



# Peer Review Program

**AICPA Peer Review Board**

**Rules of Procedures for the  
Termination of a Firm**

**Effective Date – January 13, 2016**

## ***FOREWORD***

Quality in the performance of accounting and auditing engagements by AICPA members is the goal of the AICPA Peer Review Program. The program seeks to achieve its goal through education and remedial, corrective actions. Firms (and individuals) enrolled in the program have the responsibility to cooperate with the peer reviewer, administering entity and the AICPA Peer Review Board (board) in all matters related to the peer review, including taking remedial, corrective actions or implementing Findings for Further Consideration (“FFC”) plans as needed. Instances of non-cooperation by a reviewed firm would include, but are not limited to:

- Failure to correct deficiencies or significant deficiencies.
- Instances in which the firm is found to be so seriously deficient in its performance that education and remedial, corrective actions or implementation plans are not adequate.
- Receive peer reviews with recurring deficiencies or significant deficiencies that are not corrected.
- Failure to correct deficiencies or significant deficiencies after consecutive corrective actions requested by a Report Acceptance Body (RAB)
- Failure to receive a report with a rating of pass after (1) receiving a peer review report with a peer review rating of *pass with deficiencies* and/or *fail*<sup>1</sup> AND (2) receiving notification via certified mail that a consecutive failure to receive a report with a peer review rating of *pass* may be considered a failure to cooperate with the administering entity.

In addition, a AICPA Peer Review Board Resolution states;

A firm is deemed as failing to cooperate by actions including but not limited to:

- Not responding to inquiries once the peer review has commenced;
- Withholding information significant to the peer review, for instance but not limited to:
  1. failing to discuss communications received by the reviewed firm relating to allegations or investigations in the conduct of accounting, auditing, or attestation engagements from regulatory, monitoring, or enforcement bodies;
  2. omission or misrepresentation of information relating to its accounting and auditing practice as defined by the AICPA Standards for Performing and Reporting on Peer Reviews, including, but not limited to, engagements performed under Government Auditing Standards; audits of employee benefit plans, audits performed under FDICIA, audits of carrying broker-dealers, and examinations of service organizations [Service Organizations Control (SOC) 1 and 2 engagements];
- Not providing documentation including but not limited to the representation letter, quality control documents, engagement working papers, all aspects of functional areas;
- Not responding to Matters for Further Consideration (“MFCs”) or FFCs timely;
- Limiting access to offices, personnel or other once the review has commenced;

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<sup>1</sup> Formerly known as modified and/or adverse reports

- Not facilitating the arrangement for the exit conference on a timely basis;
- Failing to timely file the report, and the response thereto related to its peer review, if applicable;
- Failing to cooperate during oversight; or
- Failing to timely acknowledge and complete required corrective actions or implementation plans.

If a reviewed firm refuses to cooperate, fails to correct material deficiencies, or is found to be so seriously deficient in its performance that education and remedial or corrective actions are not suitable, the AICPA Peer Review Board may take actions leading to the termination of the firm's enrollment or participation in the AICPA Peer Review Program.

These rules of procedures have been prepared for the use of the AICPA Peer Review Board in connection with proceedings related to the termination of a firm's enrollment in the AICPA Peer Review Program. These procedures have also been prepared for the information of those firms that may be a party to such a proceeding.

Hearings conducted under these procedures are informal in nature. Accordingly, the rules of evidence do not apply and any evidence, whether written or oral, will be considered by a hearing panel if relevant to the case at hand in accordance with these procedures set forth.

The overriding objectives of these procedures are to provide for an orderly proceeding, achieve a fair result, and adequately safeguard the rights of firms and individuals that may become party to a proceeding.

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## ***1. GENERAL***

### **1.1 Authority to Conduct Proceedings**

The Board of Directors of the AICPA has authorized the AICPA Peer Review Board (the “Board”) to terminate a firm’s enrollment in the AICPA Peer Review Program (“Program”), or otherwise sanction a firm after due notice and a fair hearing. Pursuant to this grant of authority, the Board hereby establishes the following procedures, which will govern the adjudication of all matters that may lead to the termination of a firm’s enrollment in the Program or other sanctions. Other committees, such as administering entity’s peer review committees or subcommittees or task forces established by the Board to consider peer review reports, may not terminate a firm’s enrollment in the Program.

### **1.2 Applicability of Rules of Procedures**

The Board has authorized the Director of the Program or his designee to determine if a hearing is appropriate. The rules of procedures set forth herein become applicable when the Director of the Program or his designee decides that a hearing to consider whether to terminate a firm’s enrollment in the Program or impose other sanctions should be conducted. Once these rules of procedures become applicable to a proceeding, they are to be applied until a decision to terminate a firm’s enrollment or impose other sanctions becomes effective or the matter is otherwise disposed of.

### **1.3 Hearings**

Hearings are held to adjudicate matters that may lead to the termination of a firm’s enrollment or participation in the Program. Firms affected will be advised that they may participate by telephone in the hearing to challenge or contest the charges or recommendations being made.

### **1.4 Nature of Hearings**

Hearings are designed both (a) to assist the hearing panel in assessing the facts on which to base a decision as to whether or not to terminate a firm from the AICPA Peer Review Program or impose other sanctions and (b) to provide procedural fairness thus providing firms the ability to defend themselves. Hearing procedures are informal to afford all parties maximum flexibility in presenting every side of an issue. Firms may be represented by counsel. Hearings before a hearing panel shall not be open to the public (see section 3.7).

## 1.5 **Hearing Panel**

The hearing panel determines whether or not to terminate a firm's enrollment in the Program. The Board Chair or designee shall appoint five members to the hearing panel, however, action may be taken by the hearing panel as long as a quorum is present as defined below. The hearing panel will be drawn from either current Board members or other members of the AICPA appointed at the sole discretion of the Chair of the Board or the Chair's designee. One member of the hearing panel will be appointed as the presiding officer by the Chair or the Chair's designee. The Chair, or designee, may appoint himself or herself as a member of a hearing panel or as its presiding officer. A majority of the hearing panel constitutes a quorum.

If a decision is made by the hearing panel not to terminate a firm's enrollment in the Program, the hearing panel may determine whether and what remedial actions should be required of the firm. The hearing panel has the authority to affirm, modify or reverse all or any part of the decision regarding actions previously required by the administering entity that administered the review.

If the hearing panel decides to terminate a firm's enrollment in the Program the firm has the right to appeal to the AICPA Joint Trial Board. The Trial Board has the authority to affirm, modify or reverse all or any part of the Board's decision, but it does not have the authority to increase the severity.

## 1.6 **Parties to the Proceeding**

Only the affected firm and the AICPA peer review staff are parties to the proceeding. Intervention by third parties in proceedings shall not be permitted, except other parties may be present as provided in paragraph 3.7. The designated staff of the AICPA or other individuals with responsibility for presenting the charges to the hearing panel and the representative(s) of or on behalf of the affected firm may present evidence, call and question witnesses, and make arguments, including rebuttal arguments. AICPA's Office of General Counsel acts as counsel to the panel to advise on practice and procedures and may be present at the hearing and during any executive sessions.

## ***2. THE RIGHTS OF PARTIES***

### 2.1 **Right to Participate via Conference Call**

A party to a proceeding has the right to participate and be heard at a hearing which is conducted by conference call. In order to secure its right to participate, the firm is required to notify AICPA staff at least 14 days prior to the hearing date of its desire to participate. Upon notification that the firm does want to participate, the Board may reschedule the hearing to a day and time convenient to the panel, which

may be fewer than 30 days from the originally scheduled date. If rescheduled, the firm will be notified as described in paragraph 3.3.

A firm may be represented by counsel, other representatives, or both. A hearing panel is empowered to conduct a hearing in the absence of a representative of the firm, provided a Notice of Hearing pursuant to section 3.3 has been properly served, and there is no compelling reason, in the view of the presiding officer of the hearing panel, not to proceed.

## 2.2 **Right to Present Evidence and to Cross Examine**

A party to a proceeding has the following rights in a hearing-

- a. To present evidence.
- b. To present arguments on issues relevant to the subject of the proceeding.
- c. To cross-examine witnesses at the hearing.

## 2.3 **Right to Copy of Transcript**

A firm that is a party to a proceeding who has participated by phone may request a copy of the transcript of the hearing when a transcript is prepared in accordance with section 4.3. The request must be made at the time of the hearing. Such a request does not stay the effective date of the decision.

### ***3. BASIC PRINCIPLES***

#### 3.1 **Purpose of Rules of Procedures**

Although hearings conducted by a hearing panel are informal, these rules of procedures have been adopted to insure fairness and an orderly disposition of such proceedings.

#### 3.2 **Rules of Evidence**

In hearings governed by these rules of procedures, the formal rules of evidence applicable to proceedings at law or in equity do not apply, and evidence that would be inadmissible in a court of law may be received so long as it is relevant in the discretion of the presiding officer. The hearing panel shall determine the weight to be given to any evidence.

### 3.3 **Notification of Proceeding**

Within a reasonable period of time after the Director of the Program or designee decides that it will conduct a hearing, the staff of the Board shall mail to the firm at least 30 days prior to the proposed hearing date, a "Notice of Hearing" containing a description of the charges against the firm, the time and date the hearing panel will hear the matter, and indicating that the firm has a right to participate by telephone as long as the firm advises the Director of the Program or designee at least 14 days prior to the hearing date of its desire to do so. Upon notification that the firm elects to participate, the Board may reschedule the hearing to a day and time convenient to the panel, which may be fewer than 30 days from the originally scheduled date. If rescheduled, the staff of the Board will notify the firm by mail of the new hearing date within five days of the firm's notification of their wish to participate. The notice of hearing shall also advise the firm that it may answer the charges in writing as set forth in paragraph 3.4.

The staff to the Board shall present the hearing panel with a hearing memorandum containing the charges against the firm and the material upon which it intends to rely upon at the hearing. Copies of this hearing memorandum and related material shall be furnished to the firm at the time of the mailing of the Notice of Hearing. Such Notice, when mailed by registered or certified mail (postage prepaid), return receipt requested, or other means of delivery providing proof of delivery, addressed to the managing partner, shareholder, or sole owner (chief executive officer) of the firm at its last known address as reflected in Program's enrollment records shall be deemed to be properly served.

The firm has the right to acknowledge the charges that are contained in the hearing memorandum. The firm would indicate that it acknowledges the charges against the firm by signing a statement included on the Notice of Hearing and returning it to the Director of the Program or his designee at least 14 days prior to the date on the Notice of Hearing. By acknowledging the charges, the firm waives its rights to a hearing, accepts the sanctions proposed by the charging authority and consents to publication as provided in AICPA Bylaw Section 7.6.

A copy of these rules of procedures shall accompany the Notice of Hearing to the firm.

### 3.4 **Answer to Notice of Hearing**

It is in the best interests of the firm to provide the hearing panel with an answer in writing to the charges and hearing memorandum enclosed with the Notice of Hearing, and the firm is requested to do so. In order for any such answer to be considered it must be timely filed with the staff of the Board as follows. To be timely filed, the answer must be received by the staff to the Board registered or certified mail (postage prepaid), return receipt requested, or other means of delivery providing proof of delivery, or by electronic delivery with confirmation of delivery

(the firm has proof that the email was opened) at least 14 days prior to the date of the hearing. The answer may contain a denial of some or all of the charges, an explanation of some or all of the facts described in the hearing memorandum, any defenses being asserted, and any other information deemed relevant by the enrolled firm. No written or electronic submissions will be considered by the hearing panel after this period except in extraordinary circumstances and at the sole discretion of the presiding officer. The answer may be in the form of a reply memorandum to the memorandum and material accompanying the Notice of Hearing. In all cases, however, the firm is required to notify the AICPA staff at least 14 days prior to the date of the hearing whether the firm will participate in the hearing by conference call, the identity and affiliation of the individual(s) who will represent the firm, and who will participate on behalf of the firm at the hearing. See also Section 2.1

### 3.5 **Postponements**

A firm may request a postponement of a hearing for good cause. To be considered, any request for postponement must be received by the Director of the Program or his designee at least fourteen (14) days prior to the date scheduled for a hearing. Prior to the hearing, the presiding officer of the hearing panel, or Chair of the Board, if no presiding officer has been appointed, shall have sole discretion regarding the granting of a postponement. Only in extraordinary circumstances may a postponement be granted less than fourteen (14) days prior to the hearing date. Within a reasonable period of time from the date the postponement is granted, the presiding officer shall reschedule the hearing. A postponement is not a matter of right and will be granted only upon the showing of good cause.

A hearing panel, when in session for the purpose of hearing a case, may postpone or adjourn the hearing and designate a new date upon a showing of good cause. Such action shall be taken by a majority vote of the hearing panel in executive session.

Denial of a request for postponement does not prevent the firm whose request is denied from reasserting the substance of its request as a basis for an appeal of a hearing panel's decision on the merits of the case to the AICPA Joint Trial Board.

### 3.6 **Witnesses**

Both the representatives of the firm and the staff or other individuals with responsibility for presenting the charges to a hearing panel may produce such witnesses as they deem appropriate. Witnesses will normally be excluded from a hearing except during such time as they are actually giving testimony. Since it is assumed they will testify truthfully, witnesses at a hearing will not be sworn.

### 3.7 **Confidentiality of Proceedings**

No hearing before a hearing panel shall be open to the public. However, relevant staff of the AICPA, and Board members may observe a hearing. Briefs, memoranda, documentary evidence introduced at hearings and stenographic transcripts of hearings, except as otherwise provided in Section 4.2, shall be available to the following on a confidential basis:

- a. The parties to the proceeding, observers to the proceeding as set out in the preamble above, and their consultants, advisors or representatives.
- b. The AICPA Joint Trial Board, if the firm appeals the decision by the hearing panel, members of the hearing panel, staff, and parties to the proceeding. In addition, a firm's state board of accountancy, if such firm holds a permit or license to practice issued by a state board, shall be notified of any expulsions from the peer review program if the hearing panel decides, by majority vote, it is appropriate.
- c. Members of the AICPA Peer Review Board and hearing panel members.

### 3.8 **Decisions**

Once a hearing panel is convened to hear a case, every effort will be made to reach a decision while it is convened. Thus, all parties shall be prepared to present their full case at that time.

### 3.9 **Public Disclosure of Terminations**

If a firm's enrollment in the Program is terminated, that fact shall be published as provided for in AICPA Bylaw Section 7.6 and the implementing resolution. Also, the termination will be reflected in the records maintained by the AICPA so that individuals making inquiries about the firm may be so advised.

Information contained in the files of the AICPA or the administering entity regarding pending proceeding(s) and matters that may result in the initiation of a proceeding, are to be held in confidence but maybe produced if legally required.

### 3.10 **Disqualification rom Participating in a Proceeding**

The following preclude a person from participating in any part of a proceeding on behalf of the Board or serving on a hearing panel:

- a. The individual's firm has performed a peer review in the last two peer review cycles of the affected enrolled firm's accounting and auditing practice.

- b. The individual has served on the review team that performed a peer review in the last two peer review cycles of the affected enrolled firm.
- c. The individual's firm is the subject of the proceeding.
- d. The individual serves on the board of accountancy of the state in which any office of the firm is located or where the firm has a license to practice public accounting.
- e. The individual serves on the peer review committee of the administering entity that administered the review.
- f. The individual serves in any enforcement capacity at the AICPA, state CPA society (including any professional ethics committee), state board, or on the AICPA Joint Trial Board.
- g. The individual believes he or she could not be impartial and objective with respect to the charges or has a conflict of interest.

### 3.11 **Effective Date**

A decision by the hearing panel to terminate a firm's enrollment in the Program or to impose other sanctions shall become effective 30 calendar days after the decision is made, unless, with respect to a termination, an appeal has been filed by the affected firm to the Joint Trial Board. A decision by the Joint Trial Board shall be effective immediately.

## ***4. CONDUCTING A HEARING***

### 4.1 **Responsibilities of the Presiding Officer**

The Chair of the Board or the Chair's designee shall appoint a member of the Board to serve as the presiding officer. The Chair can also appoint himself or herself as the presiding officer.

The presiding officer is to take action necessary to maintain order; rule on motions and procedural questions arising during the hearing; call recesses or adjourn the hearing; examine witnesses (along with other members of the hearing panel); determine the admissibility of evidence; and take such reasonable actions as may be necessary to provide for a fair and orderly hearing.

### 4.2 Panel Conferences When Firm Does Not Participate

If a firm does not advise the AICPA staff that it will participate in the hearing as set forth in section 2.1, the hearing may be conducted by conference call of the

panel members, the date of which shall be contained in the Notice of Hearing, as provided in paragraph 3.3, without further notice to the firm. During the conference call, the presiding officer calls the roll of the members of the hearing panel by firm name and announces whether a quorum is present. (A quorum is a majority of those members appointed to the hearing panel including the presiding officer.) Thereafter, the panel members may discuss the hearing memorandum, any submissions by the firm, and any other matters they deem relevant to their decision. Only hearing panel members, relevant AICPA staff, and other Board members may listen in the telephone conference call. The hearing panel decides in executive session, without the presence of AICPA or the other observers, except the representative, if any, of the AICPA Office of the General Counsel may also be present at the executive session to advise the panel as to the appropriate rules of procedures. The hearing panel decides the case by polling all participating members, including the presiding officer (see section 5). A decision of the hearing panel requires the affirmative vote of a majority of the participating members. In the event that the hearing panel is unable to reach a decision during the executive session, it may adjourn the hearing to such later date as it shall determine. When the firm is not participating, no transcript of the conference call hearing will be prepared. The firm shall be notified of the decision by letter via certified mail (postage prepaid, return receipt requested, or other means of delivery providing proof of delivery within a reasonable period of time after the decision. The decision of the hearing panel will also be read into the open and/or closed session minutes of the next meeting of the Board.

#### 4.3 **Order of Proceedings**

If a firm advises that it will participate in the hearing as set forth in section 2.1 and 3.4, the hearing shall be conducted in accordance with the following rules:

- a. The presiding officer calls the session to order, identifies a representative of the office of General Counsel, if present, who will serve as legal counsel to the panel, identifies the case by firm name and firm number, and determines that a reporter is present and prepared to make a transcript of the hearing.
- b. The presiding officer requests that the representatives of the enrolled firm and counsel, if any, identify themselves for the record.
- c. If no representatives of the firm are present, the presiding officer may proceed if he or she determines on the record that it is appropriate to do so.
- d. He or she calls the roll of the members of the hearing panel. The presiding officer asks all those present to identify themselves for the record. The presiding officer announces for the record whether a quorum is present. (A quorum is a majority of those members appointed to the hearing panel, including the presiding officer.)

- e. The presiding officer states for the record a brief summary of the subject of the hearing and the authority for holding it.
- f. The presiding officer states that the hearing will be conducted under these rules of procedures, noting in particular the informal nature of the hearing, especially as it relates to rules of evidence, and the need to maintain confidentiality.
- g. The presiding officer allows the parties to the proceeding to state for the record any objection they have to any prehearing proceeding, such as service of the Notice of Hearing, and to make any prehearing motions they have, such as request for postponement (see Section 3.5).
- h. The presiding officer requests the parties to the proceeding to identify their witnesses for the record.
- i. The presiding officer requests the staff or other individuals with the responsibility for presenting the charges to the hearing panel to present the evidence against the firm. In the course of this presentation, which may include taking testimony from witnesses, any exhibits to be introduced as evidence are passed to the representative of the firm for inspection. They are then passed to the presiding officer, who indicates orally whether they are to be admitted. The presiding officer should see that all documentary and physical evidence is marked for identification and that a list is kept that describes the exhibit and its identification.
- j. The presiding officer permits the following individuals to question witnesses called on behalf of the Board upon completion of their testimony:
  - i) The representatives of the enrolled firm, or counsel.
  - ii) Members of the hearing panel and the representative from the Office of the General Counsel, if present.
- k. The presiding officer requests the representatives of the firm, or counsel, to present any evidence in the firm's defense, following the same procedures in (i) above.
- l. The presiding officer permits the following individuals to question witnesses called on behalf of the firm upon completion of their testimony:
  - i) The staff or other individuals with responsibility for presenting the charges to the hearing panel.
  - ii) Members of the hearing panel and the representative from the Office of the General Counsel, if present.

- m. The presiding officer permits the individual(s) with the responsibility for presenting evidence against the firm to offer rebuttal evidence.
- n. The presiding officer permits the representatives of the firm, or counsel, to make a closing statement that is then followed by the closing statement of the individual(s) with responsibility for presenting evidence against the firm.
- o. The presiding officer requests that all individuals other than the members of the hearing panel and its counsel, if any, disconnect from the conference call. (If for any reason the members of the hearing panel desire to speak with any other individual after this point, the representatives of the enrolled firm including its counsel, if any, shall be recalled to observe the discussion.)
- p. In the executive session, the hearing panel discusses and decides its disposition of the case by polling all participating members, including the presiding officer (see section 5). A decision of the hearing panel requires the affirmative vote of a majority of the participating members. In the event that the hearing panel is unable to reach a decision during the executive session, it may adjourn the executive session to such later date as it shall determine or it may agree to reach its final decision by telephone.
- q. If a decision is reached on the day of the hearing, all persons present prior to executive session and the reporter are recalled (assuming they are still available) for the purpose of recording the decision. If a decision cannot be reached on the day of the hearing, the parties to the proceeding shall be informed of the decision by letter, which is to be mailed within a reasonable period of time after the decision in the same manner as a Notice of Hearing (see section 3.3).

## ***5. THE HEARING PANEL'S DECISION***

### **5.1 Decisions to be Made**

All hearing panels must make the following determinations based on the evidence presented at the hearing.

- a. Whether the facts, as determined, support the charges brought against the firm.
- b. Whether the charges brought are a violation of the *Standards for Performing and Reporting on Peer Reviews* established by the Board.

- c. Whether the firm's enrollment in the Program should be terminated.
- d. Whether and what remedial actions should be required of the firm if its enrollment is not terminated.

A hearing panel will not reconsider a prior decision when a firm corrects the matter causing the hearing after the hearing is held. The completion of required actions after a decision has been made to terminate the firm's enrollment does not negate the fact that the firm has failed to cooperate and the firm is not deemed to be in compliance with the requirements of the Program.

However, this does not preclude the Board's Chair from deciding that a hearing panel (but not necessarily the same hearing panel that decided the matter initially) should reconsider a prior decision when there is new evidence, that was not available to the hearing panel and which is likely to have made a difference in the hearing panel's decision. The procedures to be used in such instances shall be at the discretion of the Chair. Firms that completed required actions after termination may request reenrollment into the program. However, notice of the termination shall be published as required by Bylaw Section 7.6 and the implementing resolution.

## 5.2 **Appeal**

As noted in section 1.5, a firm enrolled in the Program will have the right to appeal to the AICPA Joint Trial Board. Such request must be received within 30 calendar days of the date of the notice of the decision, be in writing, mailed in accordance with 3.3 and shall set forth the petitioner's reasons why the decision of the Board should be modified or set aside. However, the firm will not have the right to appeal a panel's decision when they have imposed sanctions other than termination.

## 5.3 **Burden of Proof**

A determination that the facts support the charges brought against the firm must be based on the preponderance of the evidence and the charging authority has the burden of proof as to the charges it brings.