, or exercises influence
 - 6) Serving on a board of tax appeals that hears matters involving clients
 - 7) Providing services in connection with a real estate purchase from a client

- 8) Referring a tax or PFP client to a service provider that refers clients to the member under an exclusive arrangement
- 9) Referring a client to a service bureau in which the member or a partner in the member's firm has a material interest
- c. Interpretation 102-3. In dealings with an employer's external accountant, a member must be candid and not knowingly misrepresent facts or fail to disclose material facts.
- d. Interpretation 102-4. If a member and his/her supervisor have a dispute about statement preparation or recording of transactions, the member should do nothing if the supervisor's position is an acceptable alternative and does not materially misrepresent the facts.
 - 1) If the member concludes that a material misstatement would result, (s)he should consult the appropriate higher level(s) of management and should consider documenting relevant matters.
 - 2) If, after such discussions, the member concludes that action was not taken, (s)he should consider the continuing relationship with the employer, the obligation to communicate with third parties, and the desirability of consulting legal counsel.
- e. Interpretation 102-5. Educational services, e.g., teaching and research, are professional services subject to Rule 102.
- f. Interpretation 102-6. Professional services involving client advocacy are governed by the Code, e.g., Rules 201, 202, 203, and 102. If independence is required for a service, Rule 101 also applies.
 - 1) If the service stretches the bounds of performance standards, exceeds sound and reasonable professional practice, or compromises credibility, and therefore poses an unacceptable risk of injury to the member's or the firm's reputation, the propriety of accepting the engagement should be considered.

Rule 201 — *General Standards.*

- a. Interpretation 201-1. A member should have the competence to complete professional services according to professional standards and with reasonable care and diligence.

- 1) Competence involves technical qualifications and the ability to supervise and evaluate the work. It relates to knowledge of standards, techniques, and technical subject matter and to the ability to exercise sound judgment.
- 2) In some cases, additional research and consultation is a normal part of performing services. However, if a member cannot gain sufficient competence, (s)he should suggest the engagement of someone competent.

Rule 202 — *Compliance with Standards. No interpretations.*

Rule 203 — *Accounting Principles.*

- a. Interpretation 203-1. Professional judgment should be used in determining what constitutes unusual circumstances requiring a departure from established principles to prevent the financial statements or data from being misleading. Events that may justify such departures are new legislation or evolution of a new form of business transaction. An unusual degree of materiality or conflicting industry practices ordinarily do not justify departures.
- b. Interpretation 203-2. The body designated to establish accounting principles for nongovernmental entities is the FASB. Unsuperseded SFASs, ARB5, and APB Opinions are accounting principles within the meaning of Rule 203. The GASB, with respect to Statements of Governmental Accounting Standards, is the designated body for state and local governments. The Federal Accounting Standards Advisory Board (FASAB), with respect to its Statements of Federal Accounting Standards adopted and issued beginning in March 1993, is the designated body for federal governmental entities.
- c. Interpretation 203-4. Rule 203 applies to all members regarding any affirmative statement about GAAP conformity.
 - 1) Thus, Rule 203 applies to members who sign client reports to regulatory agencies, creditors, or auditors that contain such representations.

Rule 301 — *Confidential Client Information*

- a. Interpretation 301-3. The rule against disclosure of confidential information does not prohibit the review of a member's professional practice pursuant to a purchase, sale, or merger of the practice. However, appropriate precautions

(e.g., a written confidentiality agreement) should be taken so that the prospective buyer does not disclose any confidential client information.

Rule 302 — *Contingent Fees.*

- a. Interpretation 302-1. An example of circumstances in which a contingent fee is not allowed is the preparation of an amended income tax return for a client claiming a refund of taxes because of an inadvertent omission of a proper deduction.
 - 1) Examples of circumstances in which a contingent fee is allowed include
 - a) Representation of a client in an examination by a revenue agent
 - b) Representation of a client who is obtaining a private letter ruling
 - c) Filing an amended tax return claiming a refund based on a tax issue that is the subject of a test case involving a different taxpayer

Rule 501 — *Acts Discreditable*

- a. Interpretation 501-1. Client records must be returned after a client demands them even if fees have not been paid. This ethical standard applies even if the state in which the member practices grants a lien on certain records in his/her possession.
 - 1) Client records are defined as “any accounting or other records belonging to the client that were provided to the member by or on behalf of the client.”
 - 2) However, “a member’s workpapers — including, but not limited to, analyses and schedules prepared by the client at the request of the member — are the member’s property, not client records, and need not be made available.”
 - 3) Moreover, the duty to return is not absolute regarding certain other information. Examples include adjusting, closing, combining, and consolidating entries; information usually found in the journals and ledgers; and tax and depreciation carryforward information. When the engagement is complete, this information should be made available upon request in the medium in which it is requested if it exists in that medium. But information need not be converted from a nonelectronic format to an electronic one. Furthermore, the information need not be provided if all fees due the member have not been paid.

- b. Interpretation 501-2. When a court or administrative agency has made a final determination that a member has violated an antidiscrimination law, (s)he is deemed to have committed an act discreditable.
- c. Interpretation 501-3. In a governmental audit, failure to adhere to applicable audit standards, guides, procedures, statutes, rules, and regulations is an act discreditable to the profession unless the report discloses the failure and the reasons therefore.
- d. Interpretation 501-4. Negligently making, or permitting or directing another to make, materially false and misleading entries in the financial statements or records; negligently failing to correct materially false and misleading statements when the member has such authority; or negligently signing, or permitting or directing another to sign, a document with materially false and misleading information is an act discreditable.
- e. Interpretation 501-5. A member must follow GAAP and the requirements of governing bodies, commissions, or regulatory agencies when preparing financial statements or related information or in performing attest services for entities subject to their jurisdiction. A material departure from the requirements is an act discreditable unless the member discloses the reasons.
- f. Interpretation 501-6. Solicitation or knowing disclosure of May 1996 or later CPA examination questions or answers is an act discreditable.
- g. Interpretation 501-7. Failing to comply with laws regarding timely filing of personal or firm tax returns or timely remittance of taxes collected for others is an act discreditable.

Rule 502 — *Advertising and Other Forms of Solicitation.*

- a. Interpretation 502-2. False, misleading, or deceptive acts are prohibited because they are against public interest. These prohibited activities include
 - 1) Creating false expectations of favorable results
 - 2) Implying the ability to influence any court, regulatory agency, or similar body
 - 3) Representing that specific services will be performed for a stated fee when it is likely at the time of the representation that the fees will be substantially increased and the client is not advised of the possibility
 - 4) Other representations that would cause a reasonable person to misunderstand or be deceived

- b. Interpretation 502-5. Members are permitted to render services to clients of third parties. If the third party obtained its clients through advertising, the members must ascertain that all promotional efforts were within the Rules of Conduct. Members must not do through others what they are prohibited from doing themselves.

Rule 503 — *Commissions and Referral Fees. No interpretations.*

Rule 505 — *Form of Organization and Name.*

- a. According to the relevant AICPA Council Resolution, a member may practice public accounting only in a firm or organization with certain characteristics.
 - 1) If such an entity performs any audit under the SASs, a review under the SSARSs, or an examination of prospective information under the SSAEs or holds itself out as a firm of CPAs, an entity must have the following attributes:
 - a) CPAs must own a majority of the firm in terms of financial interests and voting rights.
 - b) A non-CPA owner, including an investor or commercial enterprise, must be actively engaged in providing services to clients as his/her/its principal occupation.
 - c) A CPA must have ultimate responsibility for all services provided.
 - d) A non-CPA owner must have a baccalaureate degree.
 - e) Non-CPA owners cannot hold themselves out to be CPAs, must abide by the Code, must complete the work-related CPE requirements, and are ineligible for AICPA membership.
 - f) Owners must own their equity in their own right.
 - g) Ownership must be transferred to the firm or to other qualified owners within a reasonable time if the owner ceases to be actively engaged in the firm.
 - 2) The characteristics of all other entities are considered to be whatever is legally permissible except as indicated in 3) below.
 - 3) If a firm or organization not meeting the foregoing requirements performs

compilations under SSARs, a CPA must have ultimate responsibility for any such services and for each business unit performing such services. Moreover, any compilation report must be signed individually by a CPA.

- b. Interpretation 505-2. A member in the practice of public accounting may own an interest in a separate business that performs the services for which standards are established. If the member, individually or with his/her firm or members of the firm, controls the separate business (as defined by U.S. GAAP), the entity and all its owners and employees must comply with the Code. Absent such control, the member, but not the separate business, its other owners, and its employees, would be subject to the Code.
- c. Interpretation 505-3. The overriding focus of the Council Resolution, the Code, and other AICPA requirements is that CPAs remain responsible, financially and otherwise, for the attest work performed to protect the public interest. However, in the context of alternative practice structures (APSs), CPAs may own the majority of financial interests in the attest firm, but substantially all revenues may be paid to another entity in return for services and the lease of employees, equipment, etc. Nevertheless, given the previously mentioned safeguards, if the CPA-owners of the attest firm remain financially responsible under state law, they are deemed to be in compliance with the financial-interests requirement of the Resolution.

3

CONSULTING SERVICES PROHIBITED BY SARBANES-OXLEY ACT OF 2002

Title II of the Sarbanes-Oxley Act of 2002 prohibits most “consulting” services outside the scope of practice of auditors.

(a) These services are prohibited even if pre-approved by the issuer’s audit committee.

(b) Prohibited services include:

- Bookkeeping and related services,
- Design and implementation of financial information systems,
- Appraisal or valuation services (including fairness opinions and contribution-in-kind reports), (*Note:* The valuations relate to financial statement items and not valuations per se.)
- Actuarial services,
- Internal audit outsourcing, *Note:* “Operational” internal audits are allowed.
- Services that provide any management or human resources,
- Investment or broker/dealer services, and
- Legal and “expert services unrelated to the audit.”

- Any other service that the board determines, by regulation, is impermissible.

(c) **Services Not Prohibited.** Firms, however, may provide tax services (including tax planning and tax compliance) or others that are not listed, provided the firm receives pre-approval from the board. However, certain tax planning products, like tax avoidance services, may be considered prohibited nonaudit services.

STANDARDS FOR TAX SERVICES

The AICPA has issued eight Statements on Standards for Tax Services. The statements are enforceable under the AICPA's *Code of Professional Conduct*.

SSTS No. 1 — *Tax Return Positions*

- An AICPA member should not recommend a position unless (s)he has a good faith belief that the position has a realistic possibility of being sustained if challenged. A member may reach such a position on the basis of well-reasoned articles or treatises or pronouncements of the taxing authority.
- A member should not prepare or sign a return if (s)he knows it takes a position that cannot be recommended as stated in a. above.
- Despite a. and b., a member may recommend a position that is not frivolous (knowingly advanced in bad faith and improper) if (s)he advises disclosures. The member may prepare or sign a return containing such a position if the position is properly disclosed.
- A member should advise the taxpayer of possible penalties associated with the recommended tax return position.
- A member should not recommend a position that
 - Exploits the taxing authority's audit selection process, or
 - Is advanced solely to obtain leverage in the bargaining process.
- A member has the right and responsibility to be an advocate for the taxpayer. A taxpayer has no obligation to pay more taxes than legally owed.

SSTS No.2— *Answers to Questions on Returns*

- A member should make a reasonable effort to obtain appropriate answers to all questions on a tax return before signing as preparer.
- Examples of reasonable grounds for omitting an answer

- 1) Information is not readily available, and the answer is insignificant with respect to taxable income or loss or the tax liability.
 - 2) Genuine uncertainty exists as to the meaning of the question in relation to the particular return.
 - 3) The answer to the question is voluminous, and the return states that the data will be supplied upon examination.
- c. A taxpayer is not required to explain on the return the omission of an answer when reasonable grounds exist for the omission. The member should consider whether the omission causes the return to be incomplete.

SSTS No. 3— *Certain Procedural Aspects of Preparing Returns*

- a. A member may rely without verification on information provided by the taxpayer or third parties. Reasonable inquiries should be made if information appears to be incorrect, incomplete, or inconsistent on its face or on the basis of other facts known. Prior returns should be consulted if feasible.
- b. Inquiries should be made to determine whether the taxpayer has met requirements to maintain books, records, or documentation to support deductions.
- c. A member who prepares a return should consider information known from another taxpayer's return if it is relevant, its consideration is necessary, and its use does not violate any law or rule of confidentiality.

SSTS No.4— *Use of Estimates*

- a. A member may use the taxpayer's estimates if it is impracticable to obtain exact data, and the estimates are reasonable under the facts.
- b. Estimates should be presented so as not to imply greater accuracy than exists.
- c. The taxpayer is responsible for providing the estimated data.
- d. Appraisals and valuations are not considered estimates.

SSTS No.5— *Departure from a Position Previously Conducted in an Administrative Proceeding or Court Decision*

- a. The treatment of an item as determined in an administrative proceeding or a court decision does not restrict the recommendation of a different tax treatment in later years, unless the taxpayer is bound to a specified treatment in the later year.

SSTS No.6— *Knowledge of Error: Return Preparation*

- a. The member should inform the taxpayer upon becoming aware of an error in a previously filed return or that the taxpayer did not file a required form.
- b. The member should recommend measures to take.
- c. The member is not obligated to inform the taxing authority and may not do so without the taxpayer's permission, unless required by law.
- d. If the member is requested to prepare a return when the taxpayer has not corrected a previous year's error, the member should consider whether to continue a professional relationship with the taxpayer or withdraw.
- e. If the member prepares the current return, the member should take reasonable steps to ensure that the error is not repeated.

SSTS No.7— *Knowledge of Error: Administrative Proceedings*

- a. The responsibilities are the same as stated in SSTs No. 6 except that they relate to representation of a taxpayer in an administrative proceeding.
- b. The taxpayer's agreement must be obtained to disclose the error to the taxing authority.
- c. Errors include a position on a return that no longer meets these standards (SSTS No. 1) because of retroactive legislation, judicial decisions, or administrative pronouncements. An error does not include an item with an insignificant effect.

SSTS No. 8— *Form and Content of Advice to Clients*

- a. When providing tax advice to a taxpayer, a member should use judgment to ensure that the advice reflects professional competence and meets the taxpayer's needs.
- b. When advising or consulting on tax matters, the member should follow SSTs No. 1.
- c. A member is not obligated to communicate with the taxpayer when subsequent developments affect previous advice. However, (s)he is obligated to do so when helping to implement the plans associated with the advice or when undertaking the obligation by specific agreement.
- d. Tax advice can be in any form. However, important, unusual, or complicated transactions should be in writing.

Note: Members may use a trade name as long as it is not deceptive or misleading. "Pay Less" may be construed as misleading for a tax service.

DISCIPLINARY SYSTEMS WITHIN THE PROFESSION

1. The AICPA's disciplinary mechanisms include the Professional Ethics Division and a joint trial board.
 - a. The Professional Ethics Division investigates ethics violations. It imposes sanctions in less serious cases. For example, it may require an AICPA member to take additional CPE courses as a remedial measure.
 - b. More serious infractions come before a joint trial board panel, which can acquit, admonish (censure), suspend, or expel a member. It may also take such other disciplinary, remedial, or corrective action as it deems to be appropriate. The *CPA Letter* publishes information about suspensions and expulsions.
 - 1) A decision of a trial board panel may be appealed to the full trial board. The determination of this body is conclusive.
 - 2) Upon the member's exhaustion of legal appeals, automatic expulsion without a hearing results when a member has been convicted of, or has received an adverse judgment for,
 - a) Committing a felony
 - b) Willfully failing to file a tax return
 - c) Filing a fraudulent tax return on the member's or a client's behalf
 - d) Aiding in preparing a fraudulent tax return for a client
 - 3) Automatic expulsion also occurs when a member's CPA certificate is revoked by action of any governmental agency, e.g., a state board of accountancy.
 - 4) Expulsion from the AICPA or a state society does not bar the individual from the practice of public accounting.
 - a) A valid state-issued license is required to practice.
 - b) Thus, violation of a state code of conduct promulgated by a board of accountancy is more serious than expulsion from the AICPA because it may result in revocation of the CPA certificate.

c. Joint Ethics Enforcement Program (JEEP)

- 1) The AICPA and most state societies have agreements that permit referral of an ethics complaint either to the AICPA or to a state society.
- 2) The AICPA handles matters of national concern, those involving two or more states, and those in litigation.
 - a) JEEP also promotes formal cooperation between the ethics committees of the AICPA and of the state societies.

2. The SEC, IRS, and PCAOB may also discipline accountants.

a. The SEC may seek an injunction from a court to prohibit future violations of the securities laws. Moreover, under its Rule of Practice 2(e), the SEC may conduct administrative proceedings that are quasi-judicial.

- 1) Pursuant to such proceedings, it may suspend or permanently revoke the right to practice before the SEC, including the right to sign any document filed by an SEC registrant, if the accountant
 - a) Does not have the qualifications to represent others
 - b) Lacks character or integrity
 - c) Has engaged in unethical or unprofessional conduct
 - d) Has willfully violated, or willfully aided and abetted the violation of, the federal securities laws or their rules and regulations
- 2) Suspension by the SEC may also result from
 - a) Conviction of a felony, or a misdemeanor involving moral turpitude
 - b) Revocation or suspension of a license to practice
 - c) Being permanently enjoined from violation of the federal securities acts
- 3) Some Rule 2(e) proceedings have prohibited not only individuals but also accounting firms from accepting SEC clients.
- 4) Under the Securities Law Enforcement Act of 1990, the SEC may impose civil penalties in administrative proceedings of up to \$100,000 for a natural person and \$500,000 for any other person. Furthermore, the SEC may order a

violation to account for and surrender any profits from wrongdoing and may issue cease-and-desist orders for violations.

- b. The IRS may prohibit an accountant from practicing before the IRS if the person is incompetent or disreputable or does not comply with tax rules and regulations.
 - 1) The IRS may also impose fines.
- c. The PCAOB was established by the Sarbanes-Oxley Act of 2002.
 - 1) A firm's registration application must contain information about a firm's quality control and a description of all actions pending against it. This information may have a great effect on enforcement actions and potential punishments. Moreover, the firm must give consent to cooperate with PCAOB investigations.
 - 2) The PCAOB has rule-making authority regarding quality control, ethics and auditing standards. These rules, especially those governing quality control, will have great relevance to enforcement actions.
 - 3) The PCAOB will inspect large firms annually and report violations to the SEC and state authorities. All attestation engagements, notably those in litigation, may be reviewed. The inspection also involves a quality control assessment. Furthermore, the inspection report must include the firm's response. The firm then has twelve months to correct the reported weaknesses.
 - 4) The PCAOB has substantially the same investigatory scope with respect to accountants as the SEC. The PCAOB may request that the SEC issue subpoenas to third parties, and it may deregister any uncooperative firm.
 - 5) The PCAOB has no injunctive power, but it may institute administrative proceedings. It may seek disassociation of a person from a registered firm, suspension (temporary or permanent) of the firm's registration, or a penalty of up to \$15 million. The extreme cases in which the harshest penalties may be imposed include repeated instances of negligent misconduct. By contrast, the SEC may impose the severest punishments when the firm has engaged in just one instance of highly unreasonable conduct.
- 3. State boards of accountancy and state CPA societies also have codes of ethics and/or rules of conduct.
 - a. State boards are governmental agencies that license CPAs to use the designation "Certified Public Accountant" and prohibit non-CPAs from performing the attest

function. They can suspend or revoke licensure through administrative process.

- 1) Like the AICPA, state boards have trial boards to conduct administrative hearings.
- b. State societies are voluntary, private organizations that can admonish, suspend, or expel members.

Note: A CPA may not claim to be endorsed by the Institute. A member may, however, state that (s)he is a member.

CHAPTER 3 DELAWARE ETHICS

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Outline the professional ethics and conduct for Delaware CPAs.
2. Summarize the ethical concepts promulgated in the Code of Professional Conduct.

100 Board of Accountancy

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy (“the Board”) is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board’s Administrative Specialist at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904, telephone (302) 744-4500. Requests to the Board may be directed to the same office.

1.3 The Board’s President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President’s absence, the Board’s Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board’s duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to “honorary state officials” in the “State Employees’, Officers’ and Officials’ Code of Conduct,” found at 29 Del.C. **Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.**

2.0 Professional Conduct

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants (AICPA) shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 Applications

3.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

3.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

3.3 Applicants requesting to sit for the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of 4.1.1 and 4.1.4 of these Rules and Regulations.

4.0 Requirements for a Certificate and Permit to Practice Certified Public Accountancy

4.1 Each applicant for a certificate and permit to practice certified public accountancy must provide the Board with the following:

4.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 Del.C. §107(a)(1).

4.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination as established by the AICPA and the National Association of State Boards of Accountancy (NASBA).

4.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

4.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

4.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so

accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

4.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

4.1.5 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 **Del.C.** §107(a)(5) and Regulation 5.0 of these Rules and Regulations, as applicable.

7 DE Reg. 494 (10/01/03)

5.0 Experience Requirements for Permit to Practice Certified Public Accountancy

5.1 Applicants who hold a master's degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §107(a)(5):

5.1.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.

5.1.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.

5.1.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

5.1.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in 5.4.1. The verification shall be notarized.

5.2 Applicants who hold a baccalaureate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §107(a)(5):

5.2.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

5.2.1.1 “Standards” shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

5.2.2 Experience in internal audit may be used in lieu of or in addition to the experience described in 5.2.1.

5.2.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in 5.4.1. The verification shall be notarized.

5.3 Applicants who hold an associate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** 107(a)(5):

5.3.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

5.3.1.1 “Standards” shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

5.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in 5.4.1. The verification shall be notarized.

5.4 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant’s duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

5.4.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the

practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience. The affidavit shall be notarized.

5.5 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

3 DE Reg. 1668 (6/1/00)

5 DE Reg. 119 (7/1/01)

9 DE Reg. 1983 (06/01/06)

6.0 Requirements for Permit to Practice Public Accountancy

6.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

6.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 Del.C. §107(a)(1).

6.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of 4.1.4.1 and 4.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

6.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy and Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Regulation and Auditing and Attestation portions of the Uniform Certified Public Accounting Examination.

6.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

6.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

6.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

9 DE Reg. 1983 (06/01/06)

7.0 Certificate Holders

7.1 Any person holding a valid Delaware certificate issued on or before June 30, 1985 remains a certificate holder. Even if a prior permit to practice has lapsed, he or she is deemed by statute (24 **Del.C.** §122(c)) to have achieved sufficient education and experience and may obtain a permit to practice by applying to the Board.

7.1.1 If the certificate holder chooses to obtain a permit to practice, he or she is subject to the Delaware Accountancy statute and Rules and Regulations for those individuals holding permits to practice, including biennial renewal and continuing professional education.

7.1.2 If the certificate holder chooses to remain a certificate holder, he or she may use the designation "CPA" under limited circumstances as described in Regulation 8.0 Use of Designations.

7.2 Any person issued a certificate after July 1, 1985 and those applicants who meet the requirements of 24 **Del.C.** §122(d) on or before January 1, 2006 will remain certificate holders. He or she may obtain a permit to practice by meeting the experience requirements as established in the Board's statute and Rules and Regulations.

7.2.1 If the certificate holder chooses to obtain a permit to practice, he or she is subject to the Delaware Accountancy statute and Rules and Regulations for those individuals holding permits to practice, including biennial renewal and continuing professional education.

7.2.2 If the certificate holder chooses to remain a certificate holder, he or she may use the designation "CPA" under limited circumstances as described in Regulation 8.0 Use of Designations.

7.3 Except for those applicants submitting completed applications to sit for the Uniform Certified Public Accounting Examination prior to January 1, 2006, there shall be no new certificates issued or new applications accepted for certificates only after that date.

9 DE Reg. 1983 (06/01/06)

8.0 Use of Designations

8.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

8.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

8.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

8.1.1.2 A sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state which is registered with the Board and holds a current firm permit to practice.

8.2 Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

8.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" if:

8.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing; ;

8.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services; and

8.2.1.3 The individual places the words "not in public practice" adjacent to their CPA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate on which their CPA title appears.

8.3 Designation "Public Accountant" and the abbreviation "PA"

8.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

8.3.1.1 An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

8.3.1.2 A sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

8.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

8.4 No person, sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled

accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

8.5 No person, sole proprietorship, partnership, or corporation, or any other entity authorized under Delaware law or a similar statute of another state shall use a title, certification or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title, certification or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such certifications and designations as "Certified Financial Planner™", "CFP", "CVA", "ABV", etc.

5 DE Reg. 2090 (05/01/02)

9 DE Reg. 1983 (06/01/06)

9.0 Reciprocity

9.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

9.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

9.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

9.2 The provisions of 5.1 of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109(a)(3) for the granting of a permit by reciprocity.

9.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §109 and must provide the Board with the following:

9.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

9.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9 DE Reg. 1983 (06/01/06)

10.0 Firm Permits to Practice

10.1 Definitions

10.1.1 “Firm” means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state.

10.1.2 The term “principal of a firm” is defined as any individual who has an equity interest in the firm.

10.2 Each firm which intends to be or is engaged in the practice of certified public accountancy or the practice of public accountancy in this State shall be required to obtain and maintain a valid permit to practice. Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such time as that person begins to perform certified public accounting or public accounting services in this State or for clients located in this State.

10.3 Each applicant for issuance or renewal of a firm permit to practice certified public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid Delaware individual permit to practice certified public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not as yet accumulated sufficient experience to qualify for a permit under 24 **Del.C.** §1087, holds a valid Delaware individual permit to practice certified public accountancy. For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

10.4 Each applicant for issuance or renewal of a firm permit to practice public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid Delaware individual permit to practice public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not yet met the requirements to qualify for a permit under 24 **Del.C.** §110, holds a valid individual permit to practice public accountancy. For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have a valid Delaware individual permit to practice.

10.5 An applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to register each office of the firm within

this State with the Board, and to show that each such office is under the charge of a person holding a valid Delaware permit to practice.

10.6 Each holder of or applicant for a firm permit to practice certified public accountancy or public accountancy shall notify the Board in writing within thirty (30) days after its occurrence of: 1) any change in the identities of principals who work regularly within this State; 2) any change in the number or location of offices within this State; 3) any change in the identity of the persons supervising such offices; and 4) any issuance, denial, revocation or suspension of a permit issued by any other State to the firm or to any principal or employee regulated by the Board.

10.7 Certified public accounting and public accounting firms practicing as corporations organized pursuant to Delaware law must be organized in compliance with The Professional Service Corporation Act, 8 **Del.C.** §601, et. seq.

10.8 All firms and accountants practicing in firms shall be bound by professional responsibility standards no less stringent than those stated in 8 **Del.C.** §608. Each applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to cause a duly authorized individual to verify under oath that upon issuance by the Board of a firm permit to practice, the firm will be bound by professional standards no less stringent than those stated in 8 **Del.C.** §608.

10.9 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

5 DE Reg. 2090 (05/01/02)

9 DE Reg. 1983 (06/01/06)

11.0 Continuing Education

11.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period and must include a minimum of sixteen (16) credit hours in accounting and/or auditing and a minimum of sixteen (16) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board as set forth in 11.8.

11.2 Reporting Requirements: Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov. Proof of continuing education is satisfied with an attestation by the license that he or she has satisfied the continuing education requirements of section 11.0.

11.2.1 Attestation may be completed electronically if the renewal is accomplished online. In an alternative, paper renewal documentation that contains attestation of completion can be submitted.

11.2.2 License selected for random audit will be required to supplement the attestation with attendance verification pursuant to 11.6.

11.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

11.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

11.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

11.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

11.5 Qualified Programs.

11.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

11.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

11.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

11.5.2.2 The program is at least an hour (a fifty-minute period) in length.

11.5.2.3 The program is conducted by a qualified instructor or discussion leader.

11.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

11.5.3 Programs deemed approved: Provided the criteria in 11.5.1 and 11.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

11.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

11.5.3.2 Professional development programs of national, state and local accounting organizations;

11.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

11.5.3.4 University or college courses:

11.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

11.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

11.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

11.5.3.6 Other organized educational programs on technical and other practice subjects including “in-house” training programs of public accounting firms.

11.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

11.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

11.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

11.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

11.6 Control and Reporting

11.6.1 Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for audit shall be required to submit attendance verification including:

11.6.1.1 school, firm or organization conducting course;

11.6.1.2 location of course;

11.6.1.3 title of course or description of content;

11.6.1.4 dates attended; and

11.6.1.5 hours claimed.

11.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, *et. seq.*

11.7 Evidence of Completion- Retention

11.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

11.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

11.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

11.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

11.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of sixteen (16) credit hours in accounting and/or auditing and a minimum of sixteen (16) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board. The remaining forty-four (44) credit hours may be satisfied by general subject matters so long as they

contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting

Administrative Practice

Auditing

Business Law

Communication Arts

Computer Science

Economics

Finance, Production and Marketing

Management Services Mathematics, Statistics, Probability, and Quantitative

Applications in Business

Personnel Relations, Business Management and Organization

Social Environment of Business

Specialized Areas of Industry

Taxation

8 DE Reg. 1583 (5/1/05)

9 DE Reg. 1983 (06/01/06)

12.0 Additional Provisions Concerning Examinations

12.1 All examinations required under 24 **Del.C.** Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

12.2 Applications to sit for the Uniform Certified Public Accountant examination (“CPA examination”) shall be submitted in completed form to the Board’s designated agent by the dates determined by the Board’s designated agent.

12.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

12.4 Rules for Examination.

12.4.1 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

12.4.2 Applicants will be informed in writing of the results achieved in each section.

12.5 Passing Grade on the Uniform CPA Examination

12.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects shall be deemed to have passed the Uniform Certified Public Accountant Examination.

12.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

12.6 Transfer of Credit for Subjects Passed in Another Jurisdiction

12.6.1 An applicant who has passed one or more sections of the examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the sections so passed under the following conditions:

12.6.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

12.6.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

12.6.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction.

12.6.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

12.6.3 If an applicant has passed all sections of the examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final section was successfully completed.

12.7 Computer-Based Examination

12.7.1 Effective with the implementation of the computer-based examination, a candidate may take the required test sections individually and in any order. Except as provided in

12.7.3 of these rules, credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took the test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The candidate shall also be subject to the following:

12.7.1.1 Candidates must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, that begins on the date that the first test section is passed.

12.7.1.2 Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, candidates will be able to test two out of three months within an examination window.

12.7.1.3 In the event all four test sections of the examination are not passed within the rolling eighteen month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

12.7.2 Effective October 31, 2005 all credits earned under a paper and pencil examination are no longer valid and will not be accepted.

12.7.3 The Board may extend the eighteen-month time period set forth in 12.7.1.1 in cases of substantial hardship as determined by the Board in its discretion.

12.7.4 A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four test sections of the examination. For purposes of this Regulation, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually received notice of the passing grade.

7 DE Reg. 494 (10/01/03)

9 DE Reg. 1983 (06/01/06)

13.0 Excepted Practices; Working Papers

13.1 Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 **Del.C.** §120. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls,

systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 **Del.C.** Ch. 1.

13.2 Working Papers: For purposes of 24 **Del.C.** §120, the term “working papers” does not properly include client records. In some instances, a permit holder’s working papers may include data which should be part of the client’s books and records, rendering the client’s books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client’s records and should be made available to the client upon request.

9 DE Reg. 1983 (06/01/06)

14.0 Hearings

14.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

14.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

14.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

14.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

14.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** §§10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent’s address as reflected in the Board’s records.

14.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

14.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the

witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

14.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §§10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

14.2 General procedure

14.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

14.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

14.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

14.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

5 DE Reg. 2090 (05/01/02)

9 DE Reg. 1983 (06/01/06)

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall

approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

16.0 Crimes Substantially Related to the Practice of Accountancy:

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of accountancy in the State of Delaware without regard to the place of conviction:

16.1.1 Aggravated menacing. 11 **Del.C.** §602(b)

16.1.2 Reckless endangering in the first degree. 11 **Del.C.** §604

16.1.3 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.

16.1.4 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.

16.1.5 Assault in the second degree. 11 **Del.C.** §612

16.1.6 Assault in the first degree. 11 **Del.C.** §613.

16.1.7 Assault by abuse or neglect. 11 **Del.C.** §615.

16.1.8 Gang participation. 11 **Del.C.** §616.

16.1.9 Terroristic threatening; felony. 11 **Del.C.** §621(a) and (b).

16.1.10 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

16.1.11 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.

16.1.12 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.

16.1.13 Murder in the second degree. 11 **Del.C.** §635.

16.1.14 Murder in the first degree. 11 **Del.C.** §636.

16.1.15 Promoting suicide. 11 **Del.C.** §645.

16.1.16 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.

16.1.17 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.

16.1.18 Rape in the fourth degree. 11 **Del.C.** §770.

16.1.19 Rape in the third degree. 11 **Del.C.** §771.

16.1.20 Rape in the second degree. 11 **Del.C.** §772.

16.1.21 Rape in the first degree. 11 **Del.C.** §773.

16.1.22 Sexual extortion. 11 **Del.C.** §776.

16.1.23 Continuous sexual abuse of a child. 11 **Del.C.** §778.

16.1.24 Dangerous crime against a child. 11 **Del.C.** §779.

16.1.25 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.

16.1.26 Kidnapping in the second degree. 11 **Del.C.** §783.

16.1.27 Kidnapping in the first degree. 11 **Del.C.** §783A.

16.1.28 Arson in the second degree. 11 **Del.C.** §802.

16.1.29 Arson in the first degree. 11 **Del.C.** §803.

16.1.30 Burglary in the third degree. 11 **Del.C.** §824.

16.1.31 Burglary in the second degree. 11 **Del.C.** §825.

16.1.32 Burglary in the first degree. 11 **Del.C.** §826.

16.1.33 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.

16.1.34 Robbery in the second degree. 11 **Del.C.** §831.

16.1.35 Robbery in the first degree. 11 **Del.C.** §832.

16.1.36 Carjacking in the second degree. 11 **Del.C.** §835.

16.1.37 Carjacking in the first degree. 11 **Del.C.** §836.

16.1.38 Shoplifting; felony. 11 **Del.C.** §840.

16.1.39 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 **Del.C.** §840A.

16.1.40 Theft. 11 **Del.C.** §841.

16.1.41 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842.

16.1.42 Theft; false pretense. 11 **Del.C.** §843.

16.1.43 Theft; false promise. 11 **Del.C.** §844.

16.1.44 Theft of services. 11 **Del.C.** §845.

16.1.45 Extortion. 11 **Del.C.** §846.

16.1.46 Misapplication of property; felony. 11 **Del.C.** §848.

16.1.47 Receiving stolen property. 11 **Del.C.** §851

16.1.48 Identity theft. 11 **Del.C.** §854.

16.1.49 Forgery. 11 **Del.C.** §861.

16.1.50 Possession of forgery devices. 11 **Del.C.** §862.

16.1.51 Falsifying business records. 11 **Del.C.** §871.

16.1.52 Tampering with public records in the second degree. 11 **Del.C.** §873.

16.1.53 Tampering with public records in the first degree. 11 **Del.C.** §876.

16.1.54 Offering a false instrument for filing. 11 **Del.C.** §877.

16.1.55 Issuing a false certificate. 11 **Del.C.** §878.

16.1.56 Defrauding secured creditors. 11 **Del.C.** §891.

16.1.57 Fraud in insolvency. 11 **Del.C.** §892.

16.1.58 Interference with levied-upon property. 11 **Del.C.** §893.

16.1.59 Issuing a bad check; felony. 11 **Del.C.** §900.

16.1.60 Unlawful use of credit card; felony. 11 **Del.C.** §903.

16.1.61 Reencoder and scanning devices. 11 **Del.C.** §903A.

16.1.62 Deceptive business practices. 11 **Del.C.** §906.

16.1.63 Criminal impersonation. 11 **Del.C.** §907.

16.1.64 Criminal impersonation, accident related. 11 **Del.C.** §907A.

16.1.65 Criminal impersonation of a police officer. 11 **Del.C.** §907B.

16.1.66 Unlawfully concealing a will. 11 **Del.C.** §908.

16.1.67 Securing execution of documents by deception. 11 **Del.C.** §909.

16.1.68 Debt adjusting. 11 **Del.C.** §910.

16.1.69 Fraudulent conveyance of public lands. 11 **Del.C.** §911.

16.1.70 Fraudulent receipt of public lands. 11 **Del.C.** §912.

16.1.71 Insurance fraud. 11 **Del.C.** §913.

16.1.72 Health care fraud. 11 **Del.C.** §913A.

16.1.73 Home improvement fraud. 11 **Del.C.** §916.

16.1.74 New home construction fraud. 11 **Del.C.** §917.

16.1.75 Unauthorized access. 11 **Del.C.** §932.

16.1.76 Theft of computer services. 11 **Del.C.** §933.

16.1.77 Interruption of computer services. 11 **Del.C.** §934.

16.1.78 Misuse of computer system information. 11 **Del.C.** §935.

16.1.79 Destruction of computer equipment. 11 **Del.C.** §936.

16.1.80 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11 **Del.C.** §937.

16.1.81 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938.

16.1.82 Dealing in children. 11 **Del.C.** §1100.

16.1.83 Sexual exploitation of a child. 11 **Del.C.** §1108.

16.1.84 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.

16.1.85 Possession of child pornography. 11 **Del.C.** §1111.

16.1.86 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.

16.1.87 Sexual solicitation of a child. 11 **Del.C.** §1112A.

16.1.88 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.

16.1.89 Bribery; felony. 11 **Del.C.** §1201

16.1.90 Receiving a bribe; felony. 11 **Del.C.** §1203.

16.1.91 Giving unlawful gratuities. 11 **Del.C.** §1205.

16.1.92 Receiving unlawful gratuities. 11 **Del.C.** §1206.

16.1.93 Improper influence. 11 **Del.C.** §1207.

16.1.94 Official misconduct. 11 **Del.C.** §1211.

16.1.95 Profiteering. 11 **Del.C.** §1212.

16.1.96 Perjury in the second degree. 11 **Del.C.** §1222.

16.1.97 Perjury in the first degree. 11 **Del.C.** §1223.

16.1.98 Making a false written statement. 11 **Del.C.** §1233.

16.1.99 Terroristic threatening of public officials or public servants; felony. 11 **Del.C.** §1240.

16.1.100 Hindering prosecution; felony. 11 **Del.C.** §1244.

16.1.101 Falsely reporting an incident; felony. 11 **Del.C.** §1245.

16.1.102 Promoting prison contraband; felony. 11 **Del.C.** §1256.

16.1.103 Bribing a witness. 11 **Del.C.** §1261.

16.1.104 Bribe receiving by a witness. 11 **Del.C.** §1262.

16.1.105 Tampering with a witness. 11 **Del.C.** §1263.

16.1.106 Interfering with child witness. 11 **Del.C.** §1263A.

16.1.107 Bribing a juror. 11 **Del.C.** §1264.

16.1.108 Bribe receiving by a juror. 11 **Del.C.** §1265.

16.1.109 Tampering with a juror. 11 **Del.C.** §1266.

16.1.110 Misconduct by a juror. 11 **Del.C.** §1267.

16.1.111 Tampering with physical evidence. 11 **Del.C.** §1269.

16.1.112 Unlawful grand jury disclosure. 11 **Del.C.** §1273.

16.1.113 Hate crimes; felony. 11 **Del.C.** §1304.

16.1.114 Stalking; felony. 11 **Del.C.** §1312A.

16.1.115 Violation of privacy; felony. 11 **Del.C.** §1335.

16.1.116 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.

16.1.117 Adulteration. 11 **Del.C.** §1339.

16.1.118 Possessing a destructive weapon. 11 **Del.C.** §1444.

- 16.1.119 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 16.1.120 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 16.1.121 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 16.1.122 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 16.1.123 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 16.1.123 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 16.1.125 Victim or Witness Intimidation 11 **Del.C.** §3532 and 3533.
- 16.1.126 Financial exploitation of residents or patients; felony. 16 **Del.C.** §1136(b)
- 16.1.127 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 16.1.128 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 16.1.129 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 16.1.130 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 16.1.131 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 16.1.132 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- 16.1.133 Drug paraphernalia; felony. 16 **Del.C.** §4771 (b) and (c) [manufacture and sale, delivery to a minor].
- 16.1.134 Attempt to evade or defeat tax. 30 **Del.C.** §571.
- 16.1.135 Failure to collect or pay over tax. 30 **Del.C.** §572.
- 16.1.136 Failure to file return, supply information or pay tax. 30 **Del.C.** §573.
- 16.1.137 Fraud and false statements. 30 **Del.C.** §574.
- 16.1.138 Misdemeanors [tax related]. 30 **Del.C.** §576.

16.1.139 Obtaining benefit under false representation; felony. 31 **Del.C.** §1003.

16.1.140 Reports, statements and documents; felony. 31 **Del.C.** §1004.

16.1.141 Kickback schemes and solicitations. 31 **Del.C.** §1005.

16.1.142 Conversion of payment. 31 **Del.C.** §1006.

16.1.143 Violations of the Securities Act. 6 **Del.C.** §7322.

16.1.144 Attempt to Intimidate. 11 **Del.C.** §3534.

16.1.145 Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.

16.1.146 Financial exploitation of infirm adult; felony. 31 **Del.C.** §3913.

16.2 Crimes substantially related to the practice of accountancy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 1269 (03/01/05)

9 DE Reg. 1983 (06/01/06)

GLOSSARY

ATTEST ENGAGEMENT TEAM participants in the engagement, including partners who perform concurring or second reviews and all employees and contractors retained by the firm, but excluding specialists.

DEONTOLOGY (KANTIAN ETHICS) the concept of duty and the rightness of acts. It emphasizes maxims, duties, rules, and principles that are so important that they should be followed whatever the consequences.

ETHICS standards of professional conduct and business practices adhered to by professionals in order to enhance their profession and maximize idealism, justice and fairness when dealing with the public, clients and other members of their profession.

IMMEDIATE FAMILY a covered member's spouse, equivalent of a spouse, or dependents.

INTERNAL CONTROL REPORT a report on the company's internal control over financial reporting required under Section 404 of the Sarbanes-Oxley Act. For example, the report must include a statement of management's responsibility for internal control.

JOINT CLOSELY HELD INVESTMENT an investment in any entity or property by the member and (1) the client, (2) the client's officers or directors, or (3) an owner who can exercise significant influence if the investment permits such parties to control the entity or property.

LAWS bodies of rules governing members of a community, state, organization, professional, etc ... and enforced by authority or compelling legislation.

MORAL an accepted rule or standard of human behavior.

OBJECTIVITY a state of mind, a quality that lends itself to a member's services. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)

(www.pcaobus.com) established in 2002 as a result of the Sarbanes-Oxley Act, a private sector, non-profit corporation set up to oversee the audits of public companies and ensure that accountancy firms should no longer derive non-audit revenue streams, such as consultancy, from their audit clients.

SARBANES-OXLEY (SOX) ACT wide-ranging U.S. corporate reform legislation, coauthored by the Democrat in charge of the Senate Banking Committee, Paul Sarbanes, and Republican Congressman Michael Oxley. The Act, which became law in July 2002, lays down stringent

procedures regarding the accuracy and reliability of corporate disclosures, places restrictions on auditors providing non-audit services and obliges top executives to verify their accounts personally. Section 409 is especially tough and requires that companies must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

UTILITARIANISM (TELEOLOGICAL ETHICS) the promotion that the best long-term interest of everyone concerned should be the moral standard. One should take those actions that lead to the greatest balance of good versus bad consequences