

CHAPTER 11 – FORMS OF PRACTICE AND GENERAL REQUIREMENTS

001 Definitions

001.01 For purposes of these rules, “actively participate” means the providing of personal services in the business entity licensed in Nebraska to practice public accounting, in the nature of management, performance of services for clients, or similar activities. Non-natural persons and individuals whose primary source of income from the business entity is provided as a result of passive investment will not be considered as actively participating in the business entity.

001.02 For purposes of these rules, an “owner” is defined as a person who directly or indirectly (a) has an interest in profits and losses of such business entity, or (b) owns all, or any portion, of the equity capital of such business entity, or (c) has a vote with respect to matters of such business entity.

001.03 For purposes of these rules, a “principal” is defined as an owner who actively participates in a business entity licensed in Nebraska to practice public accounting, and who is not licensed in this state or any other state or jurisdiction as a certified public accountant.

001.04 For purposes of these rules, “profits and losses” are defined as the net taxable income or loss, determined prior to payment of any form of compensation to owners, of a business entity licensed in Nebraska to practice public accounting.

001.05 For purposes of these rules, “equity capital” is defined as (a) capital stock, capital accounts, capital contributions, or undistributed earnings of a business entity licensed in Nebraska to practice public accounting; and (b) loans and advances to a business entity licensed in Nebraska to practice public accounting, made or held by its owners. “Equity capital” does not include an interest in bonuses, profit sharing plans or defined benefit plans or loans to a business entity licensed in Nebraska to practice public accounting from banks, financial institutions or other third parties that do not actively participate in such business entity.

001.06 For purposes of these rules, a “business entity” is defined as a proprietorship, partnership, professional corporation, limited liability company or any other permissible form of practice which is licensed in Nebraska to practice public accounting.

001.07 For purposes of these rules and the Public Accountancy Act, “holding themselves out to the general public” is intended to encompass those situations dealing primarily with the promoting, marketing, and practice of public accountancy with clients and potential clients. It is not intended to encompass business and similar situations where disclosure of one’s status as an owner, partner, shareholder, limited liability company member, director or otherwise would not be in violation of the general intent of these rules and is reasonable or necessary under the circumstances of a particular situation or business transaction.

002 Form of Practice and Name. A licensee may practice public accountancy, whether as an owner or employee, only in the form of a proprietorship, a partnership, a professional corporation, a limited liability company or any other permissible form of practice. A licensee shall not practice under a firm name which includes any name that would have the capacity or tendency to deceive or mislead or is misleading as to the type of organization (proprietorship, partnership, professional corporation, limited liability company or other permissible form of practice). Fictitious names are not precluded from consideration under this rule. However, names of one or more past partners, shareholders or limited liability company members may be included in the firm name of a successor partnership, corporation, limited liability company or other

permissible successor business entity. A firm name is deemed misleading if it includes the name of a person who is not a CPA. A firm name is deemed misleading if it includes the terms “& Associates,” “& Company,” or “Group,” or similar plural terms, if the firm has only one individual practicing in the firm with a current permit to practice as a CPA. A permit holder surviving the death or withdrawal of all other permit holders may continue to practice under the firm name for up to two years after becoming the sole practicing permit holder in the firm.

Any CPA firm that has continuously used an assumed name approved by the Board prior to July 19, 2005 may continue to use the assumed name, so long as the CPA firm is only owned by an individual practitioner, partner, or shareholder, who obtained such Board approval.

003 Professional Corporations. A corporation registered under Section 1-134 of the Act and any corporation granted a permit under Section 1-136 of the Act shall be subject to the Rules of Professional Conduct. Any shareholder who ceases to be eligible to be a shareholder shall be required to dispose of all of his or her shares within a reasonable period to a person qualified to be a shareholder or to the corporation.

004 Partnerships, Professional Corporations, Limited Liability Companies and other Permissible Forms of Practice; General Requirements; Ownership.

004.01 If a natural person who is not a certified public accountant in this or some other state or jurisdiction is permitted under Section 1-162.01 of the Act to be an owner of a business entity licensed in Nebraska to practice public accounting then:

004.01A Such person shall not hold himself or herself out as a certified public accountant.

004.01B Such person shall not hold himself or herself out to the general public or any client of such business entity licensed in Nebraska by the use of the term owner, partner, shareholder, director, officer or limited liability company member for purposes of describing his or her status in the business entity, regardless of whether such person may occupy such position by reason of common law, statutory law, ownership, or election unless with a disclaimer indicating such person is not a CPA. Such person may hold himself or herself out as a principal.

004.01C The name of such person shall be provided to the Board by a business entity in connection with the granting or renewal of a permit in Nebraska to such business entity, and such person shall be in compliance with the provisions of Section 1-162.01(1)(b) through (i) and (2) of the Public Accountancy Act.

004.02 Limitations; Equity Ownership. Natural persons who are not certified public accountants in this or any other state or jurisdiction but who are owners of a business entity licensed in Nebraska to practice public accounting, shall not directly or indirectly, including as a beneficiary, (a) hold, in the aggregate, more than forty-nine (49%) of such business entity’s equity capital or voting rights, (b) receive, in the aggregate, more than forty-nine (49%) of such business entity’s profits or losses, or (c) exceed in number 49% of the total number of natural persons who are owners of such business entity.

004.03 Limitations; Use of Designation Principal. A person who is an owner and who is licensed in this state or any other state or jurisdiction as a certified public accountant may not hold himself or herself out as a principal.

004.04 Other forms of practice. These rules shall be applied to individuals and to any business entity licensed in Nebraska to practice public accounting in a manner consistent with carrying out the intent of these rules.

004.05 Eligibility; Disqualification; Owners. With respect to owners who are not licensed in this state or any other state or jurisdiction as certified public accountants, if at any time the board determines that any such owner no longer is eligible to be an owner by virtue of not being in compliance with the criteria set forth in Section 1-162.01 of the Public Accountancy Act, such owner and the business entity in which ownership exists shall be notified that if a board hearing is not requested within thirty (30) days of the date of mailing notification of such determination, an order will then be entered that such owner must divest himself, herself or itself of ownership in the business entity within sixty (60) days of entry of the order.

004.06 Professional Corporations; other requirements. The principal executive officer of a professional corporation licensed in Nebraska to practice public accounting shall be an owner and a director who is a licensed certified public accountant. Directors and officers who are not licensees shall not exercise any authority whatsoever over professional matters relating to the practice of public accountancy.

004.07 A non-natural person (hereafter “Parent Company”), other than an employee stock ownership plan, permitted under Section 1-162.01 of the Act to be an owner of a business entity licensed in Nebraska under Section 1-136 of the Act (hereafter “Nebraska permit holder”) shall:

004.07A Provide to the Board the name of the Parent Company and the names of all owners in connection with the granting or renewal of a permit in Nebraska of the Nebraska permit holder; and

004.07B Remain in compliance with the provisions of Section 1-162.01 of the Act and demonstrate to the Board upon application or renewal for a firm permit for the Nebraska permit holder, that (1) any other non-natural person owning any profits and losses, equity or voting interest in the Parent Company also meets the requirements of 11.004.07 and; (2) the natural persons who are either owners or who have an ownership or beneficial interest, directly or indirectly, in such Parent Company shall, as if all were direct owners of the Nebraska Permit holder, meet the requirements of Section 1-162.01(1)(b) through (i) of the Act.

004.08 If an owner of a business entity licensed in Nebraska to practice public accountancy is an employee stock ownership plan (“ESOP”), it shall comply with the following conditions:

004.08A No shares of stock in the licensed business entity may be held by a nonemployee, former employee, or person not actively participating in the licensed business entity. Shares of stock distributed from an ESOP and immediately put back to the business entity for repurchase shall not be considered to be held by a terminated participant or beneficiary. The licensed business entity must meet any requirements of law that would allow the business entity to restrict ownership of shares of stock to active employees and the ESOP and to restrict participants’ right to demand a distribution in the form of stock in the ESOP.

004.08B Unallocated shares under the ESOP shall be treated for the purposes of compliance with Section 1-162.01(b) through (e) of the Act as if such unallocated shares are allocated each year to eligible participants in the ESOP based on a uniform allocation method as allowed by laws governing an ESOP. The trustees of the ESOP shall specify the results of such allocation in connection with the granting or renewal of a permit in Nebraska of the Nebraska permit holder.

004.08C If under Section 1-162.01(k) a special independent trustee or fiduciary is appointed, the special trustee or fiduciary may not exercise any authority whatsoever over professional matters relating to the practice of public accountancy.

004.08D Although the trustee of the ESOP may be the legal owner of the shares of stock held in the ESOP, the Board shall look through the ESOP to all beneficial owners in the ESOP to determine compliance with Section 1-162.01(b) through (e) of the Act. The Board shall disregard any vesting rights to any shares of stock in determining the beneficial ownership under the ESOP. Furthermore, only those participants who have a stock account in the ESOP shall be taken into account as beneficial owners of the licensed business entity.

004.08E All shares of stock allocated, directly or allocated pursuant to 004.08B, to beneficial owners in an ESOP shall be aggregated with any shares of stock directly owned by such natural persons to determine compliance with Section 1-162.01(b) through (e) of the Act.

005 Application procedures; forms.

005.01 Each applicant for registration as any type of licensed business entity shall register with the Board of Public Accountancy prior to performing public accounting work in the state of Nebraska. Such registration form must include an affidavit signed by a general partner or officer of such business entity who is a certified public accountant of Nebraska in good standing, attesting to the accuracy of the information in the application materials.

005.02 After the Board of Public Accountancy has accepted the initial registration application and has issued a permit to practice, the registered business entity may practice in the state of Nebraska under the title which appears on the permit to practice as the name of the business entity.

005.03 Nebraska registered business entities shall renew their registration on an annual basis, on forms provided by the Board of Public Accountancy. Failure or refusal to provide complete and accurate responses to all questions on the registration renewal forms by the deadline noted on such forms may be grounds for refusal to renew such registration.

005.04 Nebraska registered business entities shall include on their initial registration with the board, and subsequent renewal of such registration, a complete listing of the names and the state of residency of all owners.

Statutory Authority: Section 1-162.01 R.R.S. 1994.