PARAGRAPHS 100.17-.18 AND SECTIONS 220 AND 310

PARAGRAPHS 100.17 AND 100.18

Conflicts of Interest

100.17 A professional accountant may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:

- Conflicts between the interests of two or more parties for whom the professional accountant undertakes professional activities; or
- Conflicts between the interests of the professional accountant and the interests of a party for whom the professional accountant undertakes a professional activity.

100.18 Parts B and C of this Code discuss conflicts of interest for professional accountants in public practice and professional accountants in business, respectively.

SECTION 220

Conflicts of Interest

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

- Conflicts between the interests of two or more clients; or
- Conflicts between the interests of the professional accountant and the interests of the client.

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:

- Advising two shareholders in dispute over the distribution of assets on the dissolution of the company;
- Preparing a valuation of assets for each spouse in a divorce proceeding;
- 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 trying to acquire the same company;
- Representing two clients who are in a legal dispute with each other;
- Recommending a client to invest in a business in which the professional accountant in public practice has a financial interest; or
- Advising a client on the purchase of an information system while having a license agreement with a potential software vendor.

220.3 A professional accountant in public practice shall take reasonable steps to identify circumstances that might give rise to a conflict of interest. This includes potential conflicts of interest when accepting a new engagement and conflicts of interest that may arise during the course of an engagement. It is possible that the nature of an engagement may change during the course of the engagement. This is particularly true when a professional accountant is asked to conduct an engagement that is potentially adversarial, even though the parties who engage the professional accountant may not initially be in contention.

220.4 When identifying and evaluating the interests and relationships that might give rise to a conflict of interest and implementing safeguards, when necessary, the professional accountant in public practice shall take into account whether or not a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that compliance with the fundamental principles is compromised.

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 to relevant parties;
- Evaluate the significance of relevant interests or relationships;
- 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 relationship between the professional service and the matter on which the clients' interests are in conflict, the more significant the threats may be; and
- Evaluate any potential conflicts of interest that the professional accountant has reason to believe may exist due to interests and relationships of a network firm, taking into account factors such as the structure of the network, the geographic location of its firms and the nature of the clients served .

The professional accountant shall be alert to conflicts of interest that may arise during the course of an engagement.

220.6 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 or reduce it to an acceptable level. The process by which a firm shares information in order to identify conflicts of interest will vary and 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.

220.7 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. 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. If the consent is obtained verbally, the professional accountant is encouraged to document such consent. In certain circumstances the consent obtained from any relevant party may be implied by the party's conduct in keeping with common commercial practice. Examples of other safeguards include:

- Use of separate engagement teams when performing professional services for two or more clients with conflicting interests;
- Implementing institutional mechanisms to prevent unauthorized disclosure of information when performing professional services for two or more clients with conflicting interests. This could include the 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,
- Seeking guidance of third parties such as consulting with a professional regulatory body or another professional accountant.

220.8 If safeguards cannot eliminate the threat or reduce it to an acceptable level, the professional accountant in public practice shall decline to perform or discontinue professional services that could result in the conflict of interests; or terminate certain relationships or dispose of certain interests to eliminate the conflict.

220.9 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 be alert to the fundamental principle of confidentiality.

220.10 A firm may hold confidential information received from a client which could potentially damage that client's interests if disclosed to another client of the firm. In deciding whether to accept an engagement where such information might be relevant to the engagement, it is generally necessary for the firm to seek the consent of both clients. If the consent cannot be obtained because requesting the consent would in itself be a breach of confidentiality, the firm shall not accept the engagement unless the following conditions are met:

- The firm will not act in an advocacy role for one client against the other client pursuant to the engagement;
- Institutional mechanisms are in place to eliminate the threat to confidentiality, including the risk that confidential information provided by one client could be used to its detriment as a result of the firm providing services to another client; 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.

SECTION 310

Conflicts of Interest

310.1 A professional accountant in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:

- Conflicts between the interests of two or more parties for whom the professional accountant undertakes a professional activity; or
- Conflicts between the interests of the professional accountant and the interests of a party for whom the professional accountant undertakes a professional activity.

A party may include an employing organization, a vendor, a customer, a lender, a shareholder or another party.

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

310.2 Examples of situations in which conflicts of interest may arise for a professional accountant in business include:

- Serving on the Board of Directors of two companies and is privy to confidential information of one company that could be used by the professional accountant to the advantage or disadvantage of the other company;
- Undertaking a professional activity for each of two parties to assist them to dissolve their partnership;
- Being asked to prepare financial information for certain members of management who are seeking to undertake a management buy-out;
- Being responsible for selecting a vendor for the accountant's employing organization and an immediate family member of the professional accountant owns one of the potential vendors; and
- Serving on a Board of Directors that is approving certain investments for the company. If the Board approves a specific investment it will increase the value of the professional accountant's own personal investment portfolio.

310.3 A professional accountant in business shall be alert to all interests and relationships that 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, might give rise to a conflict of interest.

310.4 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, the professional accountant shall:

- Understand the nature of the relationships between the parties involved and their relevant interests;
- Understand the nature of the activity and its implications to relevant parties;
- Evaluate the significance or materiality of relevant interests or relationships;
- Evaluate the extent to which a professional activity for more than one party may result in a conflict of interest. In general, the more direct the relationship between the professional activity and the matter on which the parties' interests are in conflict, the more significant the threats may be.

When identifying and evaluating a conflict of interest, the professional accountant in business may wish to consult within the employing organization or with others such as another professional accountant or a member body.

310.5 The professional accountant in business shall apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. The professional accountant shall determine whether to discuss the nature of the conflict of interest at the appropriate levels within the employing organization, where relevant, and may consult with others such as another professional accountant or a member body. Depending on the circumstances giving rise to the conflict of interest, application of one or both of the following safeguards may be appropriate:

- Disclosing the nature of the conflict of interest to the relevant parties and obtaining their consent to undertake the professional activity. In certain circumstances consent may be implied by a party's conduct; or
- Structuring certain responsibilities and duties to reduce the threat to an acceptable level. This could include segregation of duties or obtaining appropriate oversight.

310.6 If safeguards cannot eliminate or reduce the threat to an acceptable level, the professional accountant in business shall decline to undertake or discontinue the professional activity or terminate the interest or relationship that creates the conflict of interest.

310.7 When identifying and evaluating conflicts of interest and applying appropriate safeguards, the professional accountant in business shall be alert to the fundamental principle of confidentiality.

310.8 A professional accountant in business may encounter other threats to compliance with the fundamental principles. This may occur, for example, when preparing or reporting financial information due to undue pressure from others within the employing organization or due to financial, business or personal relationships that close or immediate family members of the professional accountant have with the employing organization. Guidance on managing such threats is covered by Sections 320 and 340 of the Code.