CHAPTER 11 – PUBLIC ACCOUNTING PARTNERSHIPS AND PROFESSIONAL CORPORATIONS

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 (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 ~~or 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 A natural person who is not a certified public accountant ~~or public accountant~~ in this or some other state or jurisdiction but who actively participates in the business of a business entity licensed in Nebraska to practice public accounting may be an owner, director, officer, limited liability company member, or manager in any such business entity, under the following conditions:

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

004.01B Such person shall not hold himself or herself out to the 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 of the Public Accountancy Act.

004.01D Such person shall not have ultimate responsibility for the performance of audits, reviews or compilations of financial statements or other forms of attestation related to financial information.

004.02 Limitations; Percentage Ownership. Persons who are not certified public accountants ~~or 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, may not exceed forty-nine percent (49%) of the total number of owners of such business entity.

004.03 Limitations; Equity Ownership. Persons who are not certified public accountants ~~or 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 (a) hold, in the aggregate, more than forty-nine (49%) of such business entity's equity capital or voting rights, or (b) receive, in the aggregate, more than forty-nine (49%) of such business entity's profits or losses.

004.04 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 ~~or public accountant~~ may not hold himself or herself out as a principal.

004.05 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.

004.06 Eligibility; Disqualification; Owners. With respect to owners who are not licensed in this state or any other state or jurisdiction as certified public accountants~~ or 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 or herself of ownership in the business entity within sixty (60) days of entry of the order.

004.07 Professional Corporations; other requirements. The principal executive officer of a professional corporation licensed in Nebraska to practice public accounting shall be a shareholder and a director who is a licensed certified public accountant.~~ or 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.

004.08 A non-natural person (hereafter "Parent Company") which actively participates in the business of a business entity licensed in Nebraska under Section 1-136 of the Act (hereafter "Nebraska permit holder") may be an owner of such Nebraska licensed CPA firm under the following conditions:

> **004.08A** The Parent Company must hold a permit under Section 1-136 of the Act as a Nebraska licensed CPA firm.
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> **004.08B** The name of the Parent Company and the names of the natural persons referred to in 004.08D (2) shall be provided to the Board in connection with the granting or renewal of a permit in Nebraska of the Nebraska permit holder;

004.08C The Parent Company shall not have ultimate responsibility for the performance of audits, reviews or compilations of financial statements or other forms of attestation relating to financial information; and

004.08D The Parent Company shall be in compliance with the provisions of Section 1-162.01 of the Act, provided, however, that it shall comply with 1-162.01 (1) & (2) of the Act by demonstrating 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 11.004.08 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 of the Act except subpart (7) thereof.

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 ~~or 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.