

Alternative Business Structure (ABS) Guidelines

At its November 20, 2000, meeting, the North Carolina State Board of CPA Examiners approved the final draft of the internal *Alternative Business Structure (ABS) Guidelines*. The guidelines will serve as guidance for Board staff when answering questions regarding an ABS.

The Board recommends that any CPA with an interest in an ABS read the guidelines, as well as the relevant statutes and rules. Questions regarding the guidelines should be submitted, in writing, to Robert N. Brooks, Executive Director of the Board.

ALTERNATIVE BUSINESS STRUCTURE (ABS) INTERNAL GUIDELINES

Pursuant to North Carolina General Statute (NCGS) 93 and Title 21 of the North Carolina Administrative Code (21 NCAC) 08, the North Carolina State Board of CPA Examiners (the Board) has the responsibility to enforce NC statutes and rules regarding Certified Public Accountants (CPAs).

These internal guidelines are intended to serve as guidance for staff when explaining an ABS to CPAs licensed by this Board. These internal guidelines do not constitute approval or disapproval of any specific ABS. These internal guidelines describe standards relating to an ABS that should be met by all licensed CPAs who are involved with an ABS. Every licensed CPA involved in an ABS, who directly or indirectly participates in offering to perform or performing services to the public, must comply with the same requirements that apply to a licensed CPA offering to perform or performing services to the public in a CPA firm. These internal guidelines do not constitute rule making and are not intended to create rights enforceable at law or in equity. As provided by NCGS 150B-2(8a)(c), the Board sets forth these internal guidelines as a “non-binding interpretative statement” in order to “define, interpret, or explain the meaning” of current applicable statutes and rules. To the extent these internal guidelines might describe some restrictions upon participants in an ABS that are not expressly articulated in current statutes or rules, these restrictions are to be regarded by licensees as necessary to ensure compliance with 08N .0402’s pre-eminent requirement for independence “in fact and appearance” in a business structure that seems otherwise potentially ambiguous. If a CPA desires a binding interpretation of these internal guidelines in reference to a specific situation, the CPA must request a declaratory ruling pursuant to 21 NCAC 08B .0500. Many regulatory issues have yet to be identified regarding CPA firms and ABSs. The Board will continue to monitor the conduct of CPAs who have employment by, ownership in, or other affiliation with, an ABS and may adjust these internal guidelines, propose legislation, and adopt or amend rules as needed. All CPAs licensed by the Board shall comply with NCGS 93.

A CPA firm and the related ABS shall ensure that the client and the public know that the two entities are separate and distinct in nature and operation so that neither the client nor the public are confused by the relationship between the CPA firm and the ABS.

The CPA firm and the related ABS must have:

- Separate & distinct legal entities;
- Separate & distinct names, logos, & signage on and within building;
- Separate & distinct stationery/envelopes, business cards, and yellow page advertising under the CPA category;
- Separate billings;
- Separate engagement letters for clients of the CPA firm & clients of the ABS; and
- Separate proposals to prospective joint clients.

A CPA firm in a relationship with an ABS shall have the resources including net worth, realizable assets, and/or liability insurance, necessary to provide assurance of financial autonomy and financial

accountability for its professional services. All services performed by loaned, leased, or contracted employees between the entities shall be at fair market value.

Each engagement letter with a joint client must disclose the relationship between the CPA firm and the ABS and the limitations on the services provided by each.

All client and business records of the CPA firm are confidential and shall be kept separate from the client and business records of the related ABS. Access to those records is limited to the CPA firm unless the client has consented to access to his or her records by the ABS.

A CPA employed by the related ABS may use the CPA title on his or her stationery and business cards, and he or she may sign documents, except attest service documents, using the CPA title.

All CPAs licensed by this Board shall comply with NCGS 93, NCGS 55B, NCGS 57C, and 21 NCAC 08, as applicable, but not limited to the following which specifically affect CPAs, the CPA firm, and the relationship with the ABS: 08H .0105 Use of CPA Title; 08J .0108 CPA Firm Registration; 08N .0103 Responsibility for Compliance; 08N .0201 Integrity; 08N .0202 Deceptive Conduct Prohibited; 08N .0203 Discreditable Conduct Prohibited; 08N .0205 Confidentiality; 08N .0206 Cooperation with Board Inquiry; 08N .0207 Violation of Tax Laws; 08N .0208 Reporting Convictions, Judgments; 08N .0209 Accounting Principles; 08N .0210 Forecasts; 08N .0211 Responsibilities in Tax Practice; 08N .0212 Competence; 08N .0213 Other Rules; 08N .0301 Professional Judgment; 08N .0302 Forms of Practice; 08N .0303 Objectivity and Conflicts of Interest; 08N .0304 Management Consulting Services Standards; 08N .0305 Retention of Client Records; 08N .0306 Advertising; 08N .0307 CPA Firm Names; 08N .0402 Independence; 08N .0403 Auditing Standards; 08N .0404 Accounting and Review Services Standards; 08N .0405 Governmental Accounting Standards; 08N .0406 Attestation Standards; and 08N .0407 Competitive Bidding.

All CPAs licensed by this Board shall comply with all State and federal laws and regulations including, but not limited to: 26 USC 7216, Disclosure of Information; 26 CFR 1.6695-1, Signing Tax Returns; and Treasury Circular 230, Admission to Practice before the IRS.

A CPA firm shall not provide any attest services to the related ABS or to any affiliate of the related ABS. An ABS may not offer to perform or perform any attest services including audits, reviews of financial statements, compilations of financial statements, examinations of prospective financial information, or agreed-upon procedures engagements.

A CPA firm, including its owners, employees, and contractors, shall not allow the related ABS to have any direct or indirect control or influence over the governance, structure, or operations of the CPA firm or over the performance of any services by the CPA firm.

Each agreement between an ABS or its affiliate(s) and the related CPA firm or any owner, manager, employee or contractor of the related CPA firm, must include an express provision which stipulates that there must be compliance with NCGS 93, NCGS 55B, NCGS 57C and 21 NCAC 08 as applicable, and in the event of any conflict with the statutes and rules by any provision of the agreement or the application of any provision of the agreement, the statutes and rules shall prevail. CPAs and their employees and/or contractors providing attest services shall sign separate independence confirmations with respect to their independence in relation to all attest clients of the CPA firm and the related ABS. Independence standards pertaining to clients of a CPA firm, its owners, its employees, and its CPA contractors, shall not be circumvented by the provision of services through the related ABS or an affiliate of the related ABS. Accordingly, the CPA firm must treat the related ABS and its affiliates as affiliated parties for purposes of applying independence rules.

Access to, or transfer of, any CPA client records from the CPA firm to the ABS and from the ABS to the CPA firm shall occur only pursuant to the voluntary, advance consent of the client. If any owner of a CPA

firm terminates his or her relationship with the CPA firm or if any CPA employee of the related ABS terminates his or her employment with the ABS, the client records of the CPA firm and the client records of the CPA leaving the related ABS shall remain with the CPA firm or CPA employee, respectively, until the client decides who shall retain the records.

The ABS and its personnel who provide services to the CPA firm must agree in writing to keep all information, with respect to clients of the CPA firm, confidential except as may be permitted by the client's consent.

Office space, equipment, administrative or professional personnel, or other services provided by the ABS to the related CPA firm shall be through a legally binding, non-exclusive contract at fair market value. A CPA firm must have the contractual right to contract, to the extent it deems appropriate, for office space, equipment, administrative personnel, or other services, from a source other than the related ABS without direct or indirect financial costs or penalties under any contract between the CPA firm and the ABS or its affiliate(s).

The CPAs and/or the CPA firm shall bear all legal and financial responsibilities imposed by the Board for violations of any statutes, rules, or professional standards and the ABS may not indemnify the CPA firm for any such responsibilities.

The CPA firm shall have the contractual right to hire, contract for, or terminate, any particular employee(s) from the related ABS or from any other source. The CPA firm shall have the exclusive authority to supervise any contracted or hired personnel.

A CPA firm shall have the sole discretion to decide which clients it will accept and which engagements it will perform and how accepted engagements will be handled.