CHAPTER 5 – RULES OF PROFESSIONAL CONDUCT

001 Declaration of Purpose. Pursuant to the provisions of Section 1-112 of the Act, for the purpose of establishing and maintaining high standards of integrity and dignity in the profession of public accountancy, the following Rules of Professional Conduct are adopted:

002 Independence

002.01 Independence. A licensee who is performing an engagement in which the licensee will issue a report on financial statements of any client (other than a compilation report in which a lack of independence is disclosed) must be independent with respect to the client in fact and appearance. Independence will be considered to be impaired, if, for example:

002.01A During the period of his professional engagement, or at the time of expressing his opinion, the licensee, his firm, or any member thereof

002.01A1 had or was committed to acquire any direct or material indirect financial interest in the enterprise;

002.01A2 was a trustee of any trust or the personal representative of any estate that had or was committed to acquire any direct or material indirect financial interest in the enterprise;

002.01A3 had any joint closely held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to the net worth of the licensee or the enterprise;

002.01A4 had any loan to or from the enterprise or any officer, director or principal stockholder thereof, other than the following kinds of loans from a financial institution when made under normal lending procedures, terms and requirements: (1) loans obtained by the licensee or his firm which are not material in relation to the net worth of such borrower; (2) home mortgages; and (3) other secured loans, except those loans secured solely by the guarantee of the licensee or his firm.

002.01B Either during the period covered by the financial statements, the period of the professional engagement, or at the time of expressing an opinion, the licensee

002.01B1 was connected with the enterprise as a promoter, underwriter, voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

002.01B2 was the trustee for any pension or profit-sharing trust of the enterprise.

003 Integrity and Objectivity. A licensee shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgment to others. In tax practice, a licensee may resolve doubt in favor of his client as long as there is reasonable support for his position.

004 Competence and Technical Standards

004.01 Competence. A licensee shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence. This shall mean only those which he or someone in his firm is qualified, either by experience or education, to handle.

004.02 Auditing Standards. A licensee 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 unless he has complied with the applicable generally accepted auditing standards. Statements issued by the American Institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are deemed to be interpretations of generally accepted auditing standards.

004.03 Accounting Principles. A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle, which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that due to unusual circumstances, the financial statement would otherwise have been misleading. In such cases, his 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. Pronouncements issued by the Financial Accounting Standards Board and other pronouncements having similar generally recognized authority are deemed to be generally accepted accounting principles.

004.04 Forecasts. A licensee shall not in the performance of professional services permit his name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the licensee vouches for the achievability of the forecast.

004.05 Other professional standards. A licensee, 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 these rules, such professional standards are considered to be defined by Statements on Management Advisory Services and Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants and by similar pronouncements by other entities having generally recognized authority.

005 Responsibility to Clients

005.01 Confidential Client Information. A licensee shall not disclose any confidential information obtained in the course of performing professional services except with the consent of the client. Provided, however, this rule shall not be construed:

005.01A to relieve the licensee of his obligations under 288 NAC 5-004.02 and 004.03 relating to auditing standards and accounting principles;

005.01B to affect in any way his compliance with the validly issued subpoena or summons enforceable by order of any Court or agency;

005.01C to prohibit review of the licensee's professional practices as a part of voluntary quality review under Board authorization; or

005.01D to preclude a licensee from responding to any inquiry made by the Board or by an authorized investigative or disciplinary body, which in the opinion of the Board is duly constituted.

The Board shall not disclose any confidential client information which comes to its attention from licensees involved in disciplinary proceedings or otherwise in carrying out its official responsibilities, providing, however, this prohibition shall not restrict the exchange of information with any authorized and duly constituted investigative or disciplinary body.

005.02 Records. A licensee shall furnish to his client or former client, <u>regardless of unpaid fees outstanding,</u> upon request made within a reasonable time after original issuance of the document:

005.02A a copy of a tax return of the client;

005.02B a copy of any report; or other document, issued by the licensee to or for such client;

005.02C any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of such documents when they form the basis for work done by him; and

005.02D a copy of the licensee'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.

005.02E The licensee may charge reasonable expenses for furnishing the records.

005.03 Contingent Fees. A licensee in public practice shall not:

005.03A Perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs

005.03A1 an audit or review of a financial statement; or

005.03A2 a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

005.03A3 an examination of prospective financial information; or

005.03B Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

The prohibition in 005.03A above applies during the period in which the licensee or the licensee'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.

Any licensee who accepts a contingent fee or expects to be paid a contingent fee shall provide written disclosure of such acceptance or payment and the basis for determining such fee to the client.

Written disclosure statements, as set forth by Attachment 1 to this Chapter, are to be executed in duplicate, with a receipt acknowledgement signed and dated by the client, and maintained by the licensee for a period of five years. Licensees are subject to a random audit by the Board or its designee for compliance with the written disclosure provisions of this rule.

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

006 Advertising and Solicitation.

006.01 A licensee shall not use or participate in the use of any form of communication, written or oral, having reference to his professional services, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim, nor any form of communication having reference to his professional services which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats or harassing conduct. A false, fraudulent, misleading, deceptive or unfair statement or claim includes, but is not limited to, a statement or claim which:

006.01A Contains a misrepresentation of fact; or

006.01B Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

006.01C Is intended or likely to create false or unjustified expectations of favorable results; or

006.01D Implies educational or professional attainments or licensing recognition not supported in fact; or

006.01E Represents that professional services can or will be competently 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

006.01F Contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

007 Other Responsibilities and Practices

007.01 Acts discreditable. A licensee shall not commit an act that reflects adversely on his fitness to engage in the practice of public accountancy.

007.02 Commissions and referral fees.

007.02A Prohibited Commissions. A licensee in public practice 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 licensee or the licensee's firm also performs for that client:

007.02A1 an audit or review of a financial statement; or

007.02A2 a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

007.02A3 an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

007.02B Disclosure of Permitted Commissions. A licensee in public practice who is not prohibited by this rule from performing services for or receiving a commission and who is

paid or expects to be paid a commission shall provide written disclosure of that fact and the basis for determining such commission to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

007.02C Referral Fees. Any licensee who accepts a referral fee for recommending or referring any service of a CPA ~~or PA~~ to any person or entity or who pays a referral fee to obtain a client shall provide written disclosure of such acceptance or payment and the basis for determining such fee to the client.

007.02D Written Disclosure Statements. Written disclosure statements~~, as set forth by Attachment 1 to this Chapter,~~ are to be executed in duplicate, with a receipt acknowledgement signed and dated by the client, and maintained by the licensee for a period of five years. Licensees are subject to a random audit by the Board or its designee for compliance with the written disclosure provisions of this rule.

<u>007.02E Disclosure Form for commission, contingent fee, or referral fee.</u>

COMMISSION, CONTINGENT FEE OR REFERRAL FEE DISCLOSURE

This written disclosure form is required by the Nebraska Board of Public Accountancy for use by duly licensed Certified Public Accountants (CPA's) ~~or Public Accountants (PA's)~~ who intend to accept from any client compensation in the form of a commission, a contingent fee or a referral fee. CPA's ~~and PA's~~ are prohibited from accepting a commission or contingent fee as compensation from a client for whom the CPA~~/PA~~ or the CPA's~~/PA's~~ firm also performs:

1) an audit or review of a financial statement; or

2) a compilation of a financial statement when the CPA ~~or PA~~ expects, or reasonably might expect, that a third party will use the financial statement and the CPA's ~~or PA's~~ compilation report does not disclose a lack of independence; or

3) an examination of prospective financial information.

A CPA ~~or PA~~ also cannot prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client. 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.

Any CPA ~~or PA~~ who accepts a commission, contingent fee or referral fee or expects to be paid in such a manner shall provide written disclosure of such acceptance or payment and the basis for determining such fee to the client.

BASIS FOR DETERMINING FEE:

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Further, you are hereby informed that as a client of my firm or myself, I may have access to confidential financial information that would not otherwise be available to me if a client relationship did not exist prior to my solicitation of business. Your receipt of this disclosure constitutes your full understanding of the relationship between myself, my firm, and you as a client.

Offered by: **Accepted by:**

PRINTED NAME OF CPA~~/PA~~	**PRINTED NAME OF CLIENT(S)**
CERTIFICATE #	**SIGNATURE OF CLIENT(S)**
DATE	**DATE**

This form is to be executed in duplicate with one copy to be presented to the client at the time of signature. The CPA ~~or PA~~ is required to maintain this form in their files for a minimum of five years and is subject to a random audit by the Board or its designee for compliance with written disclosure provisions. Questions on this form or the above prohibitions and conditions should be directed to the Nebraska Board of Public Accountancy, P.O. Box 94725, Lincoln, NE 68509, (402) 471-3595.

007.03 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.

007.04 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. 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.

007.05 Communications. Any requested response to a communication from the Board shall be within thirty (30) calendar days of the receipt of the communication.

007.06 Obligation of certificate holders to notify the Board of changes of address and other information. Each certificate holder shall notify the Board in writing within thirty days of any change of address or change of employment.

Statutory Authority: Section 1-112 R.R.S. 1943