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RULES OF PROFESSIONAL CONDUCT

This special edition of the Texas State Board Report is devoted to the Rules of Professional Conduct adopted by the Texas State Board of Public Accountancy as authorized by the Texas Legislature in the Public Accountancy Act of 1991. Please retain this publication for your reference.

Amendments to the Rules will be printed in future issues, and should also be retained.

the bright minds essential to serving adequately the public interest.

(d) These rules recognize the First Amendment rights of the general public as well as licensees and do not restrict the availability of accounting services. However, public accountancy, like other professional services, cannot be exploited commercially without the public being harmed. While information as to the availability of accounting services and qualifications of licensees is desirable, overly aggressive salesmanship and hucksterism generally affect the public negatively. Accounting services cannot be subject to the auction techniques of the commercial marketplace without a loss of the vital elements of accountant independence and public confidence.

I. GENERAL PROVISIONS

Section 501.1. Preamble.

(a) These rules of professional conduct are promulgated under the *Public Accountancy Act of 1991*, Texas Civil Statutes, Article 41a-1, which directs the Texas State Board of Public Accountancy (the board) to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

(b) The services usually and customarily performed by those in the public practice of accountancy involve a high degree of skill, education, trust, and experience, which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations, both to their clients and to the public in general. These obligations include maintaining independence of thought and action, continuously improving professional skills, observing, where applicable, generally accepted accounting principles and generally accepted auditing standards, promoting sound and informative financial reporting, holding the affairs of clients in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters affecting fitness to practice public accountancy.

(c) The board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting

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(e) The rules are intended to have application to all kinds of professional services performed for the public in the practice of public accountancy, including services relating to accounting, auditing, taxation, and management advice and consultation, to mention only the broad areas in which services are currently being offered by those in the practice of public accountancy. A licensee who is engaged in the practice of public accountancy outside the United States may conduct that practice in accordance with the standards of professional conduct applicable to the country in which he is practicing. However, if a licensee's name is associated with financial statements so as to indicate that the licensee is acting as an independent public accountant using principles applicable in this country, he shall comply with Section 501.22 and Section 501.23 of this title (relating to Auditing Standards and Accounting Principles).

(f) In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

Section 501.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act — The *Public Accountancy Act of 1991, Texas Civil Statutes, Article 41a-1, 1991.*

Advertisement — A message which is transmitted to multiple persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services. If messages are transmitted orally or by any written or electronic medium, they must be recorded, transcribed, or otherwise preserved. The message must be in identical form. In the case of transmissions in written form (letter or postcard), salutations are considered a part of the message and must be in identical form.

Board — The Texas State Board of Public Accountancy.

Certificate or registration holder — The holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the *Act*, or pursuant to corresponding provisions of a prior public accountancy act; and

(B) registrations with the board for the practice of public accounting in this state issued to:

(i) individuals registered as public accountants under the *Public Accountancy Act of 1945*;

(ii) individuals registered under the *Act*, Section 14;

(iii) partnerships qualified under the *Act* or prior acts;

(iv) professional corporations qualified under the *Act* or prior acts; and

(v) offices established or maintained in this state for the practice of public accounting by a certified public accountant or partnership or professional corporation of certified public accountants, or by a public accountant or a partnership or professional corporation of public accountants, or by an individual registered under the *Act*, Section 14.

Charitable organization — An organization which has been granted tax exempt status under the *Internal Rev-*

enue Code of 1986, Section 501(c), as amended.

Client — The person or entity which retains a certificate or registration holder for the performance of professional services. The term "client" shall be deemed to include any person or entity upon whose financial statements the certificate or registration holder is retained to report or opine, whether or not this is the same person or entity which retains the certificate or registration holder.

Competitive bid — Any communication by a certificate or registration holder which is a proposal, other than an advertisement or a fee estimate, to a prospective client to perform professional services when:

(A) such proposal includes the amount to be charged or received, whether expressed as a lump sum, a maximum or minimum amount, or any form of unit price, including per diem or hourly rates with or without a maximum, minimum, or average sum; and

(B) the proposal is given with the knowledge that similar proposals are being sought concurrently from one or more other certificate or registration holders.

Contingent fee — Compensation for the performance of services, payment of which, or the amount of which, is contingent upon the finding or results of such services.

Corporation — A professional public accounting corporation organized under the *Texas Professional Corporation Act, as amended (Texas Civil Statutes, Article 1528e)*, or other corporation authorized by applicable statutes, or an equivalent law of another state, territory, or foreign country.

Fee estimate — Any written communication by way of which a certificate or registration holder provides to a prospective client, at his or its request, an estimate of the charges proposed by the certificate or registration holder for specific services and which clearly states:

(A) that the amount quoted is an estimate and that the certificate or registration holder will not be bound to provide the subject services for the estimated amount;

(B) the estimated number of people by classification to be involved in performing the work and the range of education and experience in each classification; and

(C) the estimated time to be required for the engagement by personnel classification and the anticipated completion date.

Financial statements — Statements and footnotes related thereto that purport to show actual or anticipated financial position which relates to a point in time, or results of operations, or cash flow which relate to a period of time, on the basis of generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting schedules.

Firm — A proprietorship, partnership, or professional or other corporation, or other business engaged in the practice of public accountancy.

Good standing — Compliance by a certificate or registration holder with the licensing regulations of the board, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must have complied with all the provisions of the board order to be considered in good standing.

He, his, him — Masculine pronouns when used in this

chapter also include the feminine and the neuter.

Holding out to the public as a certificate or registration holder — As that term is used in the definition of practice of (or practicing) public accountancy, any representation that a person holds a certificate or registration. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate or registration. A representation includes an oral or written communication stating that the person holds a certificate or registration. Holding out to the public as a certificate or registration holder does not include:

(A) the display of the original of a valid certificate or registration unless a valid license also is displayed;

(B) a representation made by a faculty member of an educational institution made only in connection with the duties of the person as a faculty member; or

(C) a representation made in a book, article, or other publication or in connection with the promotion of the publication; however, this exception does not apply to representations in a publication or in related promotional material either or both of which include an offer to perform a service or to sell a product other than the publication itself.

Licensee — The holder of a license by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior law or prior public accountancy act.

Other compensation — Compensation received by a certificate or registration holder who is engaged in the practice of public accountancy for other than the performance of professional services, including compensation for the sale of products (other than work product of the certificate or registration holder) or for referral of products or services of others.

Partnership — A partnership for the practice of public accountancy is presumed when there exists a relationship between or among two or more persons which share profits and:

(1) share control and management; or

(2) share ownership rights in specific partnership property; or

(3) share joint and several responsibility for partnership debts and liabilities.

Person — An individual, partnership, corporation, registered limited liability partnership, or limited liability company.

Practice of public accountancy — The offer to perform or performance by a person holding himself out to the public as a certificate or registration holder for a client or potential client, or the performance by a certificate or registration holder for a client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(A) the issuance of reports on, or the preparation of, financial statements;

(B) the furnishing of management or financial advisory or consulting services; and

(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters; or

(D) when performed by a person or practice unit licensed under this Act, the preparation of, or reporting on, a financial statement when the financial statement or report is to be used by an investor, except for a report prepared for internal use by the management of an organization, a third party, or a financial institution, or the preparation of a tax return if the tax return is filed with a taxing authority, as well as the supervision of those activities.

Practice unit — An office of a firm required to be registered with the board for the purpose of practicing public accountancy.

Professional services — Any services performed or offered to be performed in the course of the practice of public accountancy.

Quality review — A study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the firm being reviewed.

Report — When used with reference to financial statements, an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

Sole proprietorship — An unincorporated firm that is owned and controlled by one person engaged in the practice of public accountancy.

Solicitation — A communication, other than an advertisement, by a certificate or registration holder which has reference to the performance or offer of performance of professional services for the persons to whom the message is transmitted.

Section 501.3. Applicability.

All of the rules of professional conduct shall apply to and be observed by certificate, registration, and permit holders engaged in the practice of public accountancy. Notwithstanding anything herein to the contrary, only Section 501.11 of this title (relating to Independence), Section 501.25(b) of this title (relating to Mandatory Continuing Education Reporting), Section 501.41 of this title (relating to Discreditable Acts), Section 501.42 of this title (relating to Acting through Others), and Section 501.48 of this title (relating to Responses), shall apply to and be required to be observed by certificate or registration holders not in public practice, except that a certificate or registration holder who is not in public practice shall not issue, or otherwise be associated with, financial statements that do not conform to the accounting principles described in Section 501.23 of this title (relating to Ac-

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the Rules of Professional Conduct
handy for easy reference.**

counting Principles) or the standards described in Section 501.24 of this title (relating to Other Professional Standards).

Section 501.4. Practice of Public Accountancy.

A certificate or registration holder may not practice public accountancy (as defined in Section 501.2 of this title (relating to Definitions)) unless he or she holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the calendar year for which it is issued.

II. PROFESSIONAL PRACTICES

Section 501.11. Independence.

(a) A certificate or registration holder who is performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and in appearance.

(b) Independence will be considered to be impaired if, for example, during the period of his professional engagement or at the time of issuing his report, the certificate or registration holder:

(1) had or was committed to acquire any direct or material indirect financial interest in the client;

(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;

(3) had any joint closely-held business investment with the client of any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of either the client or the certificate or registration holder; or

(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

(A) loan obtained by the certificate or registration holder which are not material in relation to the net worth of the borrower;

(B) home mortgages; and

(C) other secured loans, except those secured solely by a guarantee of the certificate or registration holder.

(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:

(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of any employee;

(2) was a trustee for any pension or profit-sharing trust of the client;

(3) receives from a third party, or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by the client, other compensation which was material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements; or

(4) had a commitment from the client for a contin-

gent fee unless the contingent fee was clearly immaterial in relation to the aggregate, normally recurring fees charged annually to the client for reports on financial statements.

(d) Independence will be presumed to be impaired if the certificate or registration holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected, at the time the engagement was accepted, to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the audit plus all payroll expenses related to such compensation.

(e) A certificate or registration holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, step-children, brothers, sisters, grandparents, parents-in-law, and their respective spouses.

(1) Certificate and registration holders must consider whether the strength of personal and business relationships between the certificate or registration holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the certificate or registration holder should consider the specific association with the client.

(2) A certificate or registration holder's independence will be presumed to be impaired with respect to a client if:

(A) during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;

(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:

(i) the certificate or registration holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;

(ii) a proprietor, shareholder, or individual in a managerial position in a certificate or registration holder's office, has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.

(f) The examples of impaired independence described in subsections (b)-(e) of this section are not intended to be all-inclusive.

Section 501.12. Integrity and Objectivity.

A certificate or registration holder in the performance of professional services shall not knowingly misrepresent facts nor subordinate a judgment to others. In tax practice, however, a certificate or registration holder may resolve doubt in favor of his client as long as there is reasonable support for the position.

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Section 501.13. Payment of Commissions.

A certificate or registration holder shall not pay a commission to a third party to obtain a client unless, prior to being engaged by such client, the certificate or registration holder discloses to the client in writing the fact and the amount of such commission. This section does not apply to payments made to a certificate or registration holder for the purchase of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

Section 501.14. Receipt of Other Compensation.

(a) A certificate or registration holder who receives or agrees to receive other compensation with respect to services or products recommended, referred, or sold by him to another person shall, no later than the making of such recommendation, referral, or sale, make the following disclosures in writing to such other persons:

(1) if the other person is a client, the nature, source, and amount of all such other compensation; or

(2) if the other person is not a client, the nature, and source only of any such other compensation received from a third party.

(b) The disclosure required by this section shall be made regardless of the amount of other compensation involved.

(c) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

III. PROFESSIONAL STANDARDS

Section 501.21. Competence.

A certificate or registration holder shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with Section 501.22 of this title (relating to Auditing Standards), Section 501.23 of this title (relating to Accounting Principles), and Section 501.24 of this title (relating to Other Professional Standards).

Section 501.22. Auditing Standards.

A certificate or registration holder shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions, issued by the United States General Accounting Office, and in other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

Section 501.23. Accounting Principles.

A certificate or registration holder shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles

if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the certificate or registration holder can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the certificate or registration holder's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this section, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

Section 501.24. Other Professional Standards.

A certificate or registration holder in the performance of management advisory services or accounting and review services, shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be defined by statements on management advisory services and statements on standards for accounting and review services, respectively, in each instance issued by the American Institute of Certified Public Accountants, and by similar pronouncements by other entities having similar generally recognized authority.

Section 501.25. Mandatory Continuing Education.

Each certificate or registration holder shall comply with the mandatory continuing education reporting and the mandatory continuing education attendance requirements of Chapter 523 of this title (relating to Mandatory Continuing Education Program).

IV. CLIENT RECORDS

Section 501.31. Confidential Client Communications.

Except by permission of the client, or the heirs, successors, or personal representatives of the client, a certificate or registration holder or any partner, officer, shareholder, or employee of a certificate or registration holder shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional services rendered to the client by the certificate or registration holder. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under the Act, Section 21 and Section 22, in ethical investigations conducted by private professional organizations, or in the course of quality reviews.

Section 501.32. Records.

(a) Upon request, regardless of the status of the client or former client's account, a certificate or registration holder shall provide to the client or former client any accounting or other records belonging to, or obtained from or on behalf of, the client which the certificate or registra-

tion holder removed from the client's premises or received on behalf of the client, but the certificate or registration holder may make and retain copies of such documents when they form the basis for work done by him. For a reasonable charge, a certificate or registration holder shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) a copy of a tax return of the client;

(2) a copy of any report or other document issued by the certificate or registration holder to or for such client providing that furnishing such reports to or for a client or former client would not cause the certificate or registration holder to be in violation of the portions of Section 501.22 of this title (relating to Auditing Standards), concerning subsequent events;

(3) a copy of the certificate or registration holder's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) A certificate or registration holder, when performing an engagement that is terminated prior to the completion of the engagement, is required to return or furnish copies of only those records originally given to the certificate or registration holder by the client.

(c) Client records consist of documents obtained from or obtained on behalf of a client.

Section 501.33. Working Papers.

(a) Working papers developed by a certificate or registration holder during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the certificate or registration holder for a client, shall be and remain the property of the certificate or registration holder or holders who developed the working papers.

(b) Working papers are those papers developed by the certificate or registration holder incident to the performance of his/her engagement which do not result in changes to the client's records or are not in themselves part of the records ordinarily maintained by the client.

(c) Analyses of inventory or other accounts as part of the certificate or registration holder's selective audit procedures, even when prepared by client personnel at the request of the certificate or registration holder, are the certificate or registration holder's working papers.

(d) Only to the extent the analyses result in changes to the client's records is the certificate or registration holder required to furnish the details from his/her working papers in support of the journal entries recording such changes unless the journal entries themselves contain all necessary details.

(e) Working papers include, but are not limited to:

- (1) letters of confirmation and representation;
- (2) excerpts of company documents;
- (3) audit programs;
- (4) internal memoranda;
- (5) schedules;
- (6) flowcharts; and
- (7) narratives.

(f) Working papers which constitute client records include, but are not limited to:

(1) worksheet in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(2) worksheets in lieu of general ledger or subsidiary

ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;

(3) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry;

(4) consolidating or combining journal entries and worksheets and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

Section 501.39. Frivolous Complaints.

A certificate holder who, in writing to the board, accuses another certificate holder of violating the rules of the board, shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, shall be *prima facie* evidence of a frivolous complaint and a violation of these rules.

V. OTHER RESPONSIBILITIES AND PRACTICES

501.40. Licensing/Registration Requirements.

A certificate or registration holder must perform accounting functions through an entity registered with the board pursuant to the *Public Accountancy Act*, Section 10. Accounting functions include, but are not limited to, the preparation of tax returns or the furnishing of advice on tax matters, bookkeeping services, the issuance of reports on financial statements, the furnishing of management advisory or consulting services, and the sale, advice, or management of computer software which includes or implies an expertise in accounting. Not included, however, is a certificate holder performing accounting services as an employee, partner, or shareholder of, and exclusively for:

- (1) federal, state, or local governmental entities; or
- (2) an employer or firm not offering accounting services to the public.

Section 501.41. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

Section 501.42. Acting through Others.

A certificate or registration holder shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the certificate or registration holder, would place him in violation of these rules of professional conduct.

Section 501.43. Advertising.

(a) A certificate or registration holder shall not use or participate in the use of:

(1) any communication (written, oral, or electronic) having reference to the certificate or registration holder's professional services, which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim; nor

(2) any form of communication having reference to the certificate or registration holder's professional services, which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) A false, fraudulent, misleading, deceptive, or unfair

statement or claim includes, but is not limited to, a statement or claim which:

- (1) contains a misrepresentation of fact;
- (2) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- (3) is intended or likely to create false or unjustified expectations of favorable results;
- (4) implies educational or professional attainments or licensing recognition not supported in fact;
- (5) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; or
- (6) contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

Section 501.44. Soliciting.

(a) A certificate or registration holder may make a solicitation if and only if:

- (1) the solicitation is made to a person who is at that time a client of the certificate or registration holder;
- (2) the solicitation is invited by the person to whom it was made; or
- (3) the solicitation is made to a person seeking to secure the performance of professional services currently not being provided by another certificate or registration holder.

(b) A certificate or registration holder making a solicitation shall have the burden of ascertaining and proving that such solicitation meets the criteria of one or more parts of subsection (a) of this section.

(c) An uninvited solicitation is a violation of these rules. A certificate or registration holder will be presumed to be making an uninvited solicitation in violation of these rules if a specific person or title holder is being addressed on the letterhead.

Section 501.45. Competitive Bidding.

(a) Certificate or registration holders shall have the right to engage in competitive bidding on contracts or engagements for professional services except as stated in subsection (c) of this section.

(b) Competitive bids shall contain all information required by a written invitation to bid, and in the absence of specific requirements, as a minimum the bid shall include:

- (1) a clear and comprehensive description of all of the services to be performed;
- (2) a clear and comprehensive description of the reports to be rendered and an affirmative undertaking to deliver such reports by a specified or clearly determinable date;
- (3) a commitment as to the class and qualifications of the individuals who are proposed to perform the services; and
- (4) a clear statement of the amount that is proposed to be charged for the proposed services, or, if the bid is not for a lump sum amount, a clear statement of how such amount will be determined including the *per diem* or hourly rates, by class, and the estimated number of days or hours, by class, required to perform the services.

(c) Contracts or engagements for professional services with any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility may not be competitively bid in violation of the *Professional*

Services Procurement Act (Texas Civil Statutes, Article 664-4) or other applicable law. Contracts for consulting services may, however, be made pursuant to *Texas Civil Statutes, Article 6252-11c*.

(1) The fact that a certificate or registration holder is invited to make a proposal to an entity described in this subsection creates a presumption that similar proposals may be invited from other certificate or registration holders. This presumption may be overcome by direct inquiry of the prospective client as to whether proposals from other certificate or registration holders have been or will be invited.

(2) If it is determined that bids have been or will be invited from one or more other certificate or registration holders, a fee estimate, but not a competitive bid, may be submitted.

Section 501.46. Form of Practice.

A certificate or registration holder may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation organized under the *Texas Business Corporation Act, (Texas Civil Statutes, Article 1528e)*, the *Limited Liability Company Act (Texas Civil Statutes, Article 1528n)*, and the *Texas Uniform Partnership Act (Texas Civil Statutes, Article 6132b, section 45-A)*, or other corporation authorized by applicable statutes, or an equivalent law of another state, territory, or foreign country, or as an employee of one of these entities.

Section 501.47. Firm Names.

(a) No certificate or registration holder shall engage in the practice of public accountancy using a professional or firm name or designation that includes descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A professional or firm name or designation will be considered to be misleading if:

- (1) the name contains a misrepresentation of facts;
- (2) the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- (3) the name is intended or likely to create false or unjustified expectations of favorable results;
- (4) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;
- (5) the name of the firm that is incorporated does not include the words "corporation," "incorporated," "professional corporation," or "company," or in each case, an abbreviation thereof, as a part of the firm name, and the words "professional corporation," or "PC" are not included with the firm name each time it is used;
- (6) the name includes the designation "and company" or "and associates" or abbreviations thereof unless there are at least two licensees involved in the practice;
- (7) the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof;
- (8) the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; or

(9) the name contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

(c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

Section 501.48. Responses.

A certificate or registration holder shall respond in writing to any communication from the board requesting a response, within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the certificate or registration holder. Each certificate holder and each person required to be registered with the board under the *Public Accountancy Act of 1991*, Section 10, shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

Section 501.49. Complaint Notice.

When a complaint is made to a firm that a probable violation of the *Act* or *Rules of Professional Conduct* has occurred, a licensee or registrant shall provide to the probable complainant a statement to the effect that: "Complaints and possible ethics violations of certified public accountants should be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942, telephone (512) 505-5500."

VI. QUALITY REVIEWS

Section 501.50. Contract.

(a) In order to protect the confidentiality of privileged

information held by a certificate or registration holder during the course of a quality review or peer review of the certificate or registration holder's practice, each such quality review shall be preceded by an agreement which provides, at a minimum:

(1) that the quality review will be conducted only by individuals, groups, or firms who are certificate or registration holders under this *Act* or who hold a temporary permit issued by the board;

(2) that the individual, group, or firm conducting the review (the reviewer) is obligated to the certificate or registration holder being reviewed and to the clients of the certificate or registration holder being reviewed to maintain the confidentiality of all confidential client information;

(3) that all information which identifies or could lead to the identification of a client of the certificate or registration holder being reviewed shall not be transmitted to any person without having been reviewed and approved for release by the certificate or registration holder being reviewed;

(4) that all questions as to the transmission of particular client information which cannot be agreed upon by the reviewer and the certificate or registration holder being reviewed shall be resolved by the client or clients involved.

(b) Confidential client information acquired by a certificate or registration holder or temporary permit holder in the course of conducting a quality review shall be protected by that certificate or registration holder or temporary permit holder just as if it were confidential information of his own client; and shall be subject to the same rules of disclosure. A disclosure or information to the board for the purposes of a disciplinary complaint or disciplinary investigation shall not constitute an impermissible disclosure of confidential information.



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