

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF BERMUDA

RULES OF PROFESSIONAL CONDUCT

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF BERMUDA

RULES OF PROFESSIONAL CONDUCT

(The chartered accountant's responsibilities to clients, to the public and to colleagues)

(Headings are not part of the rules and are included only to assist with reference)

FOREWORD

The rules of professional conduct, comprehensive in their scope, practical in application and addressed to high moral standards, serve not only as a guide to the profession itself but as a source of assurance of the profession's concern for the public it serves. It is a mark of a profession that there is a voluntary assumption by those who compose it - the professional community - of ethical principles which are aimed, first and foremost, at protection of the public, and second, at achieving orderly and courteous conduct within the profession. It is to these purposes that the Institute's rules are directed.

* * *

The rules of professional conduct presume the existence of a profession. Since the word "profession" has lost some of its earlier precision through widespread application, it is worthwhile reviewing the characteristics which mark a calling as professional in the traditional sense. Much has been written on the subject and court cases have revolved around it. The weight of the authorities, however, identifies the following distinguishing elements:

- There is mastery by the practitioners of a particular intellectual skill, acquired by lengthy training and education;
- The foundation of the calling rests in public practice - the application of the acquired skill to the affairs of others for a fee;
- The calling centers on the provision of personal services rather than entrepreneurial dealing in goods;
- There is an outlook, in the practice of the calling, which is essentially objective;
- There is acceptance by the practitioners of a responsibility to subordinate personal interests to those of the public good;
- There exists a developed and independent society or institute, comprising the members of the calling, which sets and maintains standards of qualification, attests to the competence of the individual practitioner, and safeguards and develops the skills and standards of the calling;

- There is a specialized code of ethical conduct, laid down and enforced by that society or institute, designed principally for the protection of the public;
- There is a belief, on the part of those engaged in the calling, in the virtue of interchange of views, and in a duty to contribute to the development of their calling, adding to its knowledge and sharing advances in knowledge and technique with their fellow members.

By these criteria chartered accountancy is a profession.

It is essential to recognize that a profession does not cease to be a profession because a proportion of its members enter salaried private employment. These members continue to belong to the profession and to be subject to the rules of professional conduct.

* * *

The rules of professional conduct, as a whole, flow from the special obligations embraced by the chartered accountant. The reliance of the public, generally, and the business community, in particular, on sound and fair financial reporting and competent advice on business affairs, and the economic importance of that reporting and advice, impose these special obligations on the profession. They also establish firmly its social usefulness.

The rules of professional conduct centre about a number of principles - fundamental statements of accepted conduct whose soundness is, for the most part, self-evident.

These principles are:

- *A member or student shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.*
- *A member or student shall perform professional services with integrity and care and accept an obligation to sustain professional competence by keeping informed of, and complying with, developments in professional standards.*
- *A member who engages to perform an assurance or specified auditing procedures engagement shall be and remain free of any influence, interest or relationship, in respect of the client's affairs, which impairs the member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity.*
- *A member or student has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of the member's or student's duties, nor shall the member or student in any way exploit such information to the member's or student's advantage.*
- *The development of a member's practice shall be founded upon a reputation for professional excellence. The use of methods of advertising which do not uphold professional good taste is not in keeping with this principle.*

- *A member shall act in relation to any other member with the courtesy and consideration due between professional colleagues and which, in turn, the member would wish to be accorded by the other member.*

* * *

A number of the principles need not be expounded upon - those which concern upholding the honour and good reputation of the profession; the performance of professional services with integrity and care; the duty of confidence; and the duty to act with courtesy and consideration toward professional colleagues.

Some aspects of the principles and of the rules derived from them do, however, warrant discussion:

- the sustaining of professional competence;
- the duty to avoid conflicts of interest in respect of a client's affairs; and
- the development of a practice upon a reputation for professional excellence.

It is apparent that the more sophisticated and complex society becomes, the greater the demands it makes of its institutions, including its professions. Society's expectations of the accounting profession, particularly in its financial reporting roles and its business advisory services, will, therefore, continue to rise. This underscores the need, expressed in the statement of principles, for sustaining individual professional competence by keeping abreast of and complying with developments in professional standards in all functions in which the member practices, claims to specialize or is relied upon because of the member's calling.

It makes imperative, too, the duty that the chartered accountant has to bring, and be seen to bring, the qualities of objectivity and integrity to professional services. It thus becomes a cardinal position of a member of the profession that the member will not subordinate professional judgment to the will of others, and that the member expresses conclusions honestly and impartially.

In this respect, clearly, chartered accountants cannot practise their profession and participate in the affairs of their community without being exposed to circumstances that may place pressures upon their objectivity and integrity, and it would be impractical to impose detailed proscriptions intended to cover all conceivable situations. To do so on a rigid basis would be to inhibit the rendering of useful services even when the likelihood of impairment of the chartered accountant's objectivity is relatively remote.

It may be difficult for a chartered accountant always to appear completely free of any disabling influence, interest or relationship in respect of a client's affairs.

Pressures, however, upon the chartered accountant's objectivity or integrity are subject to powerful countervailing forces and restraints. These forces include liability in law, responsibility

to the profession for professional actions and, most importantly, the inbred resistance of a disciplined professional person to any infringement upon the person's basic impartiality and integrity in the rendering of services.

The public must be assured of the chartered accountant's freedom from conflict of interest. The profession tests the existence of this freedom against the criterion of whether a reasonable observer would conclude that a specified relationship between a chartered accountant and a client posed an unacceptable threat to the chartered accountant's independence of judgment. Only thus can public confidence in the objectivity and integrity of the chartered accountant be sustained,

and it is upon this public confidence that the reputation and usefulness of the profession rest. The reasonable observer should be regarded as a hypothetical individual who has knowledge of the facts which the chartered accountant knew or ought to have known, and who applies judgment objectively with integrity and due care.

Members have duties to their clients that arise from the nature of the relationships with the clients. Members have a professional duty to act with integrity and due care and a contractual duty to provide services as defined by the terms of the engagement. In certain cases, the relationship between a member and a client could also be one which the courts describe as a fiduciary relationship that gives rise to fiduciary duties.

The concepts of fiduciary relationship and fiduciary duty are derived from the law of trusts. The obligations of a fiduciary can be onerous and the implications of being in breach of a fiduciary duty can be significant.

In determining whether a fiduciary relationship does exist, a court will look at all of the factors but, in a professional engagement situation, will particularly focus on the purpose and nature of the service being provided; the extent of the reliance which the client places on the member; any lack of sophistication of the client; the vulnerability of the client to the influence of the member; and the discretionary authority, if any, granted by the client to the member. The court will also consider the extent of the disclosure to the client of the member's interest in the matter and whether the member has put himself or herself in a position of conflict or has an opportunity to receive a benefit unknown to the client.

Courts have held that, absent other circumstances, an auditor is not a fiduciary in the typical financial statement audit engagement (in keeping with the standard statutory purpose). However, when a member of the audit firm provides non-audit advisory services to the audit client and when the criteria for a fiduciary relationship exist, the audit firm may be found to be a fiduciary. A service provider is more likely to be found to be a fiduciary in professional engagements such as forensic or investigative accounting and investment advisory services.

Members must also note that a member who is an employee may, depending on the particular facts and circumstances, have a fiduciary relationship with his or her employer.

If there is any question as to whether a fiduciary relationship exists, legal advice should be obtained.

The specific duties that a court might find applicable to a fiduciary will vary depending on the particular facts and circumstances. In general, a fiduciary relationship requires the fiduciary to

act in the utmost good faith on behalf of the client. As such, a fiduciary must not place himself or

herself in a position where his or her interests conflict with that of the client; nor can a fiduciary profit from his or her position at the expense of the client. A fiduciary must use information obtained in confidence from a client only for the benefit of the client and must not use it for personal advantage or the benefit of another person. A fiduciary cannot act at the same time both for and against the same client and must make available to a client all of the information that is relevant to the client's affairs, unless these requirements are modified with the client's agreement. Other duties may be found to pertain but are less likely to apply to chartered accountants.

It is important for members to recognize that not all fiduciary relationships give rise to all fiduciary duties. The terms of the engagement, including explicit provisions for the disclosure of potential conflicts and/or the use of institutional mechanisms to maintain confidentiality are fundamentally important to the nature of the relationship and the duties that a court will find to apply in a particular case.

The responsibilities owed to an existing client are more comprehensive than the responsibilities owed to a former client. The responsibility owed to a former client is generally limited to the duty of confidentiality.

Some, but not all, fiduciary duties are also professional obligations under the rules of professional conduct. The existence of professional obligations that are similar to fiduciary duties is not in and of itself determinative as to whether a fiduciary relationship exists between a member and his or her client. The rules of professional conduct require that members maintain confidentiality, refrain from taking undisclosed profits and avoid conflicts of interest in all client relationships. While the law recognizes that only certain professional engagements give rise to fiduciary duties, members must be aware that they are subject to the rules of professional conduct in all engagements.

Turning to the matter of building a practice, strictures against publicly claiming skills or attributes superior to those possessed by colleagues with equal qualifications, and against unprofessional methods of business development are readily understood by a member of a profession. The profession can validly assert that such strictures as exist provide a result which is in the public interest. It would not be in the public interest that a practitioner could, publicly, claim to possess professional skills exceeding those of similarly qualified practitioners, in a purely subjective fashion and without hindrance or reasonable constraint; nor that quality of service in the important realm of rights and property, in which chartered accountants function, should become secondary to price - for example, a general practice engagement being tailored to a bid price rather than to the needs of the engagement, in the professional judgment of the chartered accountant.

It is not an exaggeration to suggest that these rules of professional conduct are basic to a profession, and serve the public interest in the quality of services provided by chartered accountants. The removal of all constraints would lead to downgrading the quality of service and the profession's reputation for competence and integrity. The public interest might not be served by an elimination of all constraints upon practitioners.

* * *

The rules which follow are based on the principles expressed in this Foreword. The principles themselves have emerged out of the collective experience of the profession as it has sought, down the years, to demonstrate its sense of responsibility to the public it serves. By their commitment to honourable conduct, members of the Institute, throughout its history, have given particular meaning and worth to the designation “chartered accountant”. They have done so by recognizing that rules of professional conduct, which are enforceable by sanctions, cannot by their nature state the most that is expected of members and students, but simply the least. The rules of professional conduct thus define a minimum level of acceptable conduct. Ethical conduct in its highest sense, however, is a product of personal character - an acknowledgement by the individual that the standard to be observed goes beyond simply conforming to the letter of a list of prohibitions.

Definitions

The definitions in and provisions of the Act and by-laws of the Institute govern these rules, where applicable. Members and students are referred, in particular, to by-law 2 which contains a number of relevant definitions. Additional definitions follow:

- “Advertise” means, in its application to a practising member, the making by or on behalf of the member of any representation to the public by any means whatsoever
 - (i) concerning services offered by the member as a chartered accountant or public accountant or accountant engaged in general practice or in a business or practice related thereto (as referred to in rules 420 and 421), or
 - (ii) in the process of recruiting professional staff,
- and “advertisement” and “advertising” have corresponding meanings.
- “General practice” means the carrying on of public practice in one or more of the following:
 - (a) performing an assurance engagement as defined in these rules;
 - (b) performing a specified auditing procedures engagement as defined in these rules; and
 - (c) performing a compilation engagement as defined in these rules;
 - (d) providing an accounting service insofar as it involves summarization, analysis, advice counsel or interpretation, but excluding an accounting service which is part of but incidental to the provider’s primary occupation which is not accounting;
 - (e) providing advice, counsel or interpretation with respect to taxation matters; and
 - (f) preparing a tax return or other statutory information filing when such preparation is in connection with a practice offering or providing a service described in paragraphs (a), (b), (c), (d), (e) or (f).

For greater certainty, general practice does not include:

- (g) management consulting, including investigating and identifying management and business problems related to the policy, technical, organizational, operational, financial systems, procedures or administrative aspects of organizations and recommending appropriate solutions;
 - (h) providing a forensic accounting, financial investigation or financial litigation support service;
 - (i) insolvency, including receivership, trusteeship in bankruptcy, liquidation and administration of bankrupt or insolvent companies and estates;
 - (j) data processing, including manual record-keeping;
 - (k) administratorship, insofar as it involves the management of affairs on behalf of others;
 - (l) computer systems consulting;
 - (m) business brokerage, negotiating and advising on the sale, financing, merger or acquisition of business organizations;
 - (n) executorship and estate administration;
 - (o) personal financial planning;
 - (p) investment counselling;
 - (q) insurance counselling; and
 - (r) valuation.
- “Assurance engagement” is an engagement where, pursuant to an accountability relationship between two or more parties, a practising accountant is engaged to issue a written communication expressing a conclusion concerning a subject matter for which the accountable party is responsible.
 - “Specified auditing procedures engagement” is an engagement where a practising accountant is engaged to report the results of applying specified auditing procedures to financial information other than financial statements when such procedures are not intended to enable the practising accountant to express an audit opinion or provide negative assurance on the financial information.
 - “Compilation engagement” is an engagement where a practising accountant receives information from a client and arranges it into the form of a financial statement, without providing any assurance regarding such financial statement.
 - “Organization” includes corporation, company, society, association, firm or similar body.
 - “Practising accountant” means an accountant engaged in general practice and an accountant who is an employee in a general practice.

- “Practising member” means a member who is a practising accountant; for student registration purposes, and subject in that regard to such conditions as may be stipulated by the Executive Committee from time to time, “practising member” includes a member who is the Auditor appointed pursuant to section 88 of The Bermuda Constitution Order 1968 and a member who is an employee in that member’s office.
- “Professional colleague” means a member of the Institute or of a provincial institute.
- “Public accounting firm” means a business organization, whatever legal form or forms it may take, that includes a member as an owner and that carries on general practice, either alone or as part of a multi-disciplinary firm.
- “Multi-disciplinary firm” means a business organization, whatever legal form or forms it may take, which includes a public accounting firm, together with a related business or practice which provides any service other than those services included in general practice.
- “Related business or practice” means a business or practice which is related to a general practice by reason of being cross-referenced
 - (a) with a general practice, or
 - (b) with any other business or practice which is cross-referenced with a general practice.
- “Cross-referenced” means, in relation to a general practice and one or more other businesses or practices,
 - (a) reference in the advertising, promotional or other material of any of them to any of the others, or
 - (b) use by them of any name, word, design or other feature or characteristic of presentation or communication,

which, in the view of a reasonable observer, would imply that the general practice or any of its proprietors,

 - (c) has proprietary interest or management influence in any of the other businesses or practices, or
 - (d) has any other ongoing economic association or relationship with any of the other businesses or practices.
- “Forensic accounting” means accounting services used in, or having application to, courts of law and adjudicative bodies.
- “Financial investigation” means the application of financial skills and an investigative approach to unresolved issues, conducted within the context of the relevant rules of evidence.
- “Financial litigation support” means assistance in the financial area provided to lawyers, non-lawyers, the courts and adjudicative bodies in the litigation process.

- “firm” means a sole practitioner, partnership, professional corporation, or association of member who carries or carry on the practice of public accounting, or carries or carry on related activities as defined by the Council

Application of the rules of professional conduct

A member who is not engaged in general practice must observe these rules except where the wording of any rule makes it clear that it relates only to general practice or a related business or practice or where there is a specific exception made in a particular rule.

The term “professional services” also applies to members who are not engaged in general practice. In this context, it includes those of the member’s activities where the public or the member’s associates are entitled to rely on membership in the Institute as giving the member particular competence and requiring due care, integrity and an objective state of mind.

A member is responsible to the Institute for compliance with these rules by others associated with the member in the public practice of the functions covered by the rules who are either under the member’s supervision or share with the member proprietary interest in the practice, and must not permit others to carry out on the member’s behalf acts which if the member carried them out would place the member in violation of the rules.

A member who is resident outside Bermuda is expected to abide by the rules of the organized accounting profession in the jurisdiction in which the member resides and to ensure that the member’s actions do not bring disrepute upon the Institute.

Interpretation of the rules of professional conduct

In interpreting the rules, they are to be read in light of the Foreword to the rules and the provisions of the bylaws of the Institute.

100 GENERAL

101 Compliance with by-laws, regulations and rules

Members students and firms shall comply with the by-laws, regulations and rules of the Institute as they may be from time to time and with any order or resolution of the Council, the Executive Committee or the officers of the Institute under the by-laws.

102.1 Conviction of criminal or similar offences

A member, student or firm who has been:

- (a) convicted of an offence of fraud, theft, forgery or tax evasion, or of an offence of conspiring or attempting to commit such an offence; or
- (b) found guilty of violating the provisions of any securities legislation; or

- (c) convicted of any criminal or similar offence for conduct in or relating to the member's professional capacity, or for conduct in circumstances where there was reliance on the member's membership in or association with the Institute; or
- (d) discharged absolutely or upon condition after pleading guilty to or being found guilty of an offence or violation described in (a), (b) or (c) above

shall promptly inform the Institute of the fact of the conviction, finding of guilt or discharge, as the case may be, when the right of appeal has been exhausted or expired.

- (2) This rule of professional conduct applies in respect of an offence or violation which occurs after the 8th day of May, 1997.

103 False or misleading applications

A member or student or any person who applies to become a member or student shall not sign or associate with any letter, report, statement or representation relating to such member's, student's or person's application for admission or re-admission to membership, or relating to such student's or person's application for registration or re-registration as a student, which the applicant knows, or should know, is false or misleading.

104 Requirement to reply in writing

A member, student or firm shall promptly reply in writing to any letter from the Institute in which a written reply is specifically required.

105 Co-operation with practice inspections and conduct investigations

A member or student shall co-operate with officers, employees and agents of the Institute who have been appointed to arrange or conduct:

- (a) a practice inspection; or
- (b) an investigation on behalf of a professional conduct committee.

200 STANDARDS OF CONDUCT AFFECTING THE PUBLIC INTEREST

201 Maintenance of reputation of profession

201.1 A member, student or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

201.2 Notwithstanding any other provisions of these rules, in the event a member, student or firm is charged under rule 201.1 on account of an offence or violation referred to in rule

102, when a certificate of conviction or certified copy of the original information or indictment with respect to the offence set out in rule 102 is filed with the discipline or appeal committee as provided for in by-law 84, there is a rebuttable presumption that the member, student or firm charged failed to maintain the good reputation of the profession and its ability to serve the public interest.

201.3 A member who accepts an appointment as auditor should report in accordance with the terms of the appointment, except where circumstances plainly justify the member in not so reporting.

201.4 A member who engages to serve as an advocate for a client shall ensure that:

- (a) the service is not an assurance or specified auditing procedures engagement;
- (b) the advocacy role of the member is apparent in the circumstances;
- (c) the position of the client is supportable; and
- (d) the position of the client can be argued or supported by the member or firm without the member or firm failing to comply with the independence standards required for other services which the member has engaged to provide.

202 Integrity and due care

A member, student or firm shall perform professional services with integrity and due care.

203.1 Professional competence

A member shall sustain professional competence by keeping informed of, and complying with, developments in professional standards in all functions in which the member practises or is relied upon because of the member's calling.

203.2 Co-operation with practice inspections and conduct investigations

A member, student or firm shall co-operate with officers, employees or agents of the Institute who have been appointed to conduct:

- (a) a practice inspection; or
- (b) an investigation on behalf of the Executive Committee or a professional conduct committee.

204 Independence

Definitions

For the purposes of Rules 204.1 to 204.8 and the related Council Interpretations:

“accounting role” means a position in which a person may or does exercise more than minimal influence over:

- (a) the contents of the financial statements; or
- (b) anyone who prepares the financial statements.

“assurance client” means an entity in respect of which a member or firm has been engaged to perform an assurance engagement.

“assurance engagement” means an assurance engagement as contemplated in “Standards for Assurance Engagements,” Section 5025 of the *CICA Handbook – Assurance*.

“audit client” means an entity in respect of which a member or firm has been engaged to perform an audit of the financial statements. In the application of Rule 204.4(1) to (12) “audit client” includes its related entities, and the reference to an assurance client, a client or an entity that is an audit client shall be read as including all related entities of the assurance client, client or entity as the case may be.

“audit committee” means the audit committee of the entity, or if there is no audit committee another governance body which has the duties and responsibilities normally granted to an audit committee.

“audit engagement” means an engagement to audit financial statements as contemplated in “Audit of Financial Statements — an Introduction,” Section 5090 of the *CICA Handbook – Assurance*.

“audit partner” means a person who is a partner in a firm or a person who has equivalent responsibility, other than a specialist or technical partner or equivalent who consults with others on the engagement team regarding technical or industry-specific issues, transactions or events, who is a member of the audit engagement team having responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements, or who maintains regular contact with management and the audit committee, and includes the following:

- (a) the lead engagement partner;
- (b) the engagement quality control reviewer;
- (c) another partner who, during the engagement period, provides more than ten hours of assurance services in connection with the annual financial statements or interim financial information of the client; and
- (d) a subsidiary entity engagement partner.

“clearly insignificant” means trivial and inconsequential.

“close family” means a parent, non-dependent child or sibling.

“collective investment scheme complex” means:

- (a) a collective investment scheme that has the same investment adviser or manager as a client;
- (b) a collective investment scheme that has an investment adviser or manager that is controlled by either the investment adviser or the manager of a client; and
- (c) a collective investment scheme that has an investment adviser or manager that is under common control with the investment adviser or manager of a client.

For the purposes of this definition, a collective investment scheme is an entity as described under the definition of “reporting issuer”, subparagraphs (i) or (ii) below. Investment adviser has the meaning in the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations.

“direct financial interest” means a financial interest:

- (a) owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others);
- (b) beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control;
- (c) owned through an investment club or by a private mutual fund in which the individual participates in the investment decisions.

“engagement quality control reviewer”, often referred to as reviewing, concurring or second partner, means the audit partner who, prior to issuance of the audit report, evaluates the significant judgments made by the lead engagement partner and other persons on an engagement team, the conclusions reached in formulating the audit report and other significant matters that have come to the partner’s attention.

“engagement team” means:

- (a) each member of the firm participating in the assurance engagement;
- (b) all other members of the firm who can directly influence the outcome of the assurance engagement, including:
 - (i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of, the assurance engagement partner in connection with the performance of the assurance engagement. For the purposes of an audit engagement this includes those at all successively senior levels above the lead engagement partner through to the firm’s chief executive officer;
 - (ii) those who provide consultation regarding technical or industry-specific issues, transactions or events for the assurance engagement; and
 - (iii) those who provide quality control for the assurance engagement;and
- (c) in the case of an audit client, all persons in a network firm who can directly influence the outcome of the audit engagement.

“financial interest” includes a direct or indirect ownership interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

“financial reporting oversight role” means a position in which a person may or does exercise influence over:

- (a) the contents of the financial statements; or
- (b) anyone who prepares the financial statements.

“firm” means a sole practitioner, partnership, corporation or association of members who carries or carry on a general practice, or carries or carry on related activities as defined by the Council.

“immediate family” means a spouse (or equivalent) or dependant.

“indirect financial interest” means a financial interest beneficially owned through a collective investment vehicle such as a mutual fund, estate, trust or other intermediary over which the beneficial owner has no control.

“lead engagement partner” means the audit partner having primary responsibility for an audit or review engagement.

“market capitalization” in respect of a particular fiscal year means the average market price of all outstanding listed securities and publicly traded debt of the entity measured at the end of each of the first, second and third quarters of the prior fiscal year and the year-end of the second prior fiscal year.

“member of a firm” or **“member of the firm”**, as the case may be, means a person, whether or not a member of a provincial Institute or Ordre, who is:

- (a) a sole practitioner;
- (b) a partner, professional employee or student of the firm;
- (c) an individual engaged under contract by the firm to provide services that might otherwise be provided by a partner or professional employee of the firm;

- (d) an individual who provides to the firm services which are referred to in Rule 204.1 and includes any corporate or other entity through which the individual contracts to provide such services; or
- (e) a retired partner of the firm who retains a close association with the firm.

“network firm” means an entity under common control, ownership or management with a firm, or any entity that a reasonable observer who has knowledge of the facts would conclude to be part of a firm nationally or internationally. A network firm does not include an entity that constitutes a related business or practice, as defined, in Bermuda or Canada.

“office” means a distinct sub-group of a firm, whether organized on geographical or practice lines.

“related entity” means:

- (a) in the case of a client that is a reporting issuer, an entity that has control over a client, or over which the client has control, or that is under common control with a client, including the client’s parent company and any subsidiaries;
- (b) in the case of a client that is not a reporting issuer:
 - (i) an entity over which the client has control;
 - (ii) an entity that has control over the client, provided the client is material to such entity; and
 - (iii) an entity that is under common control with the client, provided such entity and the client are not both material to the controlling entity;
- (c) in any case, an entity over which a client has significant influence, unless the entity is not material to the client; and
- (d) in any case, an entity that has significant influence over a client, unless the client is not material to the entity.

“reporting issuer” means:

- (i) an investment fund classified as a “Bermuda Recognised Scheme” under the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations;
- (ii) an investment fund classified as a “Bermuda Standard Scheme” under the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations, except one meeting the criteria in Regulation 3 of Part C of those Regulations;
- (iii) a reporting issuer in Canada, as defined in the applicable Canadian provincial or territorial securities legislation, whose shares, debt or other securities are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body; or
- (iv) an entity, other than an investment fund, whose shares, debt or other securities are quoted or listed on a recognized stock exchange,

other than an entity that has, in respect of a particular fiscal year, market capitalization and total assets that are each less than BD\$10,000,000. An entity that becomes a reporting issuer by virtue of the market capitalization or total assets becoming BD\$10,000,000 or more in respect of a particular fiscal year shall be considered to be a reporting issuer thenceforward unless and until the entity ceases to meet the criteria in (i), (ii) or (iii) above or the entity has remained under the market capitalization or total assets threshold for a period of two years.

In the case of a period in which an entity makes a public offering:

- (a) the term “market capitalization” shall be read as referring to the market price of all outstanding listed securities and publicly traded debt measured using the closing price on the day of the public offering; and
- (b) the term “total assets” shall be read as referring to the amount of total assets presented on the most recent financial statements prepared in accordance with generally accepted accounting principles included in the public offering document.

In the case of a reporting issuer that does not have listed securities or publicly traded debt, the definition of reporting issuer shall be read without reference to market capitalization.

“review client” means an entity in respect of which a member or firm conducts a review engagement. In the application of Rule 204.4(1) to (12) “review client” includes its affiliates, and the reference to an assurance client, a client or an entity that is a review client shall be read as including all affiliates of the assurance client, client or entity, as the case may be.

“review engagement” means an engagement contemplated either in “Auditor Review of Interim Financial Statements,” Section 7050 or “General Review Standards,” Section 8100 of the *CICA Handbook – Assurance*.

“specified auditing procedures engagement” means an engagement contemplated in “Reports on the Results of Applying Specified Auditing Procedures to Financial Information Other Than Financial Statements,” Section 9100 of the *CICA Handbook – Assurance*.

“subsidiary entity engagement partner” means the lead engagement partner for an audit engagement related to the annual financial statements or interim financial information of an entity that is a subsidiary or joint venture of an audit client and whose assets or revenues constitute 20% or more of the assets or revenues of the audit client’s respective consolidated assets or revenues.

“total assets” in respect of a particular fiscal year means the amount of total assets presented on the prior fiscal year’s financial statements prepared in accordance with generally accepted accounting principles that are filed with a relevant securities regulator or stock exchange.

Rule 204 - Effective date and transitional provisions

Rules 204.1 to 204.8 shall take effect, no later than:

- (a) for an assurance engagement in respect of a particular reporting period of a client, for the first reporting period commencing after December 31, 2003; and
- (b) for any other assurance engagement and an engagement to issue a report of the results of applying specified auditing procedures where the engagement is commenced after December 31, 2003,

subject to the following transitional provisions, as may be applicable.

1. Provision of non-assurance services

The non-assurance services referred to in 204.4(22) to (33) do not include a service that has not been completed before January 1, 2004 where:

- (i) There exists on December 31, 2003 a binding contract for the member or firm to provide the service;
- (ii) The provision of the service is completed before January 1, 2005; and

- (iii) The provision of the service by the member or firm would not have contravened the provisions of Rule 204.1 as it read prior to January 1, 2004.

2. Prior approval of audit and non-audit services

Rule 204.4 (21) shall not apply to a professional service that has not been completed before January 1, 2004 where:

- (i) There exists on December 31, 2003 a binding contract for the member or firm to provide such service; and
- (ii) The provision of the service is completed before December 31, 2005.

3. Employment relationships

The reference to employment in Rule 204.4(16) shall not apply to an employment relationship entered into by a person before January 1, 2004.

4. Compensation of audit partners

Rule 204.4(35) shall not apply to the compensation of an audit partner in respect of the fiscal period of the audit partner's firm that includes December 31, 2003.

5. Audit partner rotation

Notwithstanding the requirements of 204.4(20):

- (i) A lead engagement partner may continue in that role for a particular client up to and including the second fiscal year of the client commencing after December 31, 2003, notwithstanding that such partner has completed five or more years in that role, or in the role of engagement quality control reviewer, before that second fiscal year;
- (ii) An engagement quality control reviewer may continue in that role for a particular client up to and including the third fiscal year of the client commencing after December 31, 2003, notwithstanding that such partner has completed five or more years in that role, or in the role of lead engagement partner, before that third fiscal year;
- (iii) A partner referred to in Rule 204.4(20)(b) may continue in the particular role for up to seven years after December 31, 2003 notwithstanding that such partner has completed seven or more years in that role before the fiscal year of the particular client commencing after December 31, 2003;
- (iv) A member may commence the role of lead engagement partner for a particular client prior to the end of the client's second fiscal year commencing after December 31, 2003, and may continue in that role for five years, notwithstanding the number of years, if any, that the member was previously the engagement quality control reviewer for the particular client.

6. Auditors of collective investment schemes and other non-listed reporting issuers

The provisions of these rules as they relate to auditors of collective investment schemes and other non-listed reporting entities shall take effect no later than the first reporting period commencing after December 31, 2005, subject to the transitional provisions applicable to Rules 204.1 to 204.8 for the changes that took effect for the first reporting period commencing after December 31, 2003, except that, in the application to a reporting issuer that would not have been a listed entity if the definition of listed entity as it read on January 1, 2004 were to apply, the references in these transitional provisions to

2003, 2004 and 2005, as they apply to the rules affecting the reporting issuer, shall be read as 2005, 2006 and 2007 respectively.

204.1 Assurance and Specified Auditing Procedures Engagements

A member or firm who engages or participates in an engagement:

- (a) to issue a written communication under the terms of an assurance engagement; or
- (b) to issue a report on the results of applying specified auditing procedures;

shall be and remain independent such that the member, firm and members of the firm shall be and remain free of any influence, interest or relationship which, in respect of the engagement, impairs the professional judgment or objectivity of the member, firm or a member of the firm or which, in the view of a reasonable observer, would impair the professional judgment or objectivity of the member, firm or a member of the firm.

204.2 Identification of Threats and Safeguards

A member or firm who is required to be independent pursuant to Rule 204.1 shall, in respect of the particular engagement, identify threats to independence, evaluate the significance of those threats and, if the threats are other than clearly insignificant, identify and apply safeguards to reduce the threats to an acceptable level. Where safeguards are not available to reduce the threat or threats to an acceptable level, the member or firm shall eliminate the activity, interest or relationship creating the threat or threats, or refuse to accept or continue the engagement.

204.3 Documentation

A member or firm who, in accordance with Rule 204.2, has identified a threat that is not clearly insignificant, shall document a decision to accept or continue the particular engagement. The documentation shall include the following information:

- (a) a description of the nature of the engagement;
- (b) the threat identified;
- (c) the safeguard or safeguards identified and applied to eliminate the threat or reduce it to an acceptable level; and
- (d) an explanation of how, in the member's or firm's professional judgment, the safeguards eliminate the threat or reduce it to an acceptable level.

204.4 Specific Prohibitions, Assurance and Specified Auditing Procedures Engagements

In addition to complying with Rules 204.1, 204.2, 204.3, 204.5 and 204.6 a member or firm shall comply with the following specific prohibitions:

Financial interests

- (1) (a) A member or student shall not participate on the engagement team for an assurance client if the member or student, or the immediate family of the member or student, holds a direct financial interest or a material indirect financial interest in the client.
- (b) A member or student shall not participate on the engagement team for an assurance client if the member or student, or the immediate family of the member or student, holds, as trustee, a direct financial interest or a material indirect financial interest in the client.
- (2) A member or firm shall not perform an audit or review engagement for an entity if the member, firm or a network firm, has a direct financial interest or a material indirect financial interest in the entity.

- (3) A member or firm shall not perform an audit or review engagement for an entity if a pension or other retirement plan of the firm or network firm has a direct financial interest or a material indirect financial interest in the entity.
- (4) A member who is a partner of a firm and who holds, or whose immediate family holds, a direct financial interest or a material indirect financial interest in an audit or review client shall not practice in the same office as the lead engagement partner for the client.
- (5) A member who is a partner or managerial employee of a firm and who holds, or whose immediate family holds, a direct financial interest or a material indirect financial interest in an audit or review client shall not provide a non-assurance service to the client, unless the non-assurance service is clearly insignificant.
- (6) (a) A member or firm shall not perform an audit or review engagement for an entity (the first entity) if the firm or a network firm has a financial interest in a second entity, and the member or firm knows that the first entity or a director, officer or controlling owner of the first entity also has a financial interest in the second entity, unless the respective financial interests of the firm or network firm and the first entity, the director, officer or controlling owner of the first entity are immaterial and the first entity cannot exercise significant influence over the second entity.

(b) A member or student shall not participate on an engagement team for an audit or review client if the member or student has a financial interest in an entity and the member or student knows that the client or a director, officer or controlling owner of the client also has a financial interest in the entity, unless the respective financial interests of the member or student and the client, the director, officer or controlling owner of the client are immaterial and the client cannot exercise significant influence over the entity.
- (7) (a) A member or firm shall not perform an audit or review engagement for an entity if a partner or professional employee of the firm owns, or such person's immediate family owns, more than 0.1% of the securities of the entity or controls the entity.

(b) A member who is a partner or professional employee of a firm shall not own more than 0.1% of the securities of, or control, an audit or review client of the firm.
- (8) A member or student shall not participate on the engagement team of an audit or review client if the member or student knows that his or her close family owns more than 0.1% of the securities of the client or controls the client.
- (9) A member or firm shall not perform an assurance engagement for an entity that is not an audit or review client if the member or firm holds:
 - (i) a direct financial interest or a material indirect financial interest in the entity; or
 - (ii) a material financial interest in another entity that has a controlling interest in the first entity.

Loans and guarantees

- (10)(a) A member or firm shall not perform an assurance engagement for a client if the firm, or a network firm in the case of an audit or review client, has a loan from or has a loan

guaranteed by the client, except when the client is a bank or similar financial institution and the loan or guarantee is immaterial to the firm, the network firm, and the client, and the loan or guarantee is made under normal commercial terms and conditions and is in good standing.

- (b) A member or firm shall not perform an assurance engagement for a client that is not a bank or similar financial institution if the firm, or a network firm in the case of an audit or review client, has a loan to the client.
 - (c) A member or firm shall not perform an assurance engagement for a client if the firm, or a network firm in the case of an audit or review client, guarantees a loan of the client.
- (11)(a) A member or firm shall not perform an assurance engagement for a client if the firm, or a network firm in the case of an audit or review client, has a loan from or has a loan guaranteed by:
- (ii) an officer or director of the assurance client; or
 - (iii) a shareholder of the assurance client who owns more than 10% of the equity securities of the client.
- (b) A member or firm shall not perform an assurance engagement for a client if the firm, or a network firm in the case of an audit or review client, has a loan to or guarantees a loan of:
- (i) an officer or director of the assurance client; or
 - (ii) a shareholder of the assurance client who owns more than 10% of the equity securities of the client.
- (12)(a) A member or student who has a loan from or has a loan guaranteed by:
- (i) an assurance client, except a client that is a bank or similar financial institution where the loan or guarantee is made under normal commercial terms and conditions and the loan is in good standing,
 - (ii) an officer or director of the client, or
 - (iii) a shareholder of the client who owns more than 10% of the equity securities of the client, shall not participate on the engagement team for the client.
- (b) A member or student who has a loan to or guarantees the borrowing of
- (i) an assurance client that is not bank or similar financial institution;
 - (ii) an officer or director of the client; or
 - (iii) a shareholder of the client who owns more than 10% of the equity securities of the client shall not participate on the engagement team for the client.

Close business relationships

- (13)(a) A member or firm shall not perform an audit or review engagement for an entity if the firm, or a network firm, has a close business relationship with the entity or its management unless the close business relationship is limited to a financial interest that is immaterial and the relationship is clearly insignificant to the firm or network firm and the entity or its management, as the case may be.
- (b) A member or firm shall not perform an assurance engagement that is not an audit or review engagement if the firm has a close business relationship with the assurance client or its management unless the close business relationship is limited to a financial interest that is immaterial and the relationship is clearly insignificant to the firm and the client or its management, as the case may be.
- (c) A member or student who has a close business relationship with an assurance client or its management shall not participate on the engagement team for the client unless the close business relationship is limited to a financial interest that is immaterial and the

relationship is clearly insignificant to the member and the client or its management, as the case may be.

Family and personal relationships

- (14) A member or student shall not participate on the engagement team for an assurance client if the member's or student's immediate family is a director or officer of the client or an employee of the client in a position to exert direct and significant influence over the subject matter of the engagement, or was in such a position during any period covered by the engagement.
- (15) A member or student shall not participate on the engagement team for an audit client that is a reporting issuer if the member's or student's close family is in an accounting role or a financial reporting oversight role at the client, or was in such a position during any period covered by the engagement.

Employment with a reporting issuer audit client

- (16) A member or firm shall not perform an audit engagement for a reporting issuer if a person who participated in an audit capacity in an audit of the financial statements of the entity performed by the member or firm has accepted employment in a financial reporting oversight role with respect to the entity until a period of one year has elapsed from the date that the financial statements were filed with the relevant securities regulator or stock exchange.

Recent service with an assurance client

- (17) A member or student shall not participate on an engagement team for an assurance client if the member or student served as an officer or director of the client or was an employee thereof in a position to exert direct and significant influence over the subject matter of the engagement during the period covered by the assurance report.

Serving as an officer or director of an assurance client

- (18) A member or firm shall not perform an assurance engagement for an entity if a member of the firm serves as an officer or director for the entity.

Serving as an officer or director of an audit or review client

- (19)(a) A member or firm shall not perform an audit or review engagement for an entity if a member of a network firm serves as an officer or a director of the entity other than, in the case of an entity that is not a reporting issuer, serving as company secretary and the practice is specifically permitted under local law, professional rules or practice, and the duties and functions undertaken are limited to those of a routine and formal administrative nature.
- (b) A member or firm shall not perform an audit engagement for a reporting issuer, or a related entity, if a member of the firm or a network firm serves as an officer or a director of a related entity of the reporting issuer.

Long association of senior personnel with a reporting issuer audit client

- (20)(a) (i) A member shall not continue as the lead engagement partner or the engagement quality control reviewer on an audit engagement of a reporting issuer for more than five years in total, and shall not thereafter resume or assume either such role until a further five years have elapsed.
- (ii) In the case of an audit engagement of a reporting issuer that is a collective investment scheme, the lead engagement partner and the engagement quality control reviewer shall not thereafter resume or assume either such role with the reporting issuer or another collective investment scheme that is in the same collective investment scheme complex as the reporting issuer until the further five-year period has elapsed.
- (b) (i) A member, who is an audit partner on an audit engagement of a reporting issuer, other than an audit partner referred to in rule 204.4(20)(a), who, during the engagement period, provides more than ten hours of assurance services in connection with the annual financial statements or the interim financial information of the reporting issuer or who is a subsidiary engagement partner with respect to the entity shall not continue in such role or roles for more than seven years in total and shall not thereafter perform the role of audit partner of the reporting issuer until a further two years have elapsed.
- (ii) In the case of an audit engagement of a reporting issuer that is a collective investment scheme, the audit partner shall not thereafter perform the role of audit partner of the reporting issuer or another collective scheme that is in the same collective investment scheme complex as the reporting issuer until the further two-year period has elapsed.

Audit committee approval of services to a reporting issuer audit client

- (21) A member or firm shall not provide a professional service to an audit client that is a reporting issuer, or to a subsidiary thereof, without the prior approval of the reporting issuer's audit committee.

Performance of management functions for an assurance client

- (22)(a) A member or firm shall not perform an assurance engagement for an entity if, during the engagement period, a member of the firm makes a management decision or performs a management function for the entity, including:
- (i) authorizing, approving, executing or consummating a transaction;
 - (ii) having or exercising authority on behalf of the entity;
 - (iii) determining which recommendation of the member or firm will be implemented; or
 - (iv) reporting in a management role to those charged with governance of the entity.
- (b) A member or firm shall not perform an audit or review engagement for an entity, if a member of a network firm, during either the period covered by the financial statements subject to audit or review or the engagement period, makes a management decision or performs a management function for the entity including any of the services listed in paragraph 22(a)(i) to (iv);
- (c) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or review or the engagement period, a member of the firm or a network firm, makes a management decision or performs a management function for the entity, or a related entity, including any of the services listed in paragraph 22(a)(i) to (iv).

Preparation of journal entries and source documents

- (23) A member or firm shall not perform an audit or review engagement for an entity if, during either the period covered by the financial statements subject to audit or review or the engagement period, a member of the firm or a network firm:
- (i) prepares or changes a journal entry, determines or changes an account code or a classification for a transaction or prepares or changes another accounting record without obtaining the approval of management of the entity; or
 - (ii) prepares a source document or originating data, or makes a change to such a document or data.

Preparation of accounting records and financial statements for a reporting issuer audit client

- (24) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, firm, a network firm or a member of the firm or a network firm provides accounting or bookkeeping services related to the accounting records or financial statements to be audited including:
- (i) maintaining or preparing the entity's, or related entity's, accounting records;
 - (ii) preparing the financial statements or preparing financial statements which form the basis of the financial statements on which the audit report is provided; or
 - (iii) preparing or originating source data underlying such financial statements, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during the audit of such financial statements. In determining whether such a conclusion is reasonable, there is a rebuttable presumption that the results of the accounting or bookkeeping services will be subject to audit procedures.

Provision of valuation services to a reporting issuer audit client

- (25) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or a network firm, provides a valuation service to the client or the related entity, unless it is reasonable to conclude that the results of that service will not be subject to audit procedures during the audit of the financial statements. In determining whether such a conclusion is reasonable, there is a rebuttable presumption that the results of the valuation service will be subject to audit procedures.

Provision of actuarial services to a reporting issuer audit client

- (26) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or network firm, provides an actuarial service to the client or a related entity, unless it is reasonable to conclude that the results of that service will not be subject to audit procedures during the audit of the financial statements. In determining whether such a conclusion is reasonable, there is a rebuttable presumption that the results of the actuarial service will be subject to audit procedures.

Provision of internal audit services to a reporting issuer audit client

- (27) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or network firm,

provides an internal audit service to the client or a related entity, that relates to the client's, or the related entity's, internal accounting controls, financial systems or financial statements unless it is reasonable to conclude that the results of that service will not be subject to audit procedures during the audit of the financial statements. In determining whether such a conclusion is reasonable, there is a rebuttable presumption that the results of the internal audit service will be subject to audit procedures.

Provision of IT system services to a reporting issuer audit client

- (28) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or network firm provides financial information systems design or implementation services and the services involve:
- (i) directly or indirectly operating, or supervising the operation of, the entity's or a related entity's information system, or managing the entity's or a related entity's local area network; or
 - (ii) designing or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the entity's or a related entity's financial statements or other financial information systems taken as a whole;
- unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the financial statements. In determining whether such a conclusion is reasonable, there is a rebuttable presumption that the results of the financial information systems design and implementation services will be subject to audit procedures.

Provision of expert services to a reporting issuer audit client

- (29) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or network firm, provides an expert opinion or other expert service for the entity or a related entity, or for a legal representative thereof, for the purpose of advocating the entity's or related entity's, interest in a civil, criminal, regulatory, administrative or legislative proceeding or investigation.

Provision of legal services to an audit or review client

- (30) A member or firm shall not perform an audit or review engagement for an entity if, during either the period covered by the financial statements subject to audit or review or the engagement period, the member, the firm, a network firm or a member of the firm or network firm provides a legal service to the entity in the resolution of a dispute or litigation in circumstances where the matters in dispute or subject to litigation are material in relation to such financial statements.

Provision of legal services to a reporting issuer audit client

- (31) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement

period, the member, the firm, a network firm or a member of the firm or network firm, provides a legal service to the entity or a related entity.

Human resource services for a reporting issuer audit client

- (32) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, the member, the firm, a network firm or a member of the firm or network firm, provides any of the following services to the entity or a related entity:
- (i) searching for or seeking out prospective candidates for management, executive or director positions;
 - (ii) engaging in psychological testing, or other formal testing or evaluation programs;
 - (iii) undertaking reference checks of prospective candidates for an executive or director position;
 - (iv) acting as a negotiator or mediator on the entity's behalf with respect to employees or future employees with respect to any condition of employment, including position, status or title, compensation or fringe benefits; or
 - (v) recommending or advising the entity or a related entity to hire a specific candidate for a specific job.

Provision of corporate finance and similar activities to an assurance client

- (33)(a) A member or firm shall not perform an assurance engagement for an entity if, during the engagement period, the firm, or a member of the firm, provides any of the following services to the entity:
- (i) promoting, dealing in or underwriting the entity's securities;
 - (ii) making investment decisions on behalf of the entity or otherwise having discretionary authority over the entity's investments;
 - (iii) executing a transaction to buy or sell the entity's investments; or
 - (iv) having custody of assets of the entity, including taking temporary possession of securities purchased by the entity.
- (b) A firm shall not perform an audit or review engagement for an entity if a network firm, during either the period covered by the financial statements subject to audit or review or the engagement period, provides any of the services listed in paragraph 33(a)(i) to (iv) to the entity.
- (c) A firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or review or the engagement period, a member of the firm or a network firm, provides any of the services listed in paragraph 33(a)(i) to (iv) to a related entity of the reporting issuer.

Pricing

- (34) A member or firm shall not provide an assurance service for a fee that the member or firm knows is significantly lower than that charged by the predecessor member or firm, or contained in other proposals for the engagement, unless the member or firm can demonstrate:
- (i) that qualified members of the firm have been assigned to the engagement and will devote the appropriate time to it; and
 - (ii) that all applicable assurance standards, guidelines and quality control procedures have been followed.

Compensation of audit partners of a reporting issuer audit client

- (35) A member or firm shall not perform an audit engagement for a reporting issuer if, during either the period covered by the financial statements subject to audit or the engagement period, an audit partner who is on the engagement team for the reporting issuer or a related entity earns or receives compensation based on the audit partner procuring any engagement that is not an assurance engagement from the reporting issuer or a related entity, unless the member firm or the firm has fewer than five audit clients that are listed entities and fewer than ten partners.

Gifts and hospitality

- (36) A member or student who participates on an engagement team for an assurance client and the member's or student's firm shall not accept a gift or hospitality, including a product or service discount, from the client or a related entity, unless the gift or hospitality is clearly insignificant to the member, student or firm, as the case may be.

204.5 Members Must Disclose Prohibited Interests and Relationships

A member or student who has a relationship or interest, or who has provided a professional service, that is precluded by this Rule shall advise in writing a designated partner of the firm of the interest, relationship or service.

A member or student who has been assigned to an engagement team for an assurance client shall advise, in writing, a designated partner of the firm of any interest, relationship or activity that would preclude the person from being on the engagement team.

204.6 Firms To Ensure Compliance by Partners and Professional Employees

A firm that performs an assurance engagement shall ensure that members of the firm do not have a relationship or interest, do not perform a service and remain free of any influence that would preclude the firm from performing the engagement pursuant to Rules 204.1, 204.2, 204.4 or 204.7.

204.7 Independence: Insolvency Engagements

A member or firm who engages or participates in an engagement to act in any aspect of insolvency practice, including as a trustee in bankruptcy, a liquidator, a receiver or a receiver-manager, shall be and remain independent such that the member, firm and members of the firm shall be and shall remain free of any influence, interest or relationship which, in respect of the engagement, impairs the professional judgment or objectivity of the member, firm or member of the firm or which, in the view of a reasonable observer, would impair the professional judgment or objectivity of the member, firm or member of the firm.

204.8 Disclosure of Impaired Independence

A member or firm engaged in the practice of public accounting or any related function, who provides a service not subject to the requirements of Rules 204.1 to 204.7, shall disclose any activity, interest or relationship which, in respect of the engagement, would be seen by a reasonable observer to impair the member's or firm's independence such

that the professional judgment or objectivity of the member, firm or member of the firm would appear to be impaired, and such disclosure shall be made in the member's or firm's written report or other written communication accompanying financial statements or financial or other information and the disclosure shall indicate the nature of the influence or relationship and the nature and extent of the interest.

205 False or misleading documents and oral representations

A member, student or firm shall not:

- (a) sign or be associated with any letter, report, statement, representation or financial statement which the member, student or firm knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility; nor
- (b) make or be associated with any oral report, statement or representation which the member, student or firm knows, or should know, is false or misleading.

206 Compliance with professional standards

1. A member [or firm] engaged in the practice of public accounting shall perform professional services in accordance with generally accepted standards of practice of the profession.
2. A member who has responsibility for the preparation or approval of the general purpose financial statements of an entity shall ensure those financial statements are presented fairly in accordance with generally accepted accounting principles or such other accounting principles as may be required in the circumstances.
3. A member who, as a member of an entity's audit committee or board of directors, is required to participate in the review or approval of the entity's general purpose financial statements by such committee or board, shall carry out that responsibility with the care and diligence of a competent Chartered Accountant, enhanced by the skills and knowledge derived from the member's own career.

207 Unauthorized benefits

A member or student shall not, in connection with any transaction involving a client or an employer, and a firm shall not, in connection with any transaction involving a client, hold, receive, bargain for, become entitled to or acquire, directly or indirectly, any fee, remuneration or benefit for personal advantage or for the advantage of a third party without the knowledge and consent of the client or employer, as the case may be.

208 Confidentiality of information

208.1 A member, student or firm shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer except:

- (a) when properly acting in the course of carrying out professional duties;

- (b) when such information should properly be disclosed for purposes of rule 211 or rule 302;
- (c) when such information is required to be disclosed by order of lawful authority or, in the proper exercise of its duties, by the Council, the Executive Committee, a professional conduct committee, a discipline committee, an appeal committee, or a practice inspection committee;
- (d) when justified in order to defend such member or student or associates of such member or student or employees of such member, as the case may be, against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
- (d) when justified in order to defend, the member, student or firm or any associates of employees of the member, student or firm, as the case may be, against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
- (e) when the client, former client, employer or former employer, as the case may be has consented to such disclosure.

208.2 A member student or firm shall not use confidential information of any client, former client, employer or former employer as the case may be, obtained in the course of professional work for such client or employer

- (a) for the advantage of the member, student or firm,
- (b) for the advantage of a third party, or
- (c) to the disadvantage of such client or employer

without the knowledge and consent of the client, former client, employer or former employer.

208.3 A member or firm engaged to perform a particular service may contract with a non-member to assist in the performance of that service, provided the member or firm first obtains the written agreement of that non-member to preserve the confidentiality of any information acquired for the purposes of the engagement and not to make use of such information other than as shall be required in the performance of such services.

209 Borrowing from Clients

209.1 A member, student or firm shall not, directly or indirectly, borrow from or obtain a loan guarantee from a client unless either

- (a) the loan or guarantee has been made under normal commercial terms and conditions, and
 - (i) the client is a bank or similar financial institution whose business includes lending money to the public; or

- (ii) the client is a person or entity, a significant portion of whose business is the private lending of money;

or

- (b) (i) in the case of a member or student, the client is a family member or an entity over which a family member exercises significant influence;
or
(ii) in the case of a firm, the client is a family member of a partner or shareholder of the firm or an entity over which a family member of a partner or shareholder of the firm exercises significant influence.

209.2 For purposes of Rule 209.1, a client includes a person or entity who has, within the previous two years, engaged the member or firm to provide a service and who relies on membership in the Institute as giving the member or firm particular competence to provide that service.

210 Conflict of Interest

210.1 A member or firm engaged in general practice or in a related business or practice shall, before accepting any professional engagement, determine whether there is any restriction, influence, interest or relationship which, in respect of the proposed engagement, would cause a reasonable observer to conclude that there will be a conflict as contemplated by Rule 210.2.

210.2 Subject to the provisions of Rule 210.3, a member student, or firm shall not accept, commence or continue any engagement to provide professional services to any client in circumstances where a reasonable observer would conclude that the member, student or firm:

- (a) is in a position or has placed any person in a position where any of their interests conflicts with the interest of a client; or
- (b) is in a position where the duty owed to one client creates a professional or legal conflict with the duty owed by the member, student or firm to another client.

210.3 Where the acceptance of a proposed engagement would result in a conflict under Rule 210.2 or where a previously unidentified conflict under Rule 210.2 arises or is discovered in the course of an existing engagement or engagements, the member or firm must decline the proposed engagement, or withdraw from all existing engagements that are affected, unless:

- (a) (i) the member or firm is able to rely upon conflict management techniques that are generally accepted and the use of such techniques will not breach the terms of an engagement with or duty to another client;

(ii) the member or firm informs all affected clients of the existence of the conflict and the techniques that will be used to manage it; and

(iii) the member or firm obtains the consent of all affected clients to accept or continue the engagement or engagements; or

(b) the affected clients have knowledge of the conflict and their consent for the member or firm to accept or continue the engagement is implied by their conduct, in keeping with common commercial practice.

210.4 For purposes of Rule 210, a client includes any person or entity for whom the member, student or firm, or any other person engaged in general practice or a related business or practice in association with the member, student or firm, provides or is engaged to provide a professional service.

211 Duty to report breach of rules

A member or firm shall bring to the attention of the Institute any apparent breach of these rules or any instances involving doubt as to the competence, reputation or integrity of a member, student, applicant or firm provided that this rule shall not apply to

(a) a trivial matter, or

(b) a member or firm exempted from this rule for the purpose and to the extent specified by the Executive Committee, or

(c) a member who is under a specific legal requirement imposed by or pursuant to statutory authority which would preclude the disclosure of confidential information.

212.1 Handling of trust funds and other property

A member, student, or firm that receives, handles or holds money or other property as a trustee, receiver or receiver/manager, guardian, administrator/manager or liquidator shall do so in accordance with the terms of the engagement, including the terms of any applicable trust, and the law relating thereto and shall maintain such records as are necessary to account properly for the money or other property; unless otherwise provided for by the terms of the trust, money held in trust shall be kept in a separate trust bank account or accounts.

212.2 Handling property of others

A member, student or firm in the course of providing professional services shall handle with due care any property entrusted to the member or student.

213 Unlawful activity

A member, student or firm shall not knowingly associate with, or lend the member's, student's or firm's name or services to, any unlawful activity.

214 Fee quotations

A member or firm shall not quote a fee for any professional engagement unless adequate information has been obtained about the engagement.

215 Contingent fees

215.1 A member or firm engaged in general practice or in a related business or practice shall not offer or engage to perform a professional service for a fee payable only where there is a specified determination or result of the service, or for a fee the amount of which is to be fixed, whether as a percentage or otherwise, by reference to the determination or result of the service, where the service is:

- (a) one in respect of which professional standards or rules of conduct require that the member be and remain free of any influence, interest or relationship which, in respect of the engagement, impairs the member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity; or
- (b) a compilation engagement.

215.2 Rule 215.1 does not apply to a professional service for a fee fixed by a court or other public authority or to a professional service in respect of any aspect of insolvency practice, including acting as a trustee in bankruptcy, a liquidator, a receiver or a receiver/manager.

215.3 Other than in respect of an engagement described in rule 215.1, a member or firm engaged in general practice or in a related business or practice may offer or engage to perform a professional service for a fee payable only where there is a specified determination or result of the service, or for a fee the amount of which is to be fixed, whether as a percentage or otherwise, by reference to the determination or result of the service, provided:

- (a) that the fee arrangement does not constitute an influence, interest or relationship which impairs or, in the view of a reasonable observer, would impair the professional judgment or objectivity of the member or a partner of the member in respect of an engagement described in rule 215.1(a);

- (b) that the fee arrangement is not one which influences or, in the view of a reasonable observer would influence, the result of a compilation engagement performed by the member or a partner of the member for the same client; and
- (c) that the client has agreed in writing to the basis for determining the fee before the completion of the engagement.

216 Payment or receipt of commissions

Other than in relation to the sale and purchase by a member or firm of an accounting practice, a member or firm engaged in general practice or a student while employed by a member engaged in general practice shall not directly or indirectly pay to any person who is not an employee of the member or firm or who is not a public accountant a commission or other compensation to obtain a client, nor shall the member, student, or firm accept directly or indirectly from any person who is not a public accountant a commission or other compensation for a referral to a client of products or services of others.

217.1 Advertising and Promotion

A member or firm may advertise or seek publicity for the member's or firm's services, achievements or products and may seek to obtain new engagements and clients by various means, but shall not do so, directly or indirectly, in any manner

- (a) which the member or firm knows, or should know, is false or misleading.
- (b) which contravenes professional good taste or brings disrepute on the profession.
- (c) which makes unfavorable reflections on the competence or integrity of the profession or any member or firm, or
- (d) which includes a statement the contents of which the member or firm cannot substantiate.

217.2 Solicitation

Notwithstanding Rule 217.1, a member of firm shall not, either directly or through a party acting on behalf of and with the knowledge of the member, solicit, in a manner that is persistent, coercive or harassing, any professional engagement.

217.3 Endorsements

A member or firm may advertise or endorse any product or service of another person or entity that the member or firm uses or otherwise has an association with, provided the member of firm has sufficient knowledge or expertise to make an informed and considered assessment of the product or service. However in doing so,

- (a) the member or firm must act with integrity and due care;

- (b) the member or firm must be satisfied that the endorsement
 - i. is not false or misleading,
 - ii. does not contravene professional good taste or bring disrepute on the profession,
 - iii. does not make unfavourable reflections on the competence or integrity of the profession, or any member or firm, and
 - iv. does not include a statement the contents of which the member or firm cannot substantiate; and
- (c) when associating the CA designation with an endorsement, the member or firm must conduct sufficient appropriate procedures to support the assertions made about the product or service.

218 Retention of documentation and working papers

A member or firm shall retain for a reasonable period of time working papers, records or other documentation which reasonably evidence the nature and extent of the work done in respect of any professional engagement.

300 RELATIONS WITH FELLOW MEMBERS AND WITH NON-MEMBERS ENGAGED IN GENERAL PRACTICE

301 Reserved for future use.

302 Communication with predecessor

302.1 A member or firm shall not accept an engagement with respect to general practice or the public practice of a function not inconsistent with general practice, where the member or firm is replacing another member, firm or public accountant, without first communicating with such person or firm and enquiring whether there are any circumstances the member should take into account which might influence the member's decision whether or not to accept the engagement.

302.2 The incumbent member or firm shall respond promptly to the communication referred to in rule 302.1.

302.3 A member or firm responding to a communication pursuant to rule 302.2 shall inform the possible successor if suspected fraud or other illegal activity by the client was a factor in the member's or firm's resignation or if, in the member's or firm's view, fraud or other illegal activity by the client may have been a factor in the client's decision to appoint a successor.

303 Co-operation with successor

303.1 A member or firm shall upon written request of the client supply on a timely basis reasonable information to the member's or firm's successor about the work done or being assumed.

303.2 A member or firm who is a predecessor on an engagement shall co-operate with the successor on the engagement, recognizing the client's interests are paramount, and shall transfer promptly to the client or, on the client's instructions, to the successor, all books, documents, and other property belonging to the client which are in the predecessor's possession.

304 Joint engagements

A member or firm accepting any engagement jointly with another member of firm shall accept joint and several responsibility for any portion of the work to be performed by either; no member or firm shall proceed in any matter within the terms of such joint engagement without due notice to the other member or firm.

305 Communication of special engagements to incumbent

305.1 A member or firm engaged in general practice shall, before commencing any engagement for a client for which another member or firm is the duly appointed auditor or accountant, first notify such auditor or accountant of the engagement, unless both

- (a) the client makes an unsolicited request, evidenced in writing, that such notification not be given; and
- (b) the *CICA Handbook* does not recommend in respect of the engagement that the member or firm notify or contact the duly appointed auditor or accountant.

305.2 Rule 305.1 applies only where the services to be provided under the terms of the engagement are included in the member's general practice.

306.1 Responsibilities on accepting engagements

A member or firm accepting an engagement, whether by referral or otherwise, from a client of a member or firm having a continuing professional relationship with that client shall not take any action which would tend to impair the position of the other member or firm in the ongoing work with the client.

306.2 Responsibilities on referred engagements

A member or firm receiving an engagement for services by referral from another member or firm shall not provide or offer to provide any additional services to the referred client without the consent of the referring member or firm; the interest of the client being of overriding concern, the referring member or firm shall not unreasonably withhold such consent.

400 ORGANIZATION AND CONDUCT OF A PROFESSIONAL PRACTICE

401 Misleading practice names prohibited

A member or firm shall engage in general practice only under a name or style which (a) is not misleading, (b) is not self laudatory, (c) does not contravene good taste, and (d) has been approved in a manner approved by Council.

402 Name of practice of individual member practising as a sole proprietor

An individual member engaged in general practice as a sole proprietor shall practise under the individual member's own name and, where permitted in special circumstances by the Executive Committee, may, with the predecessor's written authorization, practise under the name of a predecessor sole proprietor or, on a temporary basis, under some other predecessor firm name as well as under the member's own name.

403 Name of practice of corporate member or of members practising as a firm

- (1) Subject to the provisions of paragraph 403(2), the name of any corporate member or firm engaged in general practice shall be limited to:
 - (a) the names of individual professional colleagues who are, or were previously, directors of the corporate member or partners of the firm or any predecessor corporate member or firm engaged in general practice, provided that the number of names used does not exceed the number of directors or partners currently active with the corporate member or firm;
 - (b) the names of individuals who have engaged in general practice in Bermuda, Canada or any other country provided each individual named engaged in general practice with the corporate member or firm or any predecessor corporate member or firm, and provided the individual or the individual's legal representative has authorized the use of the name; and
 - (c) part or all of the name, including a non-personal name, of an international public accounting organization of which the corporate member or firm is an affiliate, provided that the name has been approved by the Executive Committee;

and the term "& Co." or appropriate similar wording may be used where the number of directors or partners currently active with a corporate member or firm exceeds the number of names used in the corporate member's or firm's name, and

the word 'Limited' or the abbreviation 'Ltd.' may be used in a corporate member's name.

- (2) Notwithstanding the provisions of paragraph 403(1), a corporate member or firm engaged in general practice may use an additional name, including a non-personal name, to meet the international needs of clients, if the additional name is:
- (a) part or all of the name of an international public accounting organization of which the corporate member or firm is an affiliate; or
 - (b) part or all of the name of a foreign-based affiliate;

provided the registered name of the corporate member or firm in Bermuda is clearly and prominently associated with the additional name in the signature of any report or any other communication and the Executive Committee has given its approval to the use of such additional name.

404.1 Use of descriptive style

General practice shall be carried on under the descriptive style of either "chartered accountant(s)" or "public accountant(s)", unless it forms part of the firm name. Regardless of the functions actually performed, the use of either "chartered accountant(s)" or "public accountant(s)" as part of the firm name or as a descriptive style, in offering services to the public, shall be regarded as carrying on general practice for the purposes of these rules of professional conduct.

404.2 Operation of members' offices

- (a) Each office in Bermuda of any member or firm of members engaged in general practice shall be under the personal charge and management of a member who shall normally be accessible to meet the needs of clients during such times as the office is open to the public.
- (b) A member or firm shall not operate a part-time office except in accordance with such terms and conditions as may be established by the Council.

404.3 Proprietary interest with non-members

Notwithstanding Rule 404.1 each office in Bermuda of any firm engaged in general practice and composed of one or more members sharing proprietary interest with other public accountants who are not professional colleagues shall not practise under the style of "chartered accountants" **405 Association with firms**

A member or firm shall not associate in any way with any firm practising as chartered accountants in Bermuda unless:

- (a) all partners resident in Bermuda are members,
- (b) at least one partner is a member, and

- (c) every partner is a professional colleague (see rule 501), professional corporation, or incorporated professional, provided that each such corporation or incorporated professional is recognized and approved for general practice by the provincial institute in the province concerned.

406 Member in general practice responsible for a non-member in general practice

A member or firm engaged in general practice who is associated in such practice with a non-member shall be responsible to the Institute for any failure of such non-member, in respect of such practice, to abide by the rules of professional conduct of the Institute, and in the application of this rule the rules are deemed to apply as if such non-member were a member.

407 Related business or practice, and member responsible for non-member in such business or practice

- (1) The rules of professional conduct, except Rule 404.1, shall apply to a member or firm carrying on a related business or practice as if it were a general practice.
- (2) A member or firm engaged in a general practice to which another business or practice is related, or engaged in such other business or practice, shall be responsible to the Institute for any failure of a non-member who is associated with the member in such business or practice and who is under the member's or firm's management or supervision or with whom the member or firm shares proprietary or other interest in such business or practice to comply with the rules. In the application of this rule, the rules are deemed to apply as if such business or practice were a general practice and such non-member were a member.
- (3) A member may associate with a related business or practice as a proprietor, as a partner, or as a director, officer or member of a company and may associate with a non-member for this purpose.
- (4) A related business or practice shall not be designated "chartered accountant(s)" or "public accountant(s)".

408 Association of member with non-member in general practice

A member or firm shall not associate in any way with a non-member in a general practice or in a related business or practice, unless:

- (1) such association maintains the good reputation of the profession and its ability to serve the public interest; and
- (2) such business or practice establishes and maintains policies, procedures and arrangements suitable for ensuring:
 - (a) that every such non-member is knowledgeable of and complies with

- (i) the Institute's governing legislation, bylaws, regulations and rules of professional conduct; and
 - (ii) the ethical and other regulations applicable to members of a recognized professional organization or regulated body of which the non-member is a member; and
- (b) that no style or presentation or communication is used which implies that the non-member is a member.

409 Office by representation

A member or firm engaged in general practice shall not hold out or imply that the member or firm has an office in any place where the member or firm is in fact only represented by another accountant or firm engaged in general practice and, conversely, a member or firm engaged in general practice who only represents an accountant or firm engaged in general practice shall not hold out or imply that the member or firm maintains an office for such accountant or such firm.

410 General practice in corporate form

A member or firm may be associated with a corporate member in general practice. A member shall not associate in any way with any company engaged in Bermuda or Canada in general practice where such company is not a corporate member, except to the extent permitted in sub-paragraphs (1), (2), and (3) of this rule:

- (1) A member or the member's general practice firm may engage to provide to the company any of the services included in the definition in these rules of "general practice".
- (2) A member, other than a member engaged in general practice, may associate with a company not a corporate member which provides taxation services involving advice, counsel or interpretation provided such services are only a small part of the company's activities.
- (3) A member or firm may associate with a company not a corporate member which is a professional corporation or incorporated professional engaged in general practice in a province of Canada if the company or incorporated professional is recognized and approved for such practice by the provincial institute in the province concerned and the company or incorporated professional does not engage in general practice in Bermuda.

Without limiting the generality of the foregoing, a company shall be deemed to be engaged in general practice even though the company provides a service included in the definition of general practice only to another member, members, or firm engaged in general practice.

RULES OF PROFESSIONAL CONDUCT APPLICABLE ONLY TO FIRMS

501 Firm's maintenance of policies and procedures for compliance with professional standards.

A firm shall establish, maintain and uphold appropriate policies and procedures designed to ensure that its services are performed in accordance with generally accepted standards of practice of;

(a) the profession, including the recommendations set out in the *CICA Handbook*, and

(b) the particular business or practice, provided that such standards are not lower than or inconsistent with the generally accepted standards of practice of the profession in which case the generally accepted standards of the profession must be followed.

600 RULES NOT SHARED WITH PROVINCIAL INSTITUTES

601 Association with firms - special provision

Paragraph (c) of rule 405 shall be read as if there were added after the word "colleague" a comma and the words "or a member in good standing of The Institute of Chartered Accountants of Scotland or The Institute of Chartered Accountants in England and Wales or The Institute of Chartered Accountants in Ireland or (with the approval of the Executive Committee) another corporate body having objects similar to those of the Institute who has complied with the recommendations of the International Qualifications Appraisal Board of the Canadian Institute of Chartered Accountants concerning admission to membership in provincial institutes/ordre (except recommendations with respect to satisfying provincial institute course and examination requirements)".