

CODE OF PROFESSIONAL CONDUCT

OF THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

(Effective March 2013)

NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS
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NEW YORK, NEW YORK 10016-5991

**CODE OF PROFESSIONAL CONDUCT
OF THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS**

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CODE OF PROFESSIONAL CONDUCT OF THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

CODE OF PROFESSIONAL CONDUCT - INTRODUCTION & PREAMBLE

INTRODUCTION

Composition, Applicability, and Compliance

The Code of Professional Conduct of the New York State Society of Certified Public Accountants (the "Society") consists of two sections - (1) the Principles, and (2) the Rules. The Principles provide the framework for the Rules, which govern the performance of professional services by members. The bylaws require adherence to those Rules.

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

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

The Society's Code of Professional Conduct provides guidance for members in the performance of their professional responsibilities. Members should be aware that there may be other rules of conduct to which they are subject in connection with their professional responsibilities and such rules may differ from those of the Society.

Organizations which may have such differing rules include the following:

The Board of Regents of the State of New York, which Board has the authority to revoke the license of a certified public accountant who violates its rules.

Governmental agencies which regulate the client's business or use the member's attestation to evaluate the client's compliance with applicable laws and related regulations and which may have established their own rules of conduct on the part of persons practicing before them.

Professional accounting organizations in which Society members may also hold membership (such as the American Institute of Certified Public Accountants or other state societies) or be registered to practice in other states, and such organizations or applicable state boards of accountancy may have established their own rules of professional conduct to which the member may also be subject.

Other Guidance

Interpretations of Rules of Conduct consist of interpretations which have been adopted to provide guidelines as to the scope and application of the Rules but are not intended to limit such scope or application. A member who departs from such guidelines shall have the burden of justifying such

departure in any disciplinary investigation. The effective date of the Interpretations appearing in this printing is March 25, 1992 as authorized by the Board of Directors. Publication of subsequent Interpretations in the Society's *Trusted Professional* publication, which is sent to all members, constitutes notice to members. Hence, the effective date of Interpretation is the last day of the month in which the pronouncement is published in *The Trusted Professional*, unless a later date is specifically indicated. The Professional Ethics Committee will take into consideration the time that would have been reasonable for the member to comply with the Interpretations.

Preamble

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

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

Code of Professional Conduct—Applicability and Definitions

Applicability

The bylaws of the New York State Society of Certified Public Accountants require that members adhere to the Rules of the Code of Professional Conduct. Members must be prepared to justify departures from these Rules.

Interpretation Addressing the Applicability of the Society Code of Professional Conduct.

For purposes of the Applicability Section of the Code, a “member” is a member, or associate member, of the New York State Society of Certified Public Accountants.

1. The Rules of Conduct that follow apply to all professional services performed except
 - (a) where the wording of the rule indicates otherwise
 - (b) that a member who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein as long as the member’s conduct is in accord with the rules of the organized accounting profession in the country in which he or she is practicing. However, where a member’s name is associated with financial statements under circumstances that would entitle the reader to assume that United States practices were followed, the member must comply with the requirements of Rules 202, Compliance with Standards and 203, Accounting Principles
 - (c) a member who is a member of a group engagement team (see the clarified SAS Special Considerations – Audits of Group Financial Statements [including the Works of Component Auditors]) will not be subject to discipline if a foreign component auditor (accountant) departed from any of the ethics requirements stated herein with respect to the audit or review of group financial statements or other attest engagement, as long as the foreign component auditor’s (accountant’s) conduct, at a minimum, is in accord with the ethics and independence requirements set forth in the International Ethics Standards Board for Accountants’ (IESBA’s) Code of Ethics for Professional Accountants, and the members of the group engagement team are in compliance with the rules stated herein
 - (d) a member who is a member of a network firm (in definitions) will not be subject to discipline if a firm within the network (in definitions) that is located outside the United States (foreign network firm) departed from any of the ethics requirements stated herein, as long as the foreign network firm’s conduct, at a minimum, is in accord with the ethics and independence requirements set forth in the IESBA’s Code of Ethics for Professional Accountants.
2. A member shall not knowingly permit a person, whom the member has the authority or capacity to control, to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the member, would place the member in violation of the rules. Further, a member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control.

3. A member (as defined in definitions) or a covered member (as defined in definitions) may be considered to have his or her independence impaired, with respect to a client, as the result of the actions or relationships of certain persons or entities, as described in Rule 102, Independence and its interpretations, whom the member, or covered member, does not have the authority or capacity to control. Therefore, nothing in this section should lead one to conclude that the member's or covered member's independence is not impaired solely because of his or her inability to control the actions or relationships of such persons or entities.

Definitions

Attest. "Attest" means providing the following public accountancy services:

- a. any audit to be performed in accordance with generally accepted auditing standards or other similar standards, developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are designated by the Board of Directors of the NYSSCPA and in compliance with New York State Education Law section 7401-a;
- b. any review of a financial statement to be performed in accordance with standards, developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are designated by the Board of Directors of the NYSSCPA and in compliance with New York State Education Law section 7401-a;
- c. any examination to be performed in accordance with attestation standards developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are designated by the Board of Directors of the NYSSCPA and in compliance with New York State Education Law section 7401-a; or
- d. any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board.

Attest engagement. An attest engagement is an engagement that requires independence as defined in AICPA Professional Standards.

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

Best practices. Those procedures and behaviors generally agreed upon by reasonably prudent and competent persons to be the preferred approach to providing a particular professional service. So called "best practices" relevant to a professional service provided by a member may be promulgated by other professional associations or similar organizations. Best practices will vary depending upon the skill level and position of the member, the nature of the engagement, the industry, practicality and cost-benefit among other factors.

Client. A client is any person or entity that directly engages a member or a member's firm to perform professional services, or a person or entity with respect to which professional services are performed, other than the member's employer, student or the public.

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

Commissions and referral fees. Commission means any compensation paid by a third party to the member, except a referral fee, for recommending or referring any product or service to be supplied by another person. Referral fee means compensation for recommending or referring any service of a CPA to any person.

Compilation. "Compilation" means providing a service that presents, in the form of financial statements, information that is the representation of the management or owners of the client without undertaking to express any assurance of the accuracy of the information in the statements, to be performed in accordance with standards, developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are designated by the Board of Directors of the NYSSCPA and in compliance with New York State Education Law section 7401-a.

Confidential client information. Any information obtained from current, former, and prospective clients in a professional capacity which is not generally available to the public, whether or not the CPA is actually formally engaged to provide professional services. Information obtained from a person seeking to engage a member to offer professional services falls within this definition.

Confidential employer information. Any information obtained during the course of employment if use of such information is restricted by the employer through a written policy, or law, and if such information is not generally available to the public.

Covered member. A covered member is—

- a. An individual on the attest engagement team;
- b. An individual in a position to influence the attest engagement;
- c. A partner or manager who provides nonattest services to the attest client beginning once he or she provides ten hours of nonattest services to the client within any fiscal year and ending on the later of the date (i) the firm signs the report on the financial statements for the fiscal year during which those services were provided or (ii) he or she no longer expects to provide ten or more hours of nonattest services to the attest client on a recurring basis;
- d. A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;
- e. The firm, including the firm's employee benefit plans; or
- f. An entity whose operating, financial, or accounting policies can be controlled (as defined in Financial Standards Accounting Board (FASB) *Accounting Standards Codification* (ASC) 810, *Consolidation*) by any of the individuals or entities described in (a) - (e) or by two or more such individuals or entities if they act together.

Financial institution. A financial institution is considered to be an entity that, as part of its normal business operations, makes loans to the general public. In addition, for automobile leases addressed under Interpretation 102-5, *Loans From Financial Institution Clients*, an entity would be considered a financial institution if it leases automobiles to the general public.

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

Firm. A firm is a form of organization permitted by law or regulation that is engaged in the practice of public accounting. Firm includes the individual partners thereof except for purposes of applying Rule 102—Independence. For purposes of applying Rule 102, firm includes a network firm when the engagement is either a financial statement audit or review engagement, and the audit or review report is not restricted, as defined by professional standards.

[Revised March 2012 effective for engagements covering periods on or after July 1, 2012.]

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

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

- a. Evaluates the performance or recommends the compensation of the attest engagement partner;
- b. Directly supervises or manages the attest engagement partner, including all successively senior levels above that individual through the firm's chief executive;
- c. Consults with the attest engagement team regarding technical or industry-related issues specific to the attest engagement; or
- d. Participates in or oversees, at all successively senior levels, quality control activities, including internal monitoring, with respect to the specific attest engagement.

Interpretations of rules of conduct. Pronouncements issued by the Board of Directors to provide guidelines concerning the scope and application of the rules of conduct.

Joint closely held investment. A joint closely held investment is an investment in an entity or property by the member and the client (or the client's officers or directors, or any owner who has the ability to exercise significant influence over the client) that enables them to control (as defined in FASB ASC 810) the entity or property.

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

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

- b. Has primary responsibility

for the preparation of the financial statements; or

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

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

Loan. A loan is a financial transaction, the characteristics of which generally includes, but is not limited to, an agreement that provides for repayment terms and a rate of interest. A loan includes, but is not limited to, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment.

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

- a. Continuing responsibility for the overall planning and supervision of engagements for specified clients.
- b. Authority to determine that an engagement is complete subject to final partner approval if required.

Member. A member or associate member of the New York State Society of Certified Public Accountants.

Member in business. A member employed or engaged on a contractual or volunteer basis in an executive, a staff, a governance, an advisory, or an administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, or regulatory or professional bodies. This does not include a member while engaged in the practice of public accounting.

Network. For purposes of Interpretation No. 101-17, "Networks and Network Firms," network is an association of entities that includes one or more firms that (a) cooperate for the purpose of enhancing the firms' capabilities to provide professional services and (b) share one or more of the following characteristics:

1. The use of a common brand name (including common initials) as part of the firm name
2. Common control (as defined in FASB ASC 810) among the firms through ownership, management, or other means
3. Profits or costs, excluding the following:
 - a. costs of operating the association
 - b. costs of developing audit methodologies, manuals, and training courses
 - c. other costs that are immaterial to the firm
4. Common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are held accountable for performance pursuant to that strategy

5. Significant part of professional resources
6. Common quality control policies and procedures that firms are required to implement and that are monitored by the association

A network may comprise a subset of entities within an association if only that subset of entities cooperates and shares one or more of the characteristics set forth in the preceding list.

[Paragraph added, December 2011, March 2012, effective for engagements covering periods beginning on or after July 1, 2012.]

Network firm. A network firm is a firm or other entity that belongs to a network, as defined in Society Code. This includes any entity (including another firm) that the network firm, by itself or through one or more of its owners, controls (as defined in FASB ASC 810), is controlled by, or is under common control with.

[Paragraph added, December 2011, March 2012, effective for engagements covering periods beginning on or after July 1, 2012.]

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

1. The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the covered member.
2. Repayment terms.
3. Interest rate, including “points.”
4. Closing costs.
5. General availability of such loans to the public.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

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

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

Period of the professional engagement. The period of the professional engagement begins when a member either signs an initial engagement letter or other agreement to perform attest

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

Practice of public accountancy. The practice of public accountancy is defined in Section 70.1 of the Regulations of the Commissioner of Education of the State of New York.

Professional services. Professional services include all services performed by a member in the practice of public accountancy.

Professional skills and competencies of a licensed accountant. This term has the meaning given to it under the Regulations of the Commissioner of Education of the State of New York Section 70.1, subdivision C, paragraph 1.

Significant influence. The term *significant influence* is as defined in FASB ASC 323-10-15.

Society - The New York State Society of Certified Public Accountants.

Principles of Professional Conduct

Article I—Public Interest

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

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

Those who rely on certified public accountants expect them to discharge their responsibilities with integrity, objectivity, due professional care, and a genuine interest in serving the public. They are expected to provide quality services, enter into fee arrangements, and offer a range of services—all in a manner that demonstrates a level of professionalism consistent with these Principles of the Code of Professional Conduct. All who accept membership in the New York State Society of Certified Public Accountants commit themselves to honor the public trust. In return for the faith that the public places in them, members should seek continually to demonstrate their dedication to professional excellence.

Article II—Integrity

To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity. Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.

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

Integrity is measured in terms of what is right and just. In the absence of specific rules, standards, or guidance, or in the face of conflicting opinions, a member should test decisions and deeds by asking: “Am I doing what a person of integrity would do? Have I retained my integrity?” Integrity requires a member to observe both the form and the spirit of technical and ethical standards. Integrity also requires a member to observe the principles of objectivity and independence and of due professional care.

Article III—Objectivity

Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest.

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

All members have the responsibility to maintain objectivity in rendering professional services. Members employed by others to prepare financial statements or to perform auditing, tax, or consulting services are charged with the same responsibility for objectivity as members who perform attest services and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with members who perform external attest services.

Article IV—Due Professional Care

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

Due professional care also imposes the obligation to seek out and implement best practices when appropriate, as well as requires a member to plan and supervise adequately any professional activity for which he or she is responsible. Furthermore, members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services in a timely fashion, to be thorough, and to observe applicable technical and ethical standards.

Article V—Competence

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

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

Article VI—Confidentiality

Accounting professionals depend upon the free transfer of information from clients and employers in order to properly perform their jobs. In order to preserve client trust and provide the best possible service to clients and employers, members should closely guard client and employer information and treat it as confidential.

Confidentiality is the cornerstone of a trusting relationship between a member and client or employer. In order to constructively grow that relationship, the client or employer must have confidence that information provided to the member will be treated respectfully, and not disclosed to outside parties. The careful handling of client or employer affairs allows the member to develop a more meaningful relationship with the client or employer, and serve them more effectively.

A member should be fully informed of all the facts pertaining to an engagement, task, or client relationship in order to obtain optimum results for the member's client or employer. The fact that information will be kept confidential not only allows the member to competently complete the assigned task, but also encourages the public to seek appropriate assistance when necessary.

Article VII—Independence

Independence precludes relationships that may impair or appear to impair a member's objectivity in rendering attestation services.

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

Although members who are employed in industry, academia, or other non-attest practice areas cannot maintain the appearance of independence, they nevertheless have the responsibility to maintain objectivity in rendering professional services. Members employed by others to prepare financial statements or to perform internal auditing, tax, or consulting services are charged with the same responsibility for objectivity as members who provide attest services and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with members who act as third-party auditors.

ET Section 100-1

Conceptual Framework for AICPA Independence Standards

The NYSSCPA has adopted the Conceptual Framework for AICPA Independence Standards promulgated by the AICPA in their Code of Professional Conduct.

See AICPA Code of Professional Conduct Conceptual Framework for AICPA Independence Standards 100-1 for guidance.

[Issued December 2011, revised March 2012, effective December 31, 2012 with earlier application encouraged by the Professional Ethics Committee.]

Rules and Interpretations

ET Section 101

Integrity

101—Integrity. In offering to perform or performing any professional services in the practice of public accountancy, a member shall maintain integrity.

A member shall maintain integrity by:

- (a) performing all professional services with honesty;
- (b) conducting oneself in the practice of public accountancy by evidencing moral fitness to practice;
- (c) not knowingly misrepresenting facts, or representing as factual information about which the member has no basis for judgment;
- (d) not subordinating his or her judgment to others;
- (e) complying with substantial provisions of Federal, State, or local laws, rules or regulations governing the practice of public accountancy;
- (f) complying with whistle-blowing or other similar internal policies or processes, should they exist, of any organization with which the member is affiliated, including employers, should the member become aware of any significant unethical activity, irrespective of any duty to maintain client or employer confidentiality;
- (g) maintaining independence as required by Rule 102.

Interpretation under Rule 101—Integrity

101-1—Knowing misrepresentations in the preparation of financial statements or records. A member shall be considered to have knowingly misrepresented facts in violation of rule 101 when he or she knowingly –

- a. Makes, or permits or directs another to make, materially false and misleading entries in an entity's financial statements or records; or
- b. Fails to correct an entity's financial statements or records that are materially false and misleading when he or she has the authority to record an entry; or
- c. Signs, or permits or directs another to sign, a document containing materially false and misleading information.

101-2—Subordination of judgment by a member. Rule 101 prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment when performing professional services. Under this rule, if a member and his or her supervisor have a disagreement or dispute relating to

the preparation of financial statements or the recording of transactions, the member should take the following steps to ensure that the situation does not constitute a subordination of judgment.^{fn1}

1. The member should consider whether (a) the entry or the failure to record a transaction in the records, or (b) the financial statement presentation or the nature or omission of disclosure in the financial statements, as proposed by the supervisor, represents the use of an acceptable alternative and does not materially misrepresent the facts. If, after appropriate research or consultation, the member concludes that the matter has authoritative support and/or does not result in a material misrepresentation, the member need do nothing further.
2. If the member concludes that the financial statements or records could be materially misstated, the member should make his or her concerns known to the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, the company's owners). The member should consider documenting his or her understanding of the facts, the accounting principles involved, the application of those principles to the facts, and the parties with whom these matters were discussed.
3. If, after discussing his or her concerns with the appropriate person(s) in the organization, the member concludes that appropriate action was not taken, he or she should consider his or her continuing relationship with the employer. The member also should consider any responsibility that may exist to communicate to third parties, such as regulatory authorities or the employer's (former employer's) external accountant. In this connection, the member may wish to consult with his or her legal counsel.
4. The member should at all times be cognizant of his or her obligations under Interpretation 101-3.

101-3—Obligations of a member to his or her employer's external accountant. Under Rule 101, a member must maintain integrity in the performance of a professional service. In dealing with his or her employer's external accountant, a member must be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts. This would include, for example, responding to specific inquiries for which his or her employer's external accountant requests written representation.

101-4—Applicability of Rules 101 and 103 to members performing educational services. Educational services (for example, teaching full- or part-time at a university, teaching a continuing professional education course, or engaging in research and scholarship) are professional services as defined in the Code of Professional Conduct and are therefore subject to Rule 101 and Rule 103. Rules 101 and 103 provides that the member shall maintain integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

Footnotes ET Section 101

^{fn1} A member in the practice of public accounting should refer to the Statements on Auditing Standards. For example, SAS No. 108 *Planning and Supervision* [AU section 311], which discusses what the auditor should do when there are differences of opinion concerning accounting and auditing standards.

ET Section 102

Independence

Rule 102—Independence. A member in the practice of public accountancy shall be independent in the performance of attest services as required by relevant laws, statutes and regulations, and by standards promulgated by bodies designated by the Board of Directors of the NYSSCPA.

Independence under this rule is required of the member when said member is offering to perform or performing attest services for attest clients, and/or incident to those attest services when the member is offering to perform or performing professional services for attest clients in any or all matters relating to accounting concepts and to the recording of, presentation of, or providing an opinion on financial information or data.

Interpretations under Rule 102

The NYSSCPA has adopted the Independence interpretations promulgated by the AICPA in their Code of Professional Conduct.

—Independence

In performing an attest engagement, a member should consult the rules of the New York State Board of Regents, his or her state CPA society, the Public Company Accounting Oversight Board and the U.S. Securities and Exchange Commission (SEC) if the member's report will be filed with the SEC, the U.S. Department of Labor (DOL) if the member's report will be filed with the DOL, the Government Accountability Office (GAO) if law, regulation, agreement, policy or contract requires the member's report to be filed under GAO regulations, and any organization or regulatory body that issues or enforces standards of independence that would apply to the member's engagement. Such organizations or regulatory bodies may have independence requirements or rulings that differ from (e.g., may be more restrictive than) those of the NYSSCPA.

102-1—Interpretation of Rule 102

See AICPA Code of Professional Conduct Interpretation 101-1 for guidance.

The Other Considerations section of AICPA 101-1—Interpretation of Rule 101 includes the adoption of the Conceptual Framework for AICPA Independence Standards (ET Section 100-1). However, for New York State Society members who are not also members of the AICPA, the effective date for both of these sections is December 31, 2012 with earlier application encouraged by the Professional Ethics Committee.

102-2—Employment or association with attest clients.

See AICPA Code of Professional Conduct Interpretation 101-2 for guidance.

102-3—Nonattest services.

See AICPA Code of Professional Conduct Interpretation 101-3 for guidance.

[Revised, effective October 31, 2012]

102-4—Honorary directorships and trusteeships of not-for-profit organization.

See AICPA Code of Professional Conduct Interpretation 101-4 for guidance.

102-5—Loans from financial institution clients and related terminology.

See AICPA Code of Professional Conduct Interpretation 101-5 for guidance.

102-6—The effect of actual or threatened litigation on independence.

See AICPA Code of Professional Conduct Interpretation 101-6 for guidance.

[102-7]—[Deleted]

102-8— Effect on Independence of Financial Interests in Nonclients Having Investor or Investee Relationships With Covered Member’s Client

See AICPA Code of Professional Conduct Interpretation 101-8 for guidance.

[Deleted effective March 2012. Interpretation was reestablished and effective October 31, 2012, until the earlier of January 1, 2014, or adoption of AICPA Interpretation No. 101-18.]

[102-9]—[Deleted]

102-10—The effect on independence of relationships with entities included in the governmental financial statements.

See AICPA Code of Professional Conduct Interpretation 101-10 for guidance.

102-11—Modified Application of Rule 102 for Engagements Performed in Accordance With Statements on Standards for Attestation Engagements.

See AICPA Code of Professional Conduct Interpretation 101-11 for guidance.

102-12—Independence and cooperative arrangements with clients.

See AICPA Code of Professional Conduct Interpretation 101-12 for guidance.

[102-13]— [Deleted]

102-14—The effect of alternative practice structures on the applicability of independence rules.

See AICPA Code of Professional Conduct Interpretation 101-14 for guidance.

102-15—Financial relationships.

See AICPA Code of Professional Conduct Interpretation 101-15 for guidance.

[102-16] — [Reserved]

102-17—Networks and network firms.

See AICPA Code of Professional Conduct Interpretation 101-17 for guidance.

[Added December 2011, revised March 2012, effective for engagements covering periods beginning on or after July 1, 2012.]

102-18—Application of the independence rules to affiliates.

See AICPA Code of Professional Conduct Interpretation 101-18 for guidance.

[Added March 2012, effective for engagements covering periods beginning on or after January 1, 2014. Early implementation is allowed.]

102-19—Permitted employment with educational institution.

See AICPA Code of Professional Conduct Interpretation 101-19 for guidance.

ET Section 103

Objectivity

Rule 103—Objectivity.

- (1) In offering to perform or performing, any professional services in the practice of public accountancy, a member shall maintain objectivity.

A member shall maintain objectivity by:

- (a) performing all professional services to the greatest extent possible with impartiality;
 - (b) avoiding conflicts of interest to the greatest extent possible;
 - (c) If avoiding a conflict of interest is not possible, being aware of the conflict, disclosing the conflict, and curing the conflict as described below.
- (2) A conflict of interest may occur if a member performs professional services for a client or employer and the member has a relationship with another person, entity, product or service that impairs or could be viewed by a reasonable person having knowledge of the facts specific to the relationship as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity, and the conflict of interest is disclosed to the client or employer, and the client or employer consents to continued performance of professional services, then the member shall be cured of the conflict of interest.
 - (a) For professional services requiring Independence under Rule 102, conflicts of interest are not cured by disclosure or consent.
 - (b) The following relationships are presumed not to be a conflict of interest, unless there are specific facts and circumstances which rebut this presumption:
 - i. customary professional service fees paid to a member or a member's firm by a client;
 - ii. customary wages, salaries and/or benefits paid to a member by his or her employer; except that for professional services requiring Independence under Rule 102, the member would not be independent with respect to his or her employer.

Interpretations under Rule 103—Objectivity

103-1—Examples of conflicts of interest. The following are examples, not all-inclusive, of situations that should cause a member to consider whether or not the client, employer, or other appropriate parties could view the relationship as impairing the member's objectivity:

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

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

The above examples are not intended to be all inclusive.

103-2—Professional services involving client advocacy. A member or a member's firm may be requested by a client—

1. To perform tax or consulting services engagements that involve acting as an advocate for the client.
2. To act as an advocate in support of the client's position on accounting or financial reporting issues, either within the firm or outside the firm with standard setters, regulators, or others.

Services provided or actions taken pursuant to such types of clients' requests are professional services governed by the Code of Professional Conduct and shall be performed in compliance with Rule 201—General Standards, Rule 202—Compliance with Standards, and Rule 203—Accounting Principles, and interpretations thereof, as applicable. Furthermore, in the performance of any professional service, a member shall comply with Rule 101, which requires maintaining integrity and prohibits subordination of judgment to others. When performing professional services requiring independence, a member shall also comply with Rule 102 of the Code of Professional Conduct.

Moreover, there is a possibility that some requested professional services involving client advocacy may appear to stretch the bounds of performance standards, may go beyond sound and reasonable professional practice, or may compromise credibility, and thereby pose an unacceptable risk of impairing the reputation of the member and his or her firm with respect to independence, integrity,

and objectivity. In such circumstances, the member and the member's firm should consider whether it is appropriate to perform the service.

103-3—Applicability of Rule 103 when receiving commissions or referral fees. A member may perform services, recommend a product, or make a referral and receive a commission under certain conditions as explained in Rule 503. When providing such services or making a referral, the member is obligated under Rule 101 to maintain integrity, act in the client's interest, and not knowingly misrepresent facts or subordinate his or her judgment to others. In addition, the member is obligated under Rule 201 to comply with the general standards when performing any professional service for a client.

A member may not recommend a product or service, or make a referral, without determining that the product, service, or referral is appropriate for the client.

ET Section 201

General Standards

Rule 201—General Standards. A member shall comply with the following standards and with any interpretations thereof by bodies designated by the NYSSCPA Board of Directors.

- A. *Professional Competence.* Undertake only those professional services that the member, or the member's firm, can reasonably expect to be completed with professional competence. Professional competence means that a member must possess the knowledge, professional skills and competencies of a licensed accountant, and technical qualifications, including proper registration and licensing by the appropriate State authority, needed to perform his or her individual responsibilities with respect to the professional services provided.
- B. *Due Professional Care.* Exercise due professional care by applying the care and skill expected of a reasonably prudent and competent CPA in the performance of professional services; due professional care does not imply infallibility. Members have an affirmative obligation to seek out, consider, and implement appropriate best practices, with the understanding that achieving or implementing best practices is not practical or possible in all situations.
- C. *Planning and Supervision.* Adequately plan and supervise the performance of professional services.
- D. *Sufficient Relevant Data.* Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Interpretation under Rule 201—General Standards

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

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

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

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

ET Section 202

Compliance with Standards

Rule 202—Compliance with Standards. A member who practices public accountancy and utilizes the professional skills and competencies of a licensed accountant as defined above, while performing professional services shall comply with applicable law and with professional standards promulgated by appropriate bodies which have been designated by the NYSSCPA Board of Directors.

[For a listing of the appropriate bodies that were approved by the NYSSCPA Board of Directors on December 4, 2012, see AICPA Code of Professional Conduct, [ET Appendix A, Council Resolution Designating Bodies to Promulgate Technical Standards.](#)]

ET Section 203

Accounting Principles

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

Interpretations under Rule 203—Accounting Principles

203-1—Departures from Generally Accepted Accounting Principles.

Reference to generally accepted accounting principles (GAAP) in Rule 203, Accounting Principles, means those accounting principles promulgated by bodies designated by AICPA council, which are listed in appendix A. Council Resolution Designating Bodies to Promulgate Technical Standards. In the establishment of such principles, it is difficult to anticipate all circumstances to which such principles might be applied. There is a strong presumption that adherence to GAAP would, in nearly all instances, result in financial statements that are not misleading. Rule 203 recognizes that, upon occasion, there may be unusual circumstances when the literal application of GAAP would have the effect of rendering financial statements misleading. In such cases, the proper accounting treatment is that which will render the financial statements not misleading.

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

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

203-2—Status of FASB, GASB and FASAB interpretations. The NYSSCPA Board of Directors is authorized under rule 203 to designate bodies to establish accounting principles. The Board has designated the Financial Accounting Standards Board (FASB) as such a body and has resolved that FASB Accounting Standards Codification™ (ASC), constitutes accounting principles as contemplated in rule 203. The Board has also designated the Governmental Accounting Standards Board (GASB), with respect to Statements of Governmental Accounting Standards issued in July 1984 and thereafter, as the body to establish financial accounting principles for state and local governmental entities pursuant to rule 203. The Board has also designated the Federal Accounting Standards Advisory Board (FASAB), with respect to Statements of Federal Accounting Standards

adopted and issued in March 1993 and subsequently, as the body to establish accounting principles for federal government entities pursuant to rule 203.

In determining the existence of a departure from an accounting principle established in FASB ASC and rule 203 or the existence of a departure from an accounting principle established by a Statement of Governmental Accounting Standards or a Statement of Federal Accounting Standards encompassed by rule 203, the Professional Ethics Committee will construe such codification or statements, in the light of any interpretations thereof issued by the FASB, GASB, or FASAB.

[203-3]—[Deleted]

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

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

203-5—Financial statements prepared pursuant to financial reporting frameworks other than GAAP. Reference to GAAP in Rule 203 means those accounting principles promulgated by bodies designated by AICPA council, which are listed in Appendix A. *Council Resolution Designating Bodies to Promulgate Technical Standards*. Financial statements prepared pursuant to other accounting principles would be considered financial reporting frameworks other than GAAP within the context of Rule 203.

However, Rule 203 does not preclude a member from preparing or reporting on financial statements that have been prepared pursuant to financial reporting frameworks other than GAAP, such as (a) financial reporting frameworks generally accepted in another country, including jurisdictional variations of International Financial Reporting Standards (IFRSs) such that the entity's financial statements do not meet the requirements for full compliance with IFRSs as promulgated by the International Accounting Standards Board; (b) financial reporting frameworks prescribed by an agreement or a contract; or (c) an other comprehensive basis of accounting, including statutory financial reporting provisions required by law or a U.S. or foreign governmental regulatory body to whose jurisdiction the entity is subject.

In such circumstances, however, the financial statements or reports should not purport that the financial statements are in accordance with GAAP, and the financial statements or reports on those financial statements, or both, should make clear the financial reporting framework(s) used.

ET Section 301

Confidential Information

Rule 301—Confidential Information. A member who practices public accountancy shall not disclose any confidential client information, nor disclose any confidential employer information, obtained in the course of performing professional services without the specific consent of the client or employer, unless specifically required or authorized by law, subject to the exceptions outlined below. A member shall take reasonable measures to protect confidential client and employer information.

Exceptions:

- (1) A member shall adhere to his or her professional obligations under rules 202 and 203;
- (2) The member is obligated to comply with a validly issued and enforceable subpoena or summons. The member must also comply with any and all disclosures of information as required by applicable laws and government regulations;
- (3) A member may disclose all information necessary to comply with a third-party review of a member's professional practice conducted under AICPA or state CPA society or Board of Accountancy programs or authority subject to the member's employer confidentiality policies, should such policies exist;
- (4) A member may initiate a complaint with the Professional Ethics Committee or trial board or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy. A member shall respond to any inquiry made by the Professional Ethics Committee or trial board or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy;
- (5) A member may participate in actual or threatened legal proceedings or alternative dispute resolution proceedings either initiated by or against the member, provided the member discloses only the information necessary to file, pursue, or defend against the lawsuit, and takes reasonable precautions to ensure that the information disclosed does not become a matter of public record.

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

When, in the course of providing professional services, a member discovers criminal activity or fraud, or an activity the member reasonably expects is criminal or fraudulent based upon his/her good faith belief that there may be a crime or fraud, on the part of his client or employer, the member shall report the illegal activity or fraud to the appropriate supervisor above the person or persons who the member suspects of the illegal activity. It is appropriate for a member to comply with whistle-blowing or other similar internal policies or processes, should they exist, of any

organization with which the member is affiliated, including employers. If the suspected illegal activity or fraud is not remedied after such reporting, it is appropriate that the member resign from that engagement or position. There is no requirement that the member resign from the engagement or position. The member may also consult an attorney, but should be aware that disclosing confidential client information or confidential employer information in the course of doing so may violate the Rules of the Board of Regents of the State of New York, §29.10(c).

Interpretations Under Rule 301—Confidential Information

[301-1]—[Deleted]

[301-2]—[Deleted]

301-3—Confidential information and the purchase, sale, or merger of a practice. Rule 301 prohibits a member in public practice from disclosing any confidential client information without the specific consent of the client. The rule provides that it shall not be construed to prohibit the review of a member’s professional practice under AICPA or Society authorization.

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

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

ET Section 302

Contingent Fees

Rule 302—Contingent Fees. A member in the practice of public accountancy shall not:

- (1) Perform for a contingent fee any professional services for or receive such a fee from a client for whom the member or the member's firm performs:
 - (a) attest services; or
 - (b) a compilation of a financial statement when the member expects, or reasonably might expect, that a third party will use the financial statement, and the member's compilation report does not disclose a lack of independence.
- (2) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

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

Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

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

Interpretation Under Rule 302—Contingent Fees

302-1—Contingent fees in tax matters. This interpretation defines certain terms in Rule 302 and provides examples of the application of the rule.

Definition of Terms

- (a) Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund.
- (b) A fee is considered determined based on the findings of governmental agencies if the member can demonstrate a reasonable expectation at the time of a fee arrangement, of substantive consideration by an agency with respect to the member's client. Such an expectation is deemed not reasonable in the case of preparation of original tax returns.

Examples

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

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

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

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

ET Section 401

Determination of Fees

Rule 401—Determination of Fees. A member entering into negotiations to provide professional services may propose whatever fee the member deems appropriate. In determining the fee the member shall consider the resources necessary to exercise due professional care and comply with Rule 201 of this Code.

ET Section 402

Disclosure of Information

Rule 402—Disclosure of Information. Members shall not misrepresent facts, withhold significant information, or make material misstatements to independent or internal auditors, as well as quality and peer reviewers.

Interpretation under Rule 401—Disclosure of Information.

402-1—Rule 402 Not to be construed to be in conflict with Rule 301—Confidential Information. Disclosure of information is not required under Rule 402 if such disclosure would violate relevant whistle blower policies or other such guidance relating to the disclosure of confidential information under Rule 301.

ET Section 501

Acts Discreditable

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

Interpretations Under Rule 501—Acts Discreditable

501-1—Response to Requests by Clients and Former Clients for Records.

Terminology

The following terms are defined subsequently solely for use with this interpretation:

- The term *client* includes current and former clients.
- *Client-provided records* are accounting or other records belonging to the client that were provided to the member, by, or on behalf of, the client, including hardcopy or electronic reproductions of such records.
- *Member-prepared records* are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, with the result that the client's financial information is incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that are proposed or prepared by the member as part of an engagement (for example, an audit).
- *Member's work products* are deliverables as set forth in the terms of the engagement, such as tax returns.
- *Member's working papers* are all other items prepared solely for the purposes of the engagement and include items prepared by the
 - member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, and
 - client, at the request of the member and reflecting testing or other work done by the member.

Interpretation

Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records notwithstanding fees due to the member for the work performed. Failure to comply with the more restrictive provisions contained in the rules and regulations of the applicable regulatory body concerning the return of certain records would constitute a violation of this interpretation.

Client-provided records in the member's custody or control should be returned to the client at the client's request.

Unless a member and the client have agreed to the contrary, when a client makes a request for member-prepared records, or a member's work products that are in the custody or control of the member or the member's firm (member) that have not previously been provided to the client, the member should respond to the client's request as follows: ^{fn1}

- Member-prepared records relating to a completed and issued work product should be provided to the client, except that such records may be withheld if there are fees due to the member for the specific work product.
- Member's work products should be provided to the client, except that such work products may be withheld
 - if there are fees due to the member for the specific work product;
 - if the work product is incomplete;
 - for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - if threatened or outstanding litigation exists concerning the engagement or member's work.

Once the member has complied with these requirements, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.

Member's working papers are the member's property and need not be provided to the client under provisions of this interpretation; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

In connection with any request for client-provided records, member-prepared records or a member's work products, the member may

- charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client,
- provide the requested records in any format usable by the client, and
- make and retain copies of any records returned or provided to the client.

The member is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. However, if the client requests records in a specific format, and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas, unless the formulas support the client's underlying

accounting or other records, or the member was engaged to provide such formulas as part of a completed work product.

Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. The fact that the statutes of the state in which the member practices grants the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation.

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

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

501-4—Negligence in the preparation of financial statements or records. A member shall be considered to have committed an act discreditable to the profession in violation of rule 501 when, by virtue of his or her negligence, such member —

- a. Makes, or permits or directs another to make, materially false and misleading entries in the financial statements or records of an entity; or
- b. Fails to correct an entity's financial statements that are materially false and misleading when the member has the authority to record an entry; or
- c. Signs, or permits or directs another to sign, a document containing materially false and misleading information.

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

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

501-6—Solicitation or disclosure of CPA examination questions and answers. A member who solicits or knowingly discloses the May 1996 or later Uniform CPA Examination questions(s) and/or answer(s) without the written authorization of the AICPA shall be considered to have committed an act discreditable to the profession in violation of Rule 501.

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

501-8—Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies on indemnification and limitation of liability provisions in connection with audit and other attest services. Certain governmental bodies, commissions, or other regulatory agencies (collectively, *regulators*) have established requirements through laws, regulations or published interpretations that prohibit entities subject to their regulation (*regulated entity*) from including certain types of indemnification and limitation of liability provisions in agreements for the performance of audit or other attest services that are required by such regulators or that provide that the existence of such provisions causes a member to be disqualified from providing such services to these entities. For example, federal banking regulators, state insurance commissions, and the Securities and Exchange Commission have established such requirements.

If a member enters into, or directs or knowingly permits another individual to enter into, a contract for the performance of audit or other attest services that are subject to the requirements of these regulators, the member should not include, or knowingly permit or direct another individual to include, an indemnification or limitation of liability provision that would cause the regulated entity or a member to be in violation of such requirements or that would cause a member to be disqualified from providing such services to the regulated entity. A member who enters into, or directs or knowingly permits another individual to enter into, such an agreement for the performance of audit or other attest services that would cause the regulated entity or a member to be in violation of such requirements, or that would cause a member to be disqualified from providing such services to the regulated entity, would be considered to have committed an act discreditable to the profession.

501-9—Confidential information obtained from employment or volunteer activities. A member should maintain confidentiality of his or her employer's or firm's (employer) confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship (for example, discussions with the employer's vendors, customers, or lenders). This includes, but is not limited to, any confidential information pertaining to a current or previous employer, subsidiary, affiliate, or parent thereof, as well as any entities for which the member is working in a volunteer capacity. For purposes of this interpretation, *confidential employer*

information is any proprietary information pertaining to the employer or any organization for whom the member may work in a volunteer capacity that is not known to be available to the public and is obtained as a result of such relationships.

A member should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member. The member should also take reasonable steps to ensure that staff under his or her control or others within the employing organization and persons from whom advice and assistance is obtained are aware of the confidential nature of the information.

When a member changes employment, a member should not use confidential employer information acquired as a result of the prior employment relationship to his or her personal advantage or the advantage of a third party, such as a current or prospective employer. The requirement to maintain confidentiality of an employer's confidential information continues even after the end of the relationship between a member and the employer. However, the member is entitled to use experience and expertise gained through prior employment relationships.

A member would be considered to have committed an act discreditable to the profession if the member discloses or uses any confidential employer information acquired as a result of employment or volunteer relationships without the proper authority or specific consent of the employer or organization for whom the member may work in a volunteer capacity, unless there is a legal or professional responsibility to use or disclose such information.

The following are examples when members are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

- a. Disclosure is permitted by law and authorized by the employer.
- b. Disclosure is required by law, for example, to
 - i. comply with a validly issued and enforceable subpoena or summons or
 - ii. inform the appropriate public authorities of violations of law that have been discovered.
- c. There is a professional responsibility or right to disclose information, when not prohibited by law, to
 - i. initiate a complaint with, or respond to any inquiry made by, the professional ethics division or trial board of the AICPA or a duly constituted investigative or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;
 - ii. protect the professional interests of a member in legal proceedings;
 - iii. comply with professional standards and other ethics requirements; or
 - iv. report potential concerns regarding questionable accounting, auditing, or other matters to the employer's confidential complaint hotline or those charged with governance.

Members should also consider Interpretation No. 101-2, "Subordination of Judgment by a Member," under Rule 101—Integrity, for additional guidance.

- d. Disclosure is permitted on behalf of the employer to
 - i. obtain financing with lenders;
 - ii. deal with vendors, clients and customers; or
 - iii. deal with employer's external accountant, attorneys, regulators, and other business professionals.

In deciding whether to disclose confidential employer information, relevant factors to consider include, but are not limited to, the following:

- a. Whether all the relevant information is known and substantiated to the extent that it is practicable (when the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure made, if any)
- b. Whether the parties to whom the communication may be addressed are appropriate recipients.

A member may wish to consult with his or her legal counsel prior to disclosing, or determining whether to disclose, confidential employer information.

501-10— False, misleading, or deceptive acts in promoting or marketing professional services. A member in business who promotes or markets his or her abilities to provide professional services or makes claims about his or her experience or qualifications in a manner that is false, misleading, or deceptive will be considered to have committed an act discreditable to the profession, in violation of Rule 501. A false, misleading, or deceptive promotion includes any claim or representation that would be likely to cause a reasonable person to be misled or deceived. This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body.

Footnotes ET Section 501

^{fn1} The member is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [i.e. Rules of the New York State Board of Regents--Section 29.10(a)(11-iv). Requirements regarding work paper retention and client requests for records may also be imposed by state and federal statutes and regulations, and contractual agreements, i.e. Rules of the New York State Board of Regents Section 29.10(a)(8-i-vi) and Treasury Department Circular 230 Section 10.28.]

ET Section 502

Advertising and Other Forms of Solicitation

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

Interpretations under Rule 502—Advertising and Other Forms of Solicitation

502-1—False, misleading, or deceptive acts in advertising or solicitation. Advertising or other forms of solicitation that are false, misleading, or deceptive are not in the public interest and are prohibited. Such activities include those that:

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

502-2—Engagements obtained through efforts of third parties. Members are often asked to render professional services to clients or customers of third parties. Such third parties may have obtained such clients or customers as the result of their advertising and solicitation efforts.

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

ET Section 503

Commissions and Referral Fees

Rule 503—Commissions and Referral Fees

A. Prohibited commissions

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

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

The prohibition in A above applies during the period in which the member or the member's firm

- is engaged to perform any of the services listed above
- reasonably should expect to be engaged to perform any of the services listed above, and
- the period covered by any historical financial statements involved in any such listed services.

B. Disclosure of permitted commissions

A member in the practice of public accountancy, who is not prohibited by this rule from performing professional services for or receiving a commission, and who is paid or expects to be paid a commission shall, unless otherwise exempted from such disclosure requirements by applicable state law or regulations, fully disclose in writing and in plain language that fact to any person or entity to whom the member recommends or refers a product or service to which the commission relates. Such disclosure shall:

- (a) occur prior to the performance of the professional service which will trigger the commission or referral fee;
- (b) be written in 12-point font or larger on the letterhead of the member, or otherwise on the letterhead of a firm licensed in the practice of public accountancy that employs the member and be signed by the member, and be countersigned and dated by the client in order to evidence the client's receipt and understanding of the information contained in the disclosure;
- (c) contain the following information:

- a. a description of the product(s) or service(s) which the member is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship between the member and the third party, a description of any commission which may be received by the member or the member's firm. Where the product(s) or service(s) cannot be specifically identified at the time of the initial disclosure, this information shall be included in a supplemental disclosure which the member shall provide to the client within 30 days of the receipt of the commission;
- b. the dollar amount or value of the commission or the basis on which such commission shall be computed.

C. Referral Fees

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

Members should refer to Interpretation 103-3 Applicability of Rule 103 When Receiving Commissions or Referral Fees.

Interpretation 103-3—Applicability of Rule 103 when receiving commissions or referral fees.

A member may perform services, recommend a product, or make a referral and receive a commission under certain conditions as explained in Rule 503. When providing such services or making a referral, the member is obligated under Rule 101 to maintain integrity, to act in the client's interest, and not knowingly misrepresent facts or subordinate his or her judgment to others. In addition, the member is obligated under Rule 201 to comply with the general standards when performing any professional service for a client.

A member may not recommend a product or service, or make a referral, without determining that the product, service, or referral is appropriate for the client.

ET Section 505

Form and Practice Name

Rule 505—Form and Practice Name. A member may practice public accounting only in the form of organization permitted by law or regulation.

A member shall not practice public accounting under a firm name that is misleading or deceptive as to the legal form; as to persons who are partners, officers, shareholders or members of the firm; or as to any other matter. Names of one or more past owners may be included in the firm name of a successor organization. Firms may be named only in the fashion permitted by law or regulation.

A firm may not designate itself as “Members of the New York State Society of Certified Public Accountants” unless all of its CPA owners are members of the Society.

Interpretations under Rule 505—Form and Practice Name

[505-1]—[Deleted]

505-2—Application of rules of conduct to members who own a separate business. A member in the practice of public accounting may own an interest in a separate business that performs for clients any of the professional services of accounting, tax, personal financial planning, litigation support services, and those services for which standards are promulgated by bodies designated by the Board of Directors. If the member, individually or collectively with his or her firm or with members of his or her firm, controls the separate business (as defined in Financial Accounting Standards Board *Accounting Standards Codification 810*, the entity and all its owners (including the member) and employees must comply with all of the provisions of the Code of Professional Conduct. For example, in applying Rule 503—Commissions and Referral Fees, if one or more members individually or collectively can control the separate business, such business would be subject to Rule 503 and its interpretations. With respect to an attest client, Rule 102 Independence and all its interpretations and rulings would apply to the separate business, its owners and employees.

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

[505-3]— [Reserved]

505-4—Misleading Firm Names. Rule 505 prohibits a member from practicing public accounting under a firm name that is misleading. A firm name would be considered misleading if the name contains any representation that would be likely to cause a reasonable person to misunderstand, or be confused about, the legal form of the firm or who the owners or members of the firm are, such as a reference to a type of organization or an abbreviation thereof that does not accurately reflect the form under which the firm is organized.

In addition, the member should consider the rules and regulations of his or her state board(s) of accountancy concerning misleading firm names that may be more restrictive than the requirements contained in this ethics interpretation.

505-5—Common Network Brand in Firm Name. Firms within a network sometimes share the use of a common brand or share common initials as part of the firm name. The sharing of a common brand name or common initials of a network as part of the member’s firm name would not be considered misleading, provided the firm is a *network firm*, as defined in *Definitions*.

The sharing of a common brand name or common initials of a network as the entire name of the member’s firm would not be considered misleading, provided the firm is a *network firm*, as defined in *Definitions*, and shares one or more of the following characteristics with other firms in the network:

- Common control (as defined in Financial Accounting Standards Board *Accounting Standards Codification* 810, *Consolidation*) among the firms through ownership, management, or other means
- Profits or costs, excluding costs of operating the network; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm
- Common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the network’s strategy and are held accountable for performance pursuant to that strategy
- Significant part of professional resources
- Common quality control policies and procedures that firms are required to implement and that are monitored by the network

Members should refer to Interpretation No. 102-17, “Networks and Network Firms,” under Rule 102 *Independence*, for independence requirements applicable to network firms.

ET Section 506

Communications

Rule 506—Communications. A member shall respond to communications from the Professional Ethics Committee with respect to complaints against such member within 30 days of the mailing of such communications by registered or certified mail.

Interpretation under 506—Communications

506-1—Duty to cooperate. A member's duty to cooperate with the Professional Ethics Committee is without exception. A member must cooperate with the Professional Ethics Committee in any disciplinary investigation of the member or a partner or employee of the firm by making a substantive response to interrogatories or a request for documents from the committee or by complying with the educational and remedial or corrective action determined to be necessary by the Professional Ethics Committee, within thirty days after the posting of notice of such interrogatories, or request for documents, or directive to take CPE or corrective action by registered or certified mail, postage prepaid, to the member at his or her last known address shown on the books of the Society. It is incumbent upon members to see that the Society's membership records have their current address. The trial board may expel a member for not cooperating with the Professional Ethics Committee and publish that fact with the member's name in the Society's newsletter.