

Proposed Changes to the Code of Ethics for Professional Accountants addressing Conflicts of Interest

Additions to extant paragraphs are underlined

SECTION 220

Conflicts of Interest

Paragraphs 220.1-220.6 would be deleted and replaced with the following paragraphs 220.1-220.10:

220.1 A professional accountant in public practice may be faced with a conflict of interest when performing a professional service¹. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created ~~by~~when:

- ~~Conflicts—~~The professional accountant provides professional services with respect to a particular matter for~~between the interests of two or more clients whose interests with respect to that matter are in conflict;~~ or
- ~~Conflicts between—~~The interests of the professional accountant with respect to a particular matter and the interests of the client for whom the professional accountant provides professional services with respect to that same matter are in conflict.

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

220.2 Examples of situations in which conflicts of interests may arise include:

- Recommending a client to invest in a business in which a family member of the professional accountant in public practice has a financial interest;
- Providing services to both a vendor and a purchaser in relation to the same transaction;
- Acting as a liquidator of a company which is a debtor of an audit client of the liquidator's firm;
- Advising a client on its competitive position while having an interest in the same market segment;
- ~~Representing—~~Advising two clients at the same time who are trying to acquire the same company;
- Preparing valuations of assets for different two parties in who are in an adversarial proceedings position with respect to the assets;
- Performing litigation services for the plaintiff in connection with a lawsuit filed against a client of the professional accountant's firm;
- Representing two clients who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership;
- ~~Advising two shareholders in dispute over the distribution of assets on the dissolution of the company;~~

¹ **Revised Definition:** Professional Services: Professional activities performed for clients.

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- Advising a client on the purchase of ~~an~~ a product or service information system while having a ~~license~~ royalty or commission agreement with a one of the potential software vendors.

220.43 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, the professional accountant in public practice shall exercise professional judgment and take into account whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.

220.34 ~~Before accepting a new client relationship, engagement, or business relationship, a~~ A professional accountant in public practice shall take reasonable steps to identify circumstances that might create a conflict of interest including identification of: ~~In identifying: a potential conflict of interest in particular before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice shall:~~

- ~~Understand~~ the nature of the relationships between the parties involved and the nature of any relevant interests; and
- ~~Understand~~ the nature of the service and its implication for relevant parties.

~~This includes potential conflicts of interest when accepting a new engagement and conflicts of interest that may arise during the course of an engagement.~~ The nature of the services and the relevant relationships may change during the course of the engagement. This is particularly true when a professional accountant is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the professional accountant may not initially be involved in a dispute.

220.56 ~~An~~ For this purpose of identifying relationships that might create a conflict of interest, having an effective conflict identification process assists a professional accountant in public practice to identify potential conflicts prior to accepting an engagement and throughout an engagement. The earlier a potential conflict is identified, the greater the chance the professional accountant will be able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce them to an acceptable level. The process to identify potential conflicts of interest will vary and depends on such factors as:

- The nature of the professional services provided;
- The size of the firm;
- The size and nature of the client base; and
- The structure of the firm, for example the number and geographic location of offices, and whether the firm is a member of a network.

220.5 ~~In identifying whether a conflict of interest exists or may be created, and evaluating the significance of any threat to objectivity or compliance with other fundamental principles, in~~

~~particular before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice shall:~~

- ~~• Understand the nature of the relationships between the parties involved and any relevant interests;~~
- ~~• Understand the nature of the service and its implication for relevant parties;~~

220.67 ~~If an actual conflict of interest between two clients or potential clients is identified, The the professional accountant in public practice shall evaluate the significance of the threat to objectivity and any threat to compliance with other fundamental principles created by a conflict of interest and shall apply safeguards, when necessary, to eliminate the threat or reduce it to an acceptable level the professional accountant in public practice shall:-~~

- ~~• Evaluate the significance of relevant interests or relationships and In general, the more direct the relationship between the professional service and the matter on which the clients' interests are in conflict, the more significant the threats may be;~~
- ~~• Evaluate the extent to which a professional service performed for more than one client may result in a conflict of interest. In general, the more direct the connection between the professional service and the matter on which the clients' interests are in conflict, the more significant the conflict of interest may be.;~~ and

- ~~• The professional accountant shall evaluate Evaluate any potential conflicts of interest that the professional accountant knows or has reason to believe may exist due to interests and relationships of a network firm, taking into account factors such as the nature of the professional services provided and the clients served, and the geographic locations of all relevant parties.~~

220.7 ~~The professional accountant in public practice shall apply safeguards, when necessary, to eliminate or reduce the threats to compliance with the fundamental principles created by the conflict of interest to an acceptable level. Examples of other safeguards include:~~

- ~~• Use of separate engagement teams when performing professional services for two or more clients with conflicting interests who are provided with clear policies and procedures on maintaining security and confidentiality;~~
- ~~• Implementing mechanisms to prevent unauthorized disclosure of information when performing professional services for two or more clients with conflicting interests. This could include~~
- ~~• Using separate engagement teams when performing professional services for two or more clients with conflicting interests who are provided with clear policies and procedures on maintaining security and confidentiality;~~
- ~~• theCreating creation of separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm.;~~

- ~~This could also include~~ Establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information; and,
- Having a professional accountant who is not involved in providing the service or otherwise affected by the conflict review the work performed to assess whether the key judgments and conclusions are appropriate;
- Regular review of the application of safeguards by a senior individual not involved with relevant client engagements; and
- Seeking guidance of third parties, such as consulting with a professional regulatory body;

~~220.8~~ In addition, depending upon the circumstances giving rise to the conflict, it is generally necessary to disclose the nature of the conflict to the client and all known relevant parties and to obtain written consent from the client and such parties to perform the professional service to all clients affected by the conflict and to obtain their consent to the professional accountant performing the professional services.

Disclosure and consent may take different forms, for example:

- Specific disclosure to all affected clients of the circumstances of the particular conflict together with any planned safeguards, sufficient to enable the client to make an informed decision with respect to the matter; prior to obtaining written consent from all such clients to performing the professional service.
- General disclosure to potential clients of circumstances where the professional accountant, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector). ~~in written or verbal act in such situations.~~

Consent may be obtained verbally or in writing. In certain circumstances consent obtained from any relevant party may also be implied by the party's client's conduct, for example where the professional accountant is able to conclude that clients with knowledge of the circumstances at the outset have accepted the conflict in keeping with common commercial practice if they do not raise an objection to the existence of the conflict of interest.

The professional accountant shall determine whether the significance of the conflict of interest is such that specific disclosure and consent is necessary.

~~If the~~ consent is obtained verbally or is implied by the client's party's conduct, the professional accountant is encouraged to document such consent.

~~220.8-9~~ In certain exceptional circumstances, requesting consent would in itself result in a breach of confidentiality. Examples of such circumstances may include:

- Performing a transaction-related service for a client in connection with a hostile takeover of another client of the firm;
- Performing a forensic investigation for a client where the firm has confidential information obtained through having performed another professional service for another client who would be the subject of the investigation.

The firm shall not accept such an engagement under such circumstances unless the following conditions are met:

- The firm does not act in an advocacy role for one client ~~by assuming~~ where this requires the firm to assume an adversarial position against the other client;
- Specific mechanisms are in place to prevent disclosure of information between the engagement teams serving the two clients; and
- The firm is satisfied, weighing all the specific facts and circumstances, that a reasonable and informed third party would conclude that it is appropriate for the firm to accept the engagement in the particular circumstances, because a restriction on the firm's ability to provide the service would produce a disproportionate adverse outcome for the clients or other relevant third parties.

The professional accountant shall document the nature of the circumstances, including the role that the professional accountant is to undertake, the specific mechanisms in place to prevent disclosure of information between the engagement teams serving the two clients and the rationale for the conclusion that it is appropriate to accept the engagement.

220.9~~10~~If safeguards cannot eliminate the threat to objectivity and any threat to compliance with other fundamental principles created by a conflict of interest or reduce it to an acceptable level, the professional accountant in public practice shall decline to perform or shall discontinue professional services that could result in the conflict of interest; or terminate certain relationships or dispose of certain interests to eliminate the conflict.

220.11~~10~~When identifying and evaluating conflicts of interest and applying appropriate safeguards, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the professional accountant in public practice shall remain alert to the fundamental principle of confidentiality.

Proposed Changes to the Code of Ethics for Professional Accountants addressing Conflicts of Interest (CLEAN)

SECTION 220 Conflicts of Interest

Paragraphs 220.1-220.6 would be deleted and replaced with the following paragraphs 220.1-220.10:

- 220.1 A professional accountant in public practice may be faced with a conflict of interest when performing a professional service². A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created when:
- The professional accountant provides professional services with respect to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or

² **Revised Definition:** Professional Services: Professional activities performed for clients.

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- The interests of the professional accountant with respect to a particular matter and the interests of the client for whom the professional accountant provides professional services with respect to that same matter are in conflict.

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

220.2 Examples of situations in which conflicts of interests may arise include:

- Recommending a client to invest in a business in which a family member of the professional accountant in public practice has a financial interest;
- Providing services to both a vendor and a purchaser in relation to the same transaction;
- Acting as a liquidator of a company which is a debtor of an audit client of the liquidator's firm;
- Advising a client on its competitive position while having an interest in the same market segment;
- Advising two clients at the same time who are trying to acquire the same company;
- Preparing valuations of assets for two parties who are in an adversarial position with respect to the assets;
- Performing litigation services for the plaintiff in connection with a lawsuit filed against a client of the professional accountant's firm;
- Representing two clients who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership;
- Advising a client on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors.

220.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, the professional accountant in public practice shall exercise professional judgment and take into account whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised. 220.4 Before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice shall take reasonable steps to identify circumstances that might create a conflict of interest including identification of:

- the nature of the relationships between the parties involved and the nature of any relevant interests; and
- the nature of the service and its implication for relevant parties.

The nature of the services and the relevant relationships may change during the course of the engagement. This is particularly true when a professional accountant is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the professional accountant may not initially be involved in a dispute.

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220.5 For the purpose of identifying relationships that might create a conflict of interest, having an effective conflict identification process assists a professional accountant in public practice to identify potential conflicts prior to accepting an engagement and throughout an engagement. The earlier a potential conflict is identified, the greater the chance the professional accountant will be able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce them to an acceptable level. The process to identify potential conflicts of interest will depend on such factors as:

- The nature of the professional services provided;
- The size of the firm;
- The size and nature of the client base; and
- The structure of the firm, for example the number and geographic location of offices, and whether the firm is a member of a network.

220.6 If a conflict of interest between two clients or potential clients is identified, the professional accountant in public practice shall evaluate:

- the significance of relevant interests or relationships and;
- the extent to which a professional service performed for more than one client may result in a conflict of interest. In general, the more direct the connection between the professional service and the matter on which the clients' interests are in conflict, the more significant the conflict of interest may be.

The professional accountant shall evaluate any potential conflicts of interest that the professional accountant knows or has reason to believe may exist due to interests and relationships of a network firm, taking into account factors such as the nature of the professional services provided and the clients served, and the geographic locations of all relevant parties.

220.7 The professional accountant in public practice shall apply safeguards, when necessary, to eliminate or reduce the threats to compliance with the fundamental principles created by the conflict of interest to an acceptable level. Examples of safeguards include:

- Implementing mechanisms to prevent unauthorized disclosure of information when performing professional services for two or more clients with conflicting interests. This could include
- Using separate engagement teams when performing professional services for two or more clients with conflicting interests who are provided with clear policies and procedures on maintaining security and confidentiality;
- Creating separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm;
- Establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information;

- Having a professional accountant who is not involved in providing the service or otherwise affected by the conflict review the work performed to assess whether the key judgments and conclusions are appropriate;
- Regular review of the application of safeguards by a senior individual not involved with relevant client engagements; and
- Seeking guidance of third parties, such as consulting with a professional regulatory body.

220.8 In addition, depending upon the circumstances giving rise to the conflict, it is generally necessary to disclose the nature of the conflict to all clients affected by the conflict and to obtain their consent to the professional accountant performing the professional services.

Disclosure may take different forms, for example:

- Specific disclosure to all affected clients of the circumstances of the particular conflict together with any planned safeguards, sufficient to enable the client to make an informed decision with respect to the matter;
- General disclosure to potential clients of circumstances where the professional accountant, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector).

Consent may be obtained verbally or in writing. In certain circumstances consent may also be implied by the client's conduct, for example where the professional accountant is able to conclude that clients with knowledge of the circumstances at the outset have accepted the conflict if they do not raise an objection to the existence of the conflict of interest.

The professional accountant shall determine whether the significance of the conflict of interest is such that specific disclosure and consent is necessary.

If consent is obtained verbally or is implied by the client's conduct, the professional accountant is encouraged to document such consent.

220.9 In certain exceptional circumstances, requesting consent would in itself result in a breach of confidentiality. Examples of such circumstances may include:

- Performing a transaction-related service for a client in connection with a hostile takeover of another client of the firm;
- Performing a forensic investigation for a client where the firm has confidential information obtained through having performed a professional service for another client who would be the subject of the investigation.

The firm shall not accept such an engagement under such circumstances unless the following conditions are met:

- The firm does not act in an advocacy role for one client where this requires the firm to assume an adversarial position against the other client;
- Specific mechanisms are in place to prevent disclosure of information between the engagement teams serving the two clients; and
- The firm is satisfied, weighing all the specific facts and circumstances that a reasonable and informed third party would conclude that it is appropriate for the firm to accept the engagement because a restriction on the firm's ability to provide the service would produce a disproportionate adverse outcome for the clients or other relevant third parties.

The professional accountant shall document the nature of the circumstances, including the role that the professional accountant is to undertake, the specific mechanisms in place to prevent disclosure of information between the engagement teams serving the two clients and the rationale for the conclusion that it is appropriate to accept the engagement.

- 220.10 If safeguards cannot eliminate the threat to objectivity and any threat to compliance with other fundamental principles created by a conflict of interest or reduce it to an acceptable level, the professional accountant in public practice shall decline to perform or shall discontinue professional services that could result in the conflict of interest; or terminate certain relationships or dispose of certain interests to eliminate the conflict.
- 220.11 When identifying and evaluating conflicts of interest and applying appropriate safeguards, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the professional accountant in public practice shall remain alert to the fundamental principle of confidentiality.