

## PART B—PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

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### SECTION 200 – INTRODUCTION

**200.1** This Part of the Code describes how the conceptual framework contained in Part A applies in certain situations to professional accountants in public practice\*. This Part does not describe all of the circumstances and relationships that could be encountered by a professional accountant in public practice\* that create or may create threats to compliance with the fundamental principles. Therefore, the professional accountant in public practice\* is encouraged to be alert for such circumstances and relationships.

**200.2** A professional accountant in public practice\* shall not knowingly engage in any business, occupation, or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

#### Fundamental Principles

**200.2a** *A professional accountant\* shall comply with the following fundamental principles:*

- (a) **Integrity** – *to be straightforward and honest in all professional and business relationships*
- (b) **Objectivity** – *to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.*

\* See Definitions for parts A, B and C

- (c) **Professional Competence and Due Care** – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services\* based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.
- (d) **Confidentiality** – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant\* or third parties.
- (e) **Professional Behaviour** – to comply with relevant laws and regulations and avoid any action that discredits the profession.

### Threats and Safeguards

**200.3** Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit client\* and whether the audit client\* is a public interest entity\*, to an assurance client\* that is not an audit client\*, or to a non-assurance client\*.

Threats fall into one or more of the following categories:

- (a) Self-interest;
- (b) Self-review;
- (c) Advocacy;
- (d) Familiarity; and;
- (e) Intimidation.

These threats are discussed further in Part A of this Code.

*The paragraphs below set out examples of the circumstances that may result in threat and the types of safeguards that may be applicable, depending on the particular circumstances. They are not an exhaustive list nor do they imply that such circumstances will always create a significant threat. Regard should be had to the specific requirements in sections 210 to 291, when the circumstances are the same as, or analogous to, those addressed by them.*

**200.4** Examples of circumstances that create self-interest threats for a professional accountant in public practice\* include:

- A member of the assurance team\* having a direct financial interest\* in the assurance client\*.
- A firm\* having undue dependence on total fees from a client.
- A member of the assurance team\* having a significant close business relationship with an assurance client\*.

\* See Definitions for parts A, B and C

- A firm\* being concerned about the possibility of losing a significant client.
- A member of the audit team\* entering into employment negotiations with the audit client\*.
- A firm\* entering into a contingent fee\* arrangement relating to an assurance engagement\*.
- A professional accountant\* discovering a significant error when evaluating the results of a previous professional service\* performed by a member of the professional accountant's\* firm\*.

**200.5** Examples of circumstances that create self-review threats for a professional accountant in public practice\* include:

- A firm\* issuing an assurance report on the effectiveness of the operation of financial systems after designing or implementing the systems.
- A firm\* having prepared the original data used to generate records that are the subject matter of the assurance engagement\*.
- A member of the assurance team\* being, or having recently been, a director\* or officer\* of the client.
- A member of the assurance team\* being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement.
- The firm\* performing a service for an assurance client\* that directly affects the subject matter information of the assurance engagement\*.

**200.6** Examples of circumstances that create advocacy threats for a professional accountant in public practice\* include:

- The firm\* promoting shares in an audit client\*.
- A professional accountant\* acting as an advocate on behalf of an audit client\* in litigation or disputes with third parties.

**200.7** Examples of circumstances that create familiarity threats for a professional accountant in public practice\* include:

- A member of the engagement team\* having a close or immediate family\* member who is a director\* or officer\* of the client.
- A member of the engagement team\* having a close or immediate family\* member who is an employee of the client who is in a position to exert significant influence over the subject matter of the engagement.
- A director\* or officer\* of the client or an employee in a position to exert significant influence over the subject matter of the engagement having recently served as the engagement partner\*.

\* See Definitions for parts A, B and C

- A professional accountant\* accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential.
- Senior personnel having a long association with the assurance client\*.

**200.8** Examples of circumstances that create intimidation threats for a professional accountant in public practice\* include:

- A firm\* being threatened with dismissal from a client engagement.
- An audit client\* indicating that it will not award a planned non-assurance contract to the firm\* if the firm\* continues to disagree with the client's accounting treatment for a particular transaction.
- A firm\* being threatened with litigation by the client.
- A firm\* being pressured to reduce inappropriately the extent of work performed in order to reduce fees.
- A professional accountant\* feeling pressured to agree with the judgment of a client employee because the employee has more expertise on the matter in question.
- A professional accountant\* being informed by a partner\* of the firm\* that a planned promotion will not occur unless the accountant agrees with an audit client's\* inappropriate accounting treatment.

**200.9** Safeguards that may eliminate or reduce threats to an acceptable level\* fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph 100.14 of Part A of this Code.

**200.10** A professional accountant in public practice\* shall exercise judgment to determine how best to deal with threats that are not at an acceptable level\*, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level\* or by terminating or declining the relevant engagement. In exercising this judgment, a professional accountant in public practice\* shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant\* at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level\* by the application of safeguards, such that compliance with the fundamental principles is not compromised. This consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm\*.

\* See Definitions for parts A, B and C

**200.11** In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm\*-wide safeguards and engagement-specific safeguards.

**200.12** Examples of firm-wide safeguards in the work environment include:

- Leadership of the firm\* that stresses the importance of compliance with the fundamental principles.
- Leadership of the firm\* that establishes the expectation that members of an assurance team\* will act in the public interest.
- Policies and procedures to implement and monitor quality control of engagements.
- Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level\* or, when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.
- Documented internal policies and procedures requiring compliance with the fundamental principles.
- Policies and procedures that will enable the identification of interests or relationships between the firm\* or members of engagement teams\* and clients.
- Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
- Using different partners\* and engagement teams\* with separate reporting lines for the provision of non-assurance services to an assurance client\*.
- Policies and procedures to prohibit individuals who are not members of an engagement team\* from inappropriately influencing the outcome of the engagement.
- Timely communication of a firm's\* policies and procedures, including any changes to them, to all partners\* and professional staff, and appropriate training and education on such policies and procedures.
- Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's\* quality control system.
- Advising partners\* and professional staff of assurance clients\* and related entities from which independence\* is required.
- A disciplinary mechanism to promote compliance with policies and procedures.

\* See Definitions for parts A, B and C

- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm\* any issue relating to compliance with the fundamental principles that concerns them.

**200.13** Examples of engagement-specific safeguards in the work environment include:

- Having a professional accountant\* who was not involved with the non-assurance service review the non-assurance work performed or otherwise advise as necessary.
- Having a professional accountant\* who was not a member of the assurance team\* review the assurance work performed or otherwise advise as necessary.
- Consulting an independent third party, such as a committee of independent directors\*, a professional regulatory body or another professional accountant\*.
- Discussing ethical issues with those charged with governance\* of the client.
- Disclosing to those charged with governance\* of the client the nature of services provided and extent of fees charged.
- Involving another firm\* to perform or re-perform part of the engagement.
- Rotating senior assurance team\* personnel.

**200.14** Depending on the nature of the engagement, a professional accountant in public practice\* may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level\*.

**200.15** Examples of safeguards within the client's systems and procedures include:

- The client requires persons other than management to ratify or approve the appointment of a firm\* to perform an engagement.
- The client has competent employees with experience and seniority to make managerial decisions.
- The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements\*.
- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's\* services.

**200.16** *Professional accountants\* who are in doubt as to their ethical position may seek advice from the ICAEW's Technical Advisory Services by email: [ethics@icaew.com](mailto:ethics@icaew.com) or phone +44 (0)1908 248 250. Further information on guidance is available in section 1, paragraphs 1.19 to 1.22.*

\* See Definitions for parts A, B and C

## **SECTION 210 - PROFESSIONAL APPOINTMENT**

**210.0** *Clients have the right to choose their accountants, whether as auditors or professional advisers, and to change their accountants if they so desire. Professional accountants\* have the right to choose for whom they act.*

### **Client Acceptance**

**210.1** Before accepting a new client relationship, a professional accountant in public practice\* shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management or activities).

**210.2** Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

*Further information relating to money laundering legislation and guidance is included in paragraph 210.13.*

**210.3** A professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level\*.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
- Securing the client's commitment to improve corporate governance practices or internal controls.

**210.4** Where it is not possible to reduce the threats to an acceptable level\*, the professional accountant in public practice\* shall decline to enter into the client relationship.

**210.5** It is recommended that a professional accountant in public practice\* periodically review acceptance decisions for recurring client engagements.

### **Engagement Acceptance**

**210.6** The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice\* to provide only those services that the professional accountant in public practice\* is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice\* shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the

\* See Definitions for parts A, B and C

engagement team\* does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

**210.7** A professional accountant in public practice\* shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level\*. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

**210.8** When a professional accountant in public practice\* intends to rely on the advice or work of an expert, the professional accountant in public practice\* shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

### **Changes in a Professional Appointment**

**210.9** A professional accountant in public practice\* who is asked to replace another professional accountant in public practice\*, or who is considering tendering for an engagement currently held by another professional accountant in public practice\*, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level\* by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice\* accepts the engagement before knowing all the pertinent facts.

*Upon being asked to accept an appointment, professional accountants\* shall undertake the same procedures with all accountants, irrespective of whether the accountant works in public practice or not.*

\* See Definitions for parts A, B and C

**210.10** A professional accountant in public practice\* shall evaluate the significance of any threats. Depending on the nature of the engagement, this may require direct communication with the existing accountant\* to establish the facts and circumstances regarding the proposed change so that the professional accountant in public practice\* can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant\* that may influence the decision to accept the appointment.

*Having been asked to accept an appointment, the professional accountant in public practice\* shall at least seek to contact the existing accountant\*. The appropriate procedures are considered further in the Appendix to this Section.*

**210.11** Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level\*. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant\* will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment shall not be accepted;
- Asking the existing accountant\* to provide known information on any facts or circumstances that, in the existing accountant's\* opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement; or
- Obtaining necessary information from other sources.

When the threats cannot be eliminated or reduced to an acceptable level\* through the application of safeguards, a professional accountant in public practice\* shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

*Counsel has advised that as far as UK law is concerned, an existing accountant\* who communicates to a prospective accountant matters damaging to the client or to any individuals concerned with the client's business will have a strong measure of protection were any action for defamation to be brought against the existing accountant\* in that the communication will be protected by qualified privilege. This means that the existing accountant\* shall not be liable to pay damages for defamatory statements even if they turn out to be untrue, provided that they are made without malice. There is little likelihood of an existing accountant\* being held to have acted maliciously provided that:*

- *Only what is sincerely believed to be true is stated; and*
- *Reckless imputations are not made against a client or connected individuals for which there can be no reason to believe they are true.*

\* See Definitions for parts A, B and C

**210.12** A professional accountant in public practice\* may be asked to undertake work that is complementary or additional to the work of the existing accountant\*. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level\*. An example of such a safeguard is notifying the existing accountant\* of the proposed work, which would give the existing accountant\* the opportunity to provide any relevant information needed for the proper conduct of the work.

*In circumstances where the professional accountant\* is asked to undertake work which is relevant to the work of the existing accountant\*, the professional accountant\* shall notify the existing accountant\* of the proposed work, unless the client provides acceptable reasons why the existing accountant\* cannot be informed. The professional accountant\* ought to be aware of the risks of undertaking such work without the advantage of communicating with the other accountant. Further guidance on providing second opinions is available in section 230 of this Code.*

**210.13** An existing accountant\* is bound by confidentiality. Whether that professional accountant\* is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant\* is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in section 140 of Part A of this Code.

*However, care must be taken when communicating all relevant facts to a professional accountant\* in situations where the existing accountant\* knows or suspects that their client is involved in money laundering or a terrorist activity. Under the UK Money Laundering Regulations 2007, the Terrorism Act 2000 and the Terrorism Act 2006, it is a criminal offence to 'tip off' a money launderer or terrorist. Accordingly:*

- *The prospective accountant shall not specifically enquire whether the existing accountant\* has reported suspicions of money laundering or terrorism. Such questions place the existing accountant\* in a difficult position and are likely not to be answered. In addition, the prospective accountant shall not ask the existing accountant\* whether client identification or 'knowing your client' procedures have been carried out under anti-money laundering legislation. The prospective accountant has responsibility for obtaining information for client identification and 'knowing your client' and this cannot be delegated to the existing accountant\*.*
- *Disclosure of money laundering or terrorist suspicion reporting by the existing accountant\* to the potential successor shall be avoided because this information may be discussed with the client or former client.*

\* See Definitions for parts A, B and C

*For further discussion, please refer to the money laundering legislation and guidance ([www.icaew.com/moneylaundering](http://www.icaew.com/moneylaundering)) and the ICAEW's Ethics Advisory helpsheet on 'changes in professional appointments' ([www.icaew.com/ethicsadvice](http://www.icaew.com/ethicsadvice))*

- 210.14** A professional accountant in public practice\* will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing accountant\*. Once that permission is obtained, the existing accountant\* shall comply with relevant legal and other regulations governing such requests. Where the existing accountant\* provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant\*, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance\* of the client.

*If the client fails or refuses to grant the existing accountant\* permission to discuss the client's affairs with the proposed successor, the existing accountant\* shall report this fact to the prospective accountant who shall consider carefully the reason for such failure or refusal when determining whether or not to accept nomination/appointment.*

- 210.15** *Guidance on appropriate procedures to be adopted by professional accountants\* relating to changes in professional appointments is included as an Appendix to this Section.*

### **Transfer of Records**

- 210.16** *An existing accountant\* shall deal promptly with any reasonable request for the transfer of records and may have the right of particular lien if there are unpaid fees (see section 240 of this Code and 'Documents and records: ownership, lien and right of access' at [www.icaew.com/regulations](http://www.icaew.com/regulations)). The courts have held that no lien can exist over books or documents of a registered company which, either by statute or by articles of association of the company, have to be available for public inspection (see 'Documents and records: ownership, lien and rights of access' at [www.icaew.com/regulations](http://www.icaew.com/regulations)). It may be necessary for professional accountants\* to obtain legal advice prior to the exercise of a lien.*

*If the existing accountant\* has fees outstanding from a client they are entitled to mention this to the potential successor. However, if this is as a result of genuine reservations by the client, this may not be a reason to withhold cooperation with a successor. It may be useful to consider the section on fee disputes in 'Duty on firms to investigate complaints – guidance on how to handle or avoid them' at [www.icaew.com/regulations](http://www.icaew.com/regulations).*

- 210.17** *The prospective accountant often asks the existing accountant\* for information as to the client's affairs. If the client is unable to provide the information and lack thereof might prejudice the client's interests, such information shall be promptly given. In such circumstances, no charge shall normally be made unless there is good reason to the contrary. An example of such a reason would be that a*

\* See Definitions for parts A, B and C

significant amount of work is involved. Where a charge is made, the arrangements shall comply with section 240 of this Code.

- 210.18** Attention is drawn to Chapter 3 of the Audit Regulations and Guidance ([www.icaew.com/regulations](http://www.icaew.com/regulations)) relating to access to all relevant information held by the existing accountant in respect of the last audit report and Technical Release AAF 01/08 Access to Information by Successor Auditors ([www.icaew.com/technicalreleases](http://www.icaew.com/technicalreleases)).

## **Appendix to Section 210 – Changes in Professional Appointments Procedures**

### **Prospective Accountants**

- 1 *In the majority of cases, the appropriate procedures for any professional accountant\* who is invited to act in succession to another, whether the changeover is at the insistence of the client or of the existing accountant\*, is to:*
  - *Explain to the prospective client that there is a professional duty to communicate with the existing accountant\*; and*
  - *Request the client (i) to confirm the proposed change in accountant to the existing accountant\* and (ii) to authorise the existing accountant\* to co-operate with the prospective accountant; and*
  - *Write to the existing accountant\* regarding the prospective involvement with the client and request disclosure of any issue or circumstance which might be relevant to the successor's decision to accept or decline the appointment (making oral enquiry if no written reply is forthcoming).*
  
- 2 *When these procedural steps have been taken, the prospective accountant shall consider, in light of the information received from the existing accountant\*, or any other factors, including conclusions reached following discussion with the client, whether:*
  - *To accept the engagement, or*
  - *Accept it only after having addressed any factors arising from the information received from the existing accountant\* (this may include imposing conditions on acceptance), or*
  - *Decline it.*
  
- 3 *The prospective accountant shall ordinarily treat in confidence any information provided by the existing accountant\*, unless it is needed to be disclosed to perform the role required (such as making investigations into matters which need the perspective of the client's officers\* or senior employees).*

\* See Definitions for parts A, B and C

- 4 *In circumstances where the enquiries referred to above are not answered, the prospective accountant shall write to the existing accountant\* by recorded delivery service stating an intention to accept the engagement in the absence of a reply within a specific and reasonable period. The prospective accountant is entitled to assume that the existing accountant's\* silence implies there was no adverse comment to be made, although this does not obviate the requirement in 210.9 to consider all appropriate circumstances.*
- 5 *A professional accountant\* who is nominated as a joint auditor shall communicate with all existing auditors and be guided by similar principles to those set out in relation to nomination as an auditor. Where it is proposed that a joint audit appointment becomes a sole appointment, the surviving auditor shall communicate formally with the other joint auditor as though for a new appointment.*
- 6 *A professional accountant\* invited to accept nomination on the death of a sole practitioner shall endeavour to obtain such information as may be needed from the latter's alternate (where appropriate), the administrators of the estate, or other source.*
- 7 *If the prospective accountant accepts the engagement, the prospective accountant shall comply with the relevant legal and regulatory requirements as indicated in paragraph 13.*

**Existing accountants\***

- 8 *The appropriate procedure for any professional accountant\* who receives any communication in terms of the above paragraphs, whether or not the professional accountant\* is still in office, is to:*
  - *Answer promptly any communication from the potential successor about the client's affairs; and*
  - *Confirm whether there are any matters about those affairs which the prospective accountant ought to know, explaining them meaningfully, or confirm there are no such matters.*
- 9 *If the existing accountant\* has made one or more suspicious activity reports relating to money laundering or terrorism, the existing accountant\* shall not disclose that fact to the prospective accountant, or make other disclosures that could amount to tipping off. However, the existing accountant's\* legal and professional obligations remain. In order to meet these obligations, the existing accountant\* can undertake one or more of the following actions:*
  - *Contact the relevant investigating authority, for example, the Serious Organised Crime Agency (SOCA), to ascertain if appropriate wording can be agreed in a communication;*
  - *Include a factual reference to the irregularities; (further discussion is included in the ICAEW's Ethics Advisory Services Practice Helpsheets on Changes in Professional Appointments ([www.icaew.com/ethicsadvice](http://www.icaew.com/ethicsadvice)));*

\* See Definitions for parts A, B and C

- Consider seeking legal advice.

Guidance on money laundering reporting requirements in privileged circumstances is included in Technical Release 02/06, available at [www.icaew.com/technicalreleases](http://www.icaew.com/technicalreleases).

- 10** The above actions are also relevant when the existing accountant\* is preparing the required statement of circumstances in accordance with Section 519 of the UK Companies Act 2006, or other similar statutory provisions, of matters connected with ceasing to hold office which, the auditor believes, shall be brought to the notice of the professional accountants\*, shareholders or creditors of the client or under the relevant professional and other regulatory bodies. Further guidance can be found in Chapter 3 of the 2008 Audit Regulations and Guidance ([www.icaew.com/regulations](http://www.icaew.com/regulations)).
- 11** It is best practice for the prospective accountant and the existing accountant\* to record in writing such discussions as are referred to in the paragraphs above.
- 12** Where the professional accountant\* decides to accept nomination/appointment having been given notice of any matters which are the subject of contention between the existing accountant\* and the client, the professional accountant\* shall be prepared, if requested to do so, to demonstrate to the professional and regulatory investigating authorities that proper consideration has been given to those matters and the relevant legal, regulatory and ethical requirements have been met.

### **Further Information**

- 13** Professional accountants\*\* attention is drawn to additional guidance as follows:

- Chapter 3 of the 2008 Audit Regulations and Guidance ([www.icaew.com/regulations](http://www.icaew.com/regulations)), in particular technical standards relating to changes in professional appointments and access to relevant information relating to the signed audit report.
- ISQC (UK & Ireland) – quality control for firms that perform audits and reviews of historical financial information\*, and other assurance and related services engagements ([www.frc.org.uk/apb/publications](http://www.frc.org.uk/apb/publications)).
- Statement of Auditing Standards ([www.frc.org.uk/apb/publications](http://www.frc.org.uk/apb/publications)):

ISA 240 (UK and Ireland) – The auditor’s responsibility to consider fraud in an audit of financial statements\*;

ISA 250 (UK and Ireland) – Consideration of laws and regulations in an audit of financial statements\*;

ISA 510 (UK and Ireland) Initial engagements – opening balances and continuing engagements – opening balances.

\* See Definitions for parts A, B and C

- *Practice Note 12 (Revised) 'Money laundering'* ([www.frc.org.uk/apb/publications](http://www.frc.org.uk/apb/publications)).
- *Anti-money laundering for the Accountancy Sector* ([www.icaew.com/regulations](http://www.icaew.com/regulations)).
- *Technical Release 02/06 – 'Guidance on changes to the money laundering reporting requirements: the exemption from reporting knowledge or suspicion of money laundering formed in privileged circumstances'* ([www.icaew.com/technicalreleases](http://www.icaew.com/technicalreleases)).
- *Practice Helpsheet – Changes in a professional appointment* ([www.icaew.com/ethicsadvice](http://www.icaew.com/ethicsadvice)).

## SECTION 220 - CONFLICTS OF INTEREST

**220.1** A professional accountant in public practice\* shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may create threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when a professional accountant in public practice\* competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when a professional accountant in public practice\* performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.

*Subject to the specific provisions, there is, however, nothing improper in a professional accountant in public practice\* having two clients whose interests are in conflict.*

**220.2** A professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level\*. Before accepting or continuing a client relationship or specific engagement, the professional accountant in public practice\* shall evaluate the significance of any threats created by business interests or relationships with the client or a third party.

*A test is whether a reasonable and informed observer would perceive that the objectivity of professional accountants\* or their firms\* is likely to be impaired. The professional accountants\* or their firms\* shall be able to satisfy themselves and the client that any conflict can be managed with available safeguards. Attention is also drawn to the ethical conflict resolution process in Part A.*

**220.3** Depending upon the circumstances giving rise to the conflict, application of one of the following safeguards is generally necessary:

\* See Definitions for parts A, B and C

- (a) Notifying the client of the firm's\* business interest or activities that may represent a conflict of interest and obtaining their consent to act in such circumstances; or
- (b) Notifying all known relevant parties that the professional accountant in public practice\* is acting for two or more parties in respect of a matter where their respective interests are in conflict and obtaining their consent to so act; or
- (c) Notifying the client that the professional accountant in public practice\* does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.

*Professional accountants'\* attention is drawn to section 240 Fees and other types of remuneration and section 241 Agencies and referrals which provide additional guidance on the ethical and legal considerations relating to these areas, including fiduciary relationships and accounting for commission and other benefits.*

**220.4** The professional accountant\* shall also determine whether to apply one or more of the following additional safeguards:

- (a) The use of separate engagement teams\*;
- (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing);
- (c) Clear guidelines for members of the engagement team\* on issues of security and confidentiality;
- (d) The use of confidentiality agreements signed by employees and partners\* of the firm\*; and
- (e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

**220.4a** *Where a conflict of interest arises, the preservation of confidentiality, and the perception thereof will be of paramount importance. Therefore firms\* shall deploy safeguards, which generally will take the form of information barriers. These information barriers may include the following features:*

- *Ensuring that there is, and continues to be, no overlap between the teams servicing the relevant clients and that each has separate internal reporting lines;*
- *Physically separating, and restricting access to, departments providing different professional services\*, or creating such divisions within departments if necessary, so that confidential information about one client is not accessible by anyone providing services to another client where their interests conflict;*

\* See Definitions for parts A, B and C

- *Setting strict and carefully defined procedures for dealing with any apparent need to disseminate information beyond a barrier and for maintaining proper records where this occurs.*

*The professional accountant\* shall ensure that the adequacy and effectiveness of the barriers are closely and independently monitored and that appropriate disciplinary sanctions are applied for breaches of them. The overall arrangements shall regularly be reviewed by a designated senior partner\*.*

*Professional accountants\* shall note that it has been suggested by the courts that in some circumstances information barriers must be constructed as part of the organisational structure of the firm\* to be effective, rather than on an ad hoc basis.*

**220.4b** *If client service issues render it impracticable to put in place such safeguards or suitable alternatives, it is important that relevant parties, who have conflicts of interest which may result in threats to preservation of confidentiality, are made aware of and agree to the professional accountant\* continuing to act for them.*

**220.5** *Where a conflict of interest creates a threat to one or more of the fundamental principles, including objectivity, confidentiality, or professional behaviour, that cannot be eliminated or reduced to an acceptable level\* through the application of safeguards, the professional accountant in public practice\* shall not accept a specific engagement or shall resign from one or more conflicting engagements.*

**220.6** *Where a professional accountant in public practice\* has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, the professional accountant in public practice\* shall not continue to act for one of the parties in the matter giving rise to the conflict of interest.*

*Professional accountants'\* attention is drawn to section 221, Corporate Finance Advice, section 290, Independence\* – Audit and review engagements\*, section 400, Code of Ethics for Insolvency Practitioners, for guidance on issues arising from certain corporate finance activities, reporting assignments, and insolvency appointments.*

## **SECTION 221 CORPORATE FINANCE ADVICE**

*(Updated as regards to changes in legislation as at 1 April 2010)*

### **Introduction**

**221.0** *The nature of corporate finance activities is wide ranging. Therefore, the threats to a professional accountant's objectivity, integrity and independence\* will depend on the nature of the corporate finance activities being provided and the particular circumstances and relationships involved.*

\* See Definitions for parts A, B and C

## **Categories of Corporate Finance Activity**

**221.1** *Categories of activity covered by this section are as follows:*

- (a) general corporate finance advice;*
- (b) acting as adviser in relation to takeovers and mergers;*
- (c) underwriting and marketing or placing securities on behalf of a client; and*
- (d) acting as sponsor, nominated adviser or corporate adviser under the Listing Rules, the AIM Rules and the PLUS Rules respectively.*

**221.2** *Professional accountants\* shall note that the guidance given in relation to general corporate finance advice is applicable to all categories of activity.*

### **General Principles applicable to all Professional Accountants\***

#### **Statutory and Other Regulatory Requirements**

**221.3** *Professional accountants\* must be aware of and comply with legislative and regulatory measures and professional guidance governing corporate finance assignments. As a guide, a list of legislative and regulatory measures current at 1 April 2010 is given in Appendix 1 to this section but professional accountants\* shall ensure that they are aware of the most up-to-date legislative and regulatory requirements.*

**221.4** *Professional accountants\* are required to comply with the City Code on Takeovers and Mergers ('the City Code') (see Appendix 2 to this Section) in respect of all relevant takeover transactions involving companies governed by the City Code and shall treat the general principles of the City Code as best practice guidance in respect of other takeover transactions.*

**221.5** *Professional accountants\* proposing to provide corporate finance advice to a client or his employer shall at the outset draw attention to the legislative and regulatory responsibilities which will apply to the client or his employer. The professional accountant\* shall make clear to the client or his employer that, where necessary, legal advice shall be taken. The professional accountant\* shall also draw attention to his own responsibilities outlined in this Code and if appropriate, the Auditing Practices Board's Ethical Standards for Auditors ([www.frc.org.uk/apb/publications/ethical.cfm](http://www.frc.org.uk/apb/publications/ethical.cfm)) and the Auditing Practices Board's Ethical Standards for Reporting Accountants ([www.frc.org.uk/apb/publications/ethical.cfm](http://www.frc.org.uk/apb/publications/ethical.cfm)).*

#### **Acquisition Searches**

**221.6** *It may be appropriate for a professional accountant\* to conduct an acquisition search which could identify another client or his employer as a target provided the search is based solely on information which is not confidential to that client.*

#### **Interests of Shareholders and Owners**

**221.7** *Professional accountants\* shall remain aware when giving advice that they shall have regard to the interests of all shareholders and owners unless they are specifically acting for a single or defined group thereof. This is particularly so*

\* See Definitions for parts A, B and C

*when advising on a proposal which is stated to be agreed by directors\* and/or majority shareholders or owners.*

### **Preparation of Documents**

- 221.8** *Any document shall be prepared in accordance with normal professional standards of integrity and objectivity and with a proper degree of care. All statements or observations therein must be capable, taken individually or as a whole, of being justified on an objective examination of the available facts.*
- 221.9** *In order to differentiate the roles and responsibilities of the various advisers, professional accountants\* shall ensure that these roles and responsibilities are clearly described in all public documents and circulars and that each adviser is named.*
- 221.10** *Professional accountants\* intending to comment on published audited accounts shall act in accordance with paragraphs 221.20-22 below.*

### **Overseas Transactions**

- 221.11** *This section has been drafted with regard to the situation in the UK and the Republic of Ireland. Professional accountants\* shall apply the spirit of the guidance, subject to local legislation and regulation, to overseas transactions of a similar nature.*

### **General Corporate Finance Advice Applicable to Professional Accountants in Public Practice\***

- 221.12** *The nature of corporate finance activities is so wide ranging that all the threats to the fundamental principles identified in section 100 and section 200, can arise when professional accountants in public practice\* provide corporate finance advice to both assurance clients\* and non-assurance clients: the self-interest threat, the self-review threat, the advocacy threat, the familiarity threat and the intimidation threat.*

*When advising a non-assurance client there can be no objection to a professional accountant in public practice\* accepting an engagement which is designed primarily with a view to advancing that client's case, though the professional accountant in public practice\* shall be aware that the self-interest threat could arise. Where a non-assurance client has received advice over a period of time on a series of related or unrelated transactions it is likely that, additionally, the familiarity threat may exist. But where a professional accountant in public practice\* advises an assurance client\* which is subject to a takeover bid or where a professional accountant in public practice\* acts as sponsor, nominated adviser or corporate adviser to an assurance client\* involved in the issue of securities, the self-interest threat will become more acute and the advocacy threat will arise.*

*Some corporate finance activities such as marketing or underwriting of securities contain so strong an element of advocacy as to be incompatible with the objectivity required for the reporting roles of an auditor or reporting accountant. Even where the activities of an auditor or reporting accountant are restricted to ensuring their clients' compliance with the Listing Rules, the AIM Rules or the PLUS Rules it is likely that a self-review threat could arise.*

\* See Definitions for parts A, B and C

- 221.13** *It may be in the best interests of a company for corporate finance advice to be provided by its auditor and there is nothing improper in the professional accountant in public practice\* supporting an assurance client\* in this way.*
- 221.14** *A professional accountant in public practice's\* objectivity may be seriously threatened if their role involves undertaking the management responsibilities of an assurance client\*. Co-ordination tasks, such as initiating and organising meetings, issuing timetables and reporting progress, are unlikely to threaten reporting objectivity. When involved in negotiations on behalf of an assurance client\*, the professional accountant in public practice\* shall ensure that he does not assume the role of taking decisions for a client which would prejudice reporting objectivity. Accordingly, the professional accountant in public practice\* shall ensure that the client takes full responsibility for the final decisions arising from any such negotiations.*

### **Conflict of Interest**

- 221.15** *Professional accountants in public practice\* shall be aware of the danger of a conflict of interest arising. All reasonable steps shall be taken to ascertain whether a conflict of interest exists or is likely to arise in the future between a professional accountant in public practice\* and his clients, both with regard to new clients and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.*
- 221.16** *The attention of professional accountants in public practice\* is directed to section 220, 'Conflicts of interest' and to the safeguards indicated in paragraphs 220.3 and 220.4 of that section. Where there appears to be a conflict of interest between clients but after careful consideration the professional accountant in public practice\* believes that either the conflict is not material or is unlikely seriously to prejudice the interests of any of those clients and that its safeguards are sufficient, the professional accountant in public practice\* may accept or continue the engagement. Unless client confidentiality considerations dictate otherwise it would be advisable, if appropriate, to seek the clients' consent. Considerations that lead to a conclusion to accept or continue the engagement shall be explicitly recorded.*
- 221.17** *Where a professional accountant in public practice\* acts or continues to act for two or more clients having obtained consent, if appropriate, in accordance with the previous paragraphs, safeguards will need to be implemented to manage any conflict which arises. The safeguards may include:*
- (a) the use of different partners\* and teams for different clients, each having separate internal reporting lines;*
  - (b) all necessary steps being taken to prevent the leakage of confidential information between different teams and sections within the firm\*;*
  - (c) regular review of the situation by a senior partner\* or compliance officer not personally involved with either client; and*
  - (d) advising the clients to seek additional independent advice, where it is appropriate.*

\* See Definitions for parts A, B and C

*Any decision on the part of a sole practitioner shall take account of the fact that the safeguards at (a) to (c) of the above paragraph will not be available to him or her. Similar considerations apply to small firms where the number of partners\* is insufficient to spread the work as indicated above.*

- 221.18** *Where a conflict of interest is so fundamental that it cannot be managed effectively by the implementation of appropriate safeguards and is likely seriously to prejudice the interests of a client, the engagement shall not be accepted or continued even if all relevant clients consent to the engagement.*
- 221.19** *Where a professional accountant in public practice\* is required for any reason to disengage from an existing client, the professional accountant in public practice\* shall do so as speedily as practicable having regard to the interest of the client.*

### **Documents for Client and Public Use**

- 221.20** *In the case of a document prepared solely for the client and its professional advisers, it shall be a condition of the engagement that the document shall not be disclosed to any third party without the firm's\* prior written consent.*
- 221.21** *A professional accountant in public practice\* is, in the absence of any indication to the contrary, entitled to assume that a company's published financial information that has been reported on by a professional accountant in public practice\* has been prepared properly and in accordance with all relevant Accounting Standards. If a professional accountant in public practice\* is commenting in a public document on such financial information and where scope for alternative accounting treatment exists, and the accuracy of the comment or observation is dependent on an assumption as to the actual accounting treatment chosen, that assumption must be stated, together with any other assumptions material to the commentary. Where the professional accountant in public practice\* is not in possession of sufficient information to warrant a clear opinion this shall be declared in the document.*
- 221.22** *A professional accountant in public practice\* must take responsibility for anything published under his name, provided he consented to such publication, and the published document shall make clear the client for whom the professional accountant in public practice\* is acting. To prevent misleading or out-of-context quotations, it shall be a condition of the engagement that, if anything less than the full document is to be published, the text and its context shall be expressly agreed with the professional accountant in public practice\*.*

### **Takeovers and Mergers**

#### **City Code Transactions**

- 221.23** *Professional accountants in public practice\* are reminded that, if in doubt as to the propriety of any aspect of a City Code transaction with which they are involved, they shall consult the Panel on Takeovers and Mergers ('the Takeover Panel'). (See Appendix 2 of this section).*
- 221.24** *Where a professional accountant in public practice\* finds itself acting as auditor or reporting accountant for two or more parties involved in a transaction subject to the City Code, a perceived conflict of interest may arise. In such*

\* See Definitions for parts A, B and C

*circumstances (subject to paragraph 221.26 below) a professional accountant in public practice\* may act for more than one party, including both offeror and offeree companies as auditor, as reporting accountants, and in the provision of incidental advice consistent with these roles but must implement adequate safeguards (see paragraph 221.17 above).*

### **Lead Advisers in City Code Transactions**

- 221.25** *For the purposes of this Section, a 'lead adviser' is the professional accountant in public practice\* primarily responsible for advising on, organising and presenting an offer or the response to an offer. This definition would include an 'independent financial adviser' required under Rule 3 of the City Code.*
- 221.26** *In no circumstances shall a professional accountant in public practice\* be a lead adviser to more than one party involved in a transaction subject to the City Code. Where a professional accountant in public practice\* finds itself acting in an auditor or reporting accountant role for any party involved in a transaction subject to the City Code, the professional accountant in public practice\* shall not act as lead adviser for any party involved, save in the circumstances set out below in paragraphs 221.27–221.29.*
- 221.27** *A professional accountant in public practice\* who is auditor to a target company may be requested to act as lead adviser to a bidder on an offer subject to the City Code. Where the bid is hostile, it is likely that the professional accountant in public practice's\* objectivity will be perceived to be prejudiced by its possession of material confidential information on the target and it will not therefore be able to advise on the offer. However, if the bid is agreed, the professional accountant in public practice\* may be able to act or continue to act as lead adviser to the bidder with the agreement of the target and subject to the prior approval of the Takeover Panel. The professional accountant in public practice\* shall obtain confirmation from its clients that their interests would not be prejudiced if the professional accountant in public practice\* were to act or continue to act in both capacities.*
- 221.28** *Where a professional accountant in public practice\* is acting as lead adviser to a company which is involved in a bid subject to the City Code, conflicts of interest for the professional accountant in public practice\* may arise due to an existing relationship with a second or subsequent bidder. Providing that the relationship with the second or subsequent bidder is confined to that of auditor or reporting accountant, and subject to the prior approval of the Takeover Panel, the professional accountant in public practice\* may continue to act as lead adviser, providing that it is satisfied that the implementation of safeguards (see paragraph 221.27 above) provides the necessary level of protection to each of the clients involved.*
- 221.29** *Where a professional accountant in public practice\* is requested to act as lead adviser to a target company in relation to a bid which is subject to the City Code from a company which is an existing assurance client\*, they may act as lead adviser to the target company only with the prior approval of the Takeover Panel.*

\* See Definitions for parts A, B and C

*The ethical guidance for professional accountants in public practice\* seeking to act for more than one party in a takeover transaction subject to the City Code is summarised in Appendix 3 to this section. Appendix 3 has been prepared only as a useful reference and is not intended to form part of this section.*

### **Transactions not Subject to the City Code**

**221.30** *Where a takeover is not subject to the City Code, and there is no substantial public interest involved, a professional accountant in public practice\* may, subject to the implementation of appropriate safeguards (see paragraphs 221.16 and 221.17 above), provide financial advice to both sides or to competing bidders. However, the professional accountant in public practice\* shall not act as lead adviser to both the target and a bidder in respect of such a transaction. The professional accountant in public practice\* shall be alive to the possibility of conflicts of interest arising in relation to minority interests and shall ensure that any such conflicts are addressed. Where appropriate, the advisory client and minority interests shall be advised as to the desirability of the minority interests appointing a wholly independent adviser.*

### **Underwriting and Marketing of Shares**

**221.31** *A professional accountant in public practice\* who is an auditor or reporting accountant shall not deal in, underwrite or promote shares for their client (see also APB's Ethical Standard 5 and APB's Ethical Standard for Reporting Accountants ([www.frc.org.uk/apb/publications/ethical.cfm](http://www.frc.org.uk/apb/publications/ethical.cfm))). Involvement of this kind would give rise to an advocacy threat, self-review threat and self-interest threat such that the professional accountant in public practice's\* objectivity and independence\* would be threatened.*

**221.32** *It may be appropriate:*

- (a) for an auditor or reporting accountant otherwise to assist a client in raising capital; or*
- (b) for an auditor or reporting accountant otherwise to provide independent advice to a client, or its professional advisers, in connection with the issue or sale of shares or securities to the public; or*
- (c) for an auditor or reporting accountant otherwise to provide advice as sponsor, as an Alternative Investment Market (AIM) nominated adviser or as a PLUS corporate adviser to a company as set out below.*

*In these situations the professional accountant in public practice\* shall adopt steps similar to those described in paragraph 220.3 and 220.4 of section 220 and, additionally, set up procedures to review and identify any potential conflicts of interest which could compromise the professional accountant in public practice's\* objectivity.*

### **Sponsors, Nominated Advisers and Corporate Advisers**

**221.33** *The attention of professional accountants in public practice\* is drawn to:*

\* See Definitions for parts A, B and C

- (a) *the UK Listing Authority's Listing Rules when a firm\* accepts the responsibilities of a sponsor;*
- (b) *the London Stock Exchange's AIM Rules and, AIM Rules for Nominated Advisers (which include the Eligibility Criteria for Nominated Advisers.) AIM's requirement is that for AIM companies to maintain their trading facility they shall have a nominated adviser at all times. In this context professional accountants in public practice\* shall have in place procedures to enable them to identify whether any conflicts exist or are likely to arise in the future before acting as a nominated adviser. Professional accountants in public practice\* shall note the policy of the London Stock Exchange that it will not normally allow a nominated adviser to be the reporting accountant to the issuer unless appropriate safeguards are in place as set out in paragraph 221.17 above. Furthermore, professional accountants in public practice\* shall note that the London Stock Exchange does not permit a nominated adviser to act for any other party to a transaction or takeover other than its AIM client company. In cases of doubt, professional accountants in public practice\* shall consult the London Stock Exchange.*
- (c) *the PLUS Rules and in particular the PLUS Corporate Advisers Handbook when acting as a Corporate Adviser defined by the PLUS Rules. PLUS's requirement is that for PLUS companies to maintain their trading facility they shall have a corporate adviser at all times. In this context professional accountants in public practice\* shall have in place procedures to enable them to identify whether any conflicts exist or are likely to arise in the future before acting as a corporate adviser. Professional accountants in public practice\* shall note that PLUS does not permit a corporate adviser to act for any other party to a transaction or takeover other than its PLUS client company. In cases of doubt, professional accountants in public practice\* shall consult PLUS.*

**221.34** *Considerable care needs to be taken if a professional accountant in public practice\* is also to act as sponsor, nominated adviser or corporate adviser to an assurance client\*. A threat to the objectivity of the auditor or reporting accountant can arise as the duties of a sponsor, nominated adviser or corporate adviser are different from those of an auditor or reporting accountant and are owed to a different party. Although it is quite possible that no conflict will arise between the two roles, professional accountants in public practice\* need to recognise the possibility of conflicts arising, particularly if the role of sponsor, nominated adviser or corporate adviser is to include any advocacy of the directors'\* views or if the transaction is to involve any issue of securities. To comply with the requirements of paragraph 221.31 above, where there is an issue of securities associated with such a transaction, a separate broker shall be appointed to take responsibility for any underwriting or marketing of the company's shares.*

## **Appendix 1 to Section 221 – Corporate Finance Advice**

### **Information on Statutory and Other Regulatory and Professional Requirements**

\* See Definitions for parts A, B and C

*For the assistance of professional accountants\* a list of the relevant legislative and regulatory measures and professional guidance is set out below. This reflects the position as at **1 April 2010**. Professional accountants\* shall be aware that this list may be subject to variation in the future and when undertaking corporate finance assignments professional accountants\* shall ensure they are aware of the current status of the list.*

- 1** *The Financial Services and Markets Act 2000, the Companies Act 1985 as amended, the Companies Act 2006, Part V of the Criminal Justice Act 1993 and, where applicable, the requirements of the Financial Services Authority's Handbook ([www.fsa.gov.uk/Pages/handbook](http://www.fsa.gov.uk/Pages/handbook)) or the ICAEW's Designated Professional Body Handbook ([www.icaew.com/dpb](http://www.icaew.com/dpb)).*
  - 2** *The City Code on Takeovers and Mergers (the 'City Code').*
  - 3** *The Financial Services Authority Handbook which includes:*
    - *the Listing Rules;*
    - *the Prospectus Rules;*
    - *the Disclosure and Transparency Rules; and*
    - *the London Stock Exchange's AIM Rules and AIM Rules for Nominated Advisers (which include the Eligibility Criteria for Nominated Advisers)*
  - 4** *The PLUS Market Corporate Adviser Handbook.*
  - 5** *The Admission and Disclosure Standards of the London Stock Exchange.*
  - 6** *The Auditing Practices Board's Ethical Standards, in particular ES 5 Non-Audit Services Provided to Audit clients\* and the Ethical Standard for Reporting Accountants ([www.frc.org.uk/apb/publications](http://www.frc.org.uk/apb/publications)).*
- And in the Republic of Ireland:*
- 7** *Investment Intermediaries Act, 1995 as amended by the Investor Compensation Act, 1998 and the Insurance Act, 2000 ('IIA'), and where applicable the requirements of the Central Bank of Ireland's Rule Book or the ICAEW's Investment Business Regulations and Guidance.*
  - 8** *Irish Takeover Panel Act, 1997.*
  - 9** *The Listing Rules of the Irish Stock Exchange: the IEX Rules.*
  - 10** *Code of Conduct issued by the Central Bank of Ireland under Section 37 of the IIA, as amended by S. 30 of the Insurance Act 2000.*
  - 11** *European Communities (Takeover Bids (Directive 2004/25/EC) Regulations 2006 (RoI).*

\* See Definitions for parts A, B and C

- 12 *Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (RoI).*
- 13 *Market Abuse (Directive 2003/6/EC) Regulations 2005 (RoI).*
- 14 *Prospectus (Directive 2003/71/EC) Regulations 2005.*

#### **Appendix 2 to Section 221 – Corporate Finance Advice**

- 1 *A professional accountant in public practice\* who provides takeover services for clients is required to comply with the City Code and with all rulings made and guidance issued under it by the Panel on Takeovers and Mergers ('the Takeover Panel').*
- 2 *Accordingly a professional accountant in public practice\* proposing to provide takeover services to a client shall at the outset:*
  - (a) *explain that these responsibilities will apply; and*
  - (b) *include in the terms of the engagement recognition of the professional accountant in public practice's\* obligation to comply with the City Code including any steps which the professional accountant in public practice\* may be obliged to take in performing those responsibilities. A specimen clause for the engagement letter is set out in paragraph 3 below.*

#### **Specimen Clause for Engagement Letters**

- 3 *The client agrees and acknowledges that where the services provided by the professional accountant in public practice\* relate to a transaction within the scope of the City Code, the client and the professional accountant in public practice\* will comply with the provisions of the City Code and will observe the terms of the Guidance Note published by the Institutes of Chartered Accountants relevant to such services or transactions. In particular, the client acknowledges that:*
  - (a) *if the client or its advisers or agents fail to comply with the City Code then the professional accountant in public practice\* may withdraw from acting for the client; and*
  - (b) *the professional accountant in public practice\* is obliged to supply to the Takeover Panel any information, books, documents or other records concerning the services or transaction which the Takeover Panel may require.*

#### **Scope of Takeover Services**

- 4 *Takeover services means any professional services\* provided by a professional accountant in public practice\* to a client in connection with a transaction to which the City Code applies.*
- 5 *The kinds of activities most commonly relevant for this purpose include:*
  - (a) *acting as financial adviser to one of the parties (for example, as 'Rule 3 adviser' to the offeree company);*

\* See Definitions for parts A, B and C

- (b) *reporting on profit forecasts and/or valuations for the purposes of takeover documents;*
- (c) *conducting acquisition searches for clients, and introducing clients to other parties with a view to effecting transactions;*
- (d) *advising in relation to acquisitions and disposals of securities of companies which are subject to City Code.*
- (e) *acting as a reporting accountant where both the City Code and the Listing Rules or Take Over Rules apply.*

**6** *Whilst the City Code does not define precisely the range of activities and transactions within its scope, paragraph 3 of the Introduction to the City Code describes the companies and transactions which are subject to the City Code. In practice, those engaged in providing takeover services rarely experience difficulty in determining whether the City Code is or may be relevant to the activities proposed to be undertaken for any particular client. In cases of any doubt the Takeover Panel shall be consulted.*

### **Special Responsibilities**

- 7** *A professional accountant in public practice\* who has provided or is providing takeover services to a client shall:*
- (a) *supply to the Takeover Panel any information, books, documents or other records concerning the relevant transaction or arrangement which the Takeover Panel may properly require and which are in the possession or under the control of the professional accountant in public practice\*; and*
  - (b) *otherwise render all such assistance as the professional accountant in public practice\* is reasonably able to give to the Takeover Panel, provided that in each case the relevant information, books, documents or other records were acquired by the professional accountant in public practice\* in the course of providing the relevant takeover services.*
- 8** *Except with the consent of the Takeover Panel, a professional accountant in public practice\* shall not provide or continue to provide any takeover services to any person if the Takeover Panel has stated that it considers that such a person is not likely to comply with the standards of conduct for the time being expected in the United Kingdom concerning the practices of those involved in takeovers, mergers or substantial acquisitions of shares and the Takeover Panel has not subsequently indicated a change in this view. A person to whom this paragraph applies will normally have been named in a statement published by the Takeover Panel, inter alia, for the purposes of Rule 4.3.1 of the Financial Services Authority's Handbook on Market Conduct.*
- 9** *If professional accountants in public practice\* have included in the engagement letter agreed with the client a provision as outlined in paragraph 3 above, they will be able to discharge their responsibilities under paragraph 7 and/or 8 above, without any breach of confidentiality or duty to the client. While professional accountants in public practice\* shall include such a provision, it is*

\* See Definitions for parts A, B and C

recognised that, on occasion, compliance with such responsibilities may still involve a breach of confidentiality to a third party or a breach of some other duty owed to the client. In such circumstances this Appendix is not applicable.

**The Financial Services and Markets Act 2000**

**10** The provision of corporate finance services may require authorisation by the Financial Services Authority or a licence under the Designated Professional Body arrangements. However, this Guidance Note applies to all professional accountants in public practice\* whether authorised/licensed or not.

**Appendix 3 to Section 221 – Corporate Finance Advice**

**Guidance for firms\* seeking to act for more than one party in a takeover subject to the City Code**

This table is intended for illustrative purposes only and shall be read in conjunction with section 221, Corporate Finance Advice.

	<b>Bid Situation</b>	<b>Target</b>	<b>Bidder</b>	<b>Subsequent Bidder</b>	<b>Comments</b>
A	Agreed – relationship with one bidder	Ass	Ass	-	Permitted – see paragraph 221.24
B		Adv	Ass	-	Permitted by agreement with the Takeover Panel – see paragraph 221.29
C		Ass	Adv	-	Permitted with conditions – see paragraph 221.27
D		Adv	Adv	-	Prohibited – see paragraph 221.26
E	Hostile one bidder	Ass	Ass	-	Permitted with conditions – see paragraph

\* See Definitions for parts A, B and C

					221.24
F		Adv	Ass	-	Permitted by agreement with the Takeover Panel – see paragraph 221.29
G		Ass	Adv	-	Prohibited – see paragraph 221.26 and 221.27
H		Adv	Adv	-	Prohibited – see paragraph 221.26
I	Subsequent bidder emerges	Ass	Ass	Ass	Permitted – see paragraph 221.24
J		Ass	-	Ass	Permitted - see paragraph 221.24
K		Adv	-	Ass	Permitted – see paragraph 221.28
L		Ass	-	Adv	Prohibited – see paragraph 221.26
M		Adv	-	Adv	Prohibited – see paragraph 221.26
N	Acting for rival bidders	-	Ass	Ass	Permitted – see paragraph 221.24

\* See Definitions for parts A, B and C

O		-	Adv	Ass	Permitted – see paragraph 221.28
P		-	Ass	Adv	Prohibited – see paragraph 221.26
Q		-	Adv	Adv	Prohibited – see paragraph 221.26

*In all of the above cases where professional accountants in public practice\* may be permitted to act for more than one party, the professional accountants in public practice\* must consider the potential threats and put in place the appropriate safeguards as set out in paragraph 221.33. Furthermore, where stated, permission for the professional accountant in public practice\* to act for more than one party shall be obtained from the Takeover Panel.*

### **Key**

*Adv Professional accountant in public practice\* acts as lead adviser (see paragraph 221.17)*

*Ass Professional accountant in public practice\* acts as auditor or reporting accountant.*

*As regards the application of this guidance to non-audit assurance engagements\*, professional accountant in public practice's\* attention is drawn to the explanatory note contained in the Definitions to Parts A, B and C.*

### **Notes**

- 1 *This matrix does not address a reverse takeover situation, where the offeror is required by the City Code to appoint advisers.*
- 2 *The matrix does not cover the takeover of private companies, except those which are subject to the City Code. Private companies are subject to the general requirements of this Code.*

## **SECTION 230 - SECOND OPINIONS**

**230.0** *Opinions expressed informally by a professional accountant\* may be acted on, and professional accountants\* shall bear in mind the potential consequences of those opinions. Oral opinions shall as a matter of good practice, because of legal implications, be confirmed in writing as soon as practicable after giving the opinion. If a professional accountant\* is asked for a 'general opinion' (one relative to a hypothetical situation not related to specific entities or*

\* See Definitions for parts A, B and C

*circumstances), whether written or oral, the professional accountant\* shall ensure that the recipient of the opinion understands that it has been given in the context of that particular hypothetical situation only.*

- 230.1** Situations where a professional accountant in public practice\* is asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may create threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant\* or is based on inadequate evidence. The existence and significance of any threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

*This section does not apply to expert evidence assignments, opinions pursuant to litigation and opinions provided to other firms\* and their clients jointly.*

- 230.2** When asked to provide such an opinion, a professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level\*. Examples of such safeguards include seeking client permission to contact the existing accountant\*, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant\* with a copy of the opinion.

*A professional accountant\* providing a second opinion will normally need to seek contact with the existing accountant\* (particularly if the existing accountant\* is engaged as auditor) and the client in order to:*

- *Ascertain the circumstances in which the consultation has been made; and*
- *Be apprised of all the facts relevant to the issue at the time the opinion is given.*

- 230.3** If the company or entity seeking the opinion will not permit communication with the existing accountant\*, a professional accountant in public practice\* shall determine whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

*If the client will not allow the opinion-giver to carry out any of the steps referred to above, the opinion-giver must normally decline to act (particularly if the existing accountant\* is engaged as auditor).*

## **SECTION 240 - FEES AND OTHER TYPES OF REMUNERATION**

- 240.0** *ICAEW does not set charge-out rates or otherwise prescribe the basis for calculating fees, nor does it ordinarily investigate complaints relating solely to the quantum of fees charged. However, professional accountants in public*

\* See Definitions for parts A, B and C

*practice\* have certain professional responsibilities in relation to fees as set out in the following paragraphs.*

- 240.1** When entering into negotiations regarding professional services\*, a professional accountant in public practice\* may quote whatever fee is deemed appropriate. The fact that one professional accountant in public practice\* may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.
- 240.2** The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level\*. Examples of such safeguards include:
- Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.
  - Assigning appropriate time and qualified staff to the task.
- 240.2a** *The basis on which fees will be calculated shall be discussed and explained at the earliest opportunity together with, where practicable, the estimated initial fee. Fees shall be determined by reference to:*
- *The seniority and professional expertise of the persons necessarily engaged on the work;*
  - *The time expended by each;*
  - *The degree of risk and responsibility which the work entails;*
  - *The nature of the client's business, the complexity of its operation and the work to be performed;*
  - *The priority and importance of the work to the client;*
  - *Expenses properly incurred.*
- 240.2b** *The arrangements agreed shall be confirmed in writing prior to the commencement of any engagement, normally in an engagement letter, including a confirmation of any estimate, quotation or other indication, and where the basis of future fees will differ from that of initial fees, the basis on which such fees will be rendered. Where there is no engagement letter the professional accountant in public practice\* shall confirm the initial discussion in writing to the client as soon as practicable.*

\* See Definitions for parts A, B and C

**240.2c** *In the case of assurance work, and in particular audit work, professional accountants in public practice\* who obtain work having quoted levels of fees which they have reason to believe are significantly lower than existing fees or, for example, those quoted by other tendering firms\*, shall be aware that their objectivity and the quality of their work may appear to be threatened by self-interest in securing the client. Such professional accountants in public practice\* shall ensure that their work complies with relevant standards, guidelines and regulations and, in particular, quality control procedures.*

**240.2d** *In the event of a complaint being made to ICAEW where fees were a feature in obtaining or retaining the work, professional accountants in public practice\* shall demonstrate that:*

- *The work done was in accordance with relevant standards; and*
- *The client was not misled as to the basis on which fees for the current and/or subsequent years are to be determined.*

**240.3** Contingent fees\* are widely used for certain types of non-assurance engagements\*.<sup>1</sup> They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self-interest threat to objectivity. The existence and significance of such threats will depend on factors including:

- The nature of the engagement.
- The range of possible fee amounts.
- The basis for determining the fee.
- Whether the outcome or result of the transaction is to be reviewed by an independent third party.

**240.4** The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level\*. Examples of such safeguards include:

- An advance written agreement with the client as to the basis of remuneration.
- Disclosure to intended users of the work performed by the professional accountant in public practice\* and the basis of remuneration.
- Quality control policies and procedures.
- Review by an independent third party of the work performed by the professional accountant in public practice\*.

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<sup>1</sup> Contingent fees\* for non-assurance services provided to audit clients\* and other assurance clients\* are discussed in sections 290 and 291 of this Part of the Code.

**240.4a** *In some formal appointments under insolvency legislation, in particular bankruptcies, liquidations and administrations, the remuneration of the professional accountant in public practice\* may, by statute, be based on a percentage of:*

- *Realisations or the value of the property with which the professional accountant in public practice\* has to deal; and/or*
- *Distributions.*

Consequently, it may not be possible to base the fee on the principle in paragraph 240.4 above.

**240.4b** *In some circumstances, such as advising on a management buy-in or buy-out, the raising of venture capital, acquisition searches or sales mandates, where no professional opinion is given, it may not be appropriate to charge fees save on a contingent fee\* basis: to require otherwise might deprive potential clients of professional assistance, for example where the capacity of the client to pay is dependent upon the success or failure of the venture.*

**240.4c** *Due diligence assignments, particularly those performed in relation to a prospective transaction, typically involve a high level of risk and responsibility. A higher fee may be charged for such work in respect of a completed transaction than for the same transaction if it is not completed, for whatever reason, provided that the difference reflects any additional risk and responsibility.*

#### **Fee Information and Disputes**

**240.4d** *A professional accountant in public practice\* shall furnish, either in the fee account or subsequently on request, and without further charge, such details as are reasonable to enable the client to understand the basis on which the fee account has been prepared.*

**240.4e** *Where fees rendered without prior agreement exceed, by more than a reasonable amount, a quotation or estimate or indication of fees given by a professional accountant in public practice\*, the professional accountant in public practice\* shall be prepared to provide the client with a full and detailed explanation of the excess and to take steps to resolve speedily any dispute which arises.*

**240.4f** *A professional accountant in public practice\* whose fees have not been paid may be entitled to retain certain books and papers of a client by exercising a lien and may refuse to pass on information to the client or the successor accountant until those fees are paid (but see section 210, 'Professional appointment'). However, a professional accountant in public practice\* who so acts shall be prepared to take reasonable and prompt steps to resolve any dispute relating to the amount of that fee. In respect of any fee dispute, a professional accountant in public practice\* shall be aware of the fee arbitration services offered by ICAEW.*

**240.4g** *Overdue fees may give rise to a perceived or real self-interest threat (see section 280). Similar considerations apply to work-in-progress for a client if billing is unduly deferred.*

\* See Definitions for parts A, B and C

## Referrals and Commissions

**240.5** In certain circumstances, a professional accountant in public practice\* may receive a referral fee or commission relating to a client. For example, where the professional accountant in public practice\* does not provide the specific service required, a fee may be received for referring a continuing client to another professional accountant in public practice\* or other expert. A professional accountant in public practice\* may receive a commission from a third party (e.g., a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.

**240.6** A professional accountant in public practice\* may also pay a referral fee to obtain a client, for example, where the client continues as a client of another professional accountant in public practice\* but requires specialist services not offered by the existing accountant\*. The payment of such a referral fee also creates a self-interest threat to objectivity and professional competence and due care.

**240.7** The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level\*. Examples of such safeguards include:

- Disclosing to the client any arrangements to pay a referral fee to another professional accountant\* for the work referred.
- Disclosing to the client any arrangements to receive a referral fee for referring the client to another professional accountant in public practice\*.
- Obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.

*Remuneration of employees would not normally be included within the scope of the payments addressed above.*

**240.7a** *A fiduciary relationship between a professional accountant in public practice\* and his or her client will arise where the accountant acts as the client's agent; and/or where the accountant gives professional advice to the client so as to give rise to a relationship which the law would regard as one of 'trust and confidence'. Where a fiduciary relationship exists at the time between a professional accountant in public practice\* and a client, the professional accountant in public practice\* is legally bound to account to the client for any commission, fee or other benefit received from a third party at any time. ICAEW is advised that the effect is that a professional accountant in public practice\* will require the informed consent of the client if the professional accountant in public practice\* is to retain the commission, fee or other benefit or any part of it. If professional accountants in public practice\* are in doubt as to whether the circumstances give rise to a fiduciary relationship, they are recommended to seek appropriate legal advice.*

\* See Definitions for parts A, B and C

**240.7b** *Under the general law, professional accountants\* must adopt one of the following courses in respect of commission receivable<sup>2</sup>:*

(a) *Account to the client for the commission or other benefit*

*This could be effected:*

- *By payment of the whole commission or benefit to the client, or*
- *By deducting the amount received from the fees otherwise chargeable to the client and by showing such deduction on the face of the bill.*

(b) *Obtain the client's advance consent to each receipt of commission*

*This involves obtaining consent before the commission is received and the firm\* must disclose, in advance, the actual amount of the commission (or its basis of calculation) and the terms and timing of its payment.*

(c) *Obtain the client's advance general consent to the member's\* retaining commission.*

*This could be by way of the engagement letter, or by a supplementary agreement, containing explicit wording permitting such retention, such as the following:*

*'In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions we [or such associates] arrange for you, in which case you will be notified in writing of the amount and terms of payment. [The fees that would otherwise be payable by you as described above will [or will not] be abated by such amounts.] You consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our, [or their,] being liable to account to you for any such amounts.'*

*Note:*

- i. *Before the client agrees to any such provision, examples must be given of likely commissions that may be received and the likely amounts, and it shall be emphasised that these are only examples and may not cover all receipts in the future. If, in the future, abnormally large commissions are received which were not envisaged when the engagement letter was signed, it would be advisable to obtain specific consent to the retention of those commissions in order to meet any assertion that retention of such commission was not authorised by the engagement letter.*
- ii. *Any further provision which indicated likely levels of commission, and then continued 'Commissions of less than £X will be retained by us, and commissions of more than £X will be divided equally*

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<sup>2</sup> Professional accountants\* are reminded that where detailed regulatory requirements cover the same issues as this Code, the regulatory requirements prevail where these are more onerous.

\* See Definitions for parts A, B and C

*between yourselves and ourselves' might be effective. Members\* are advised, however, to consult with their lawyers before including such a provision.*

- iii. *Where an existing client of the member\* is to sign a new engagement letter containing such a provision as is referred to above, the firm\* shall explain that, in the absence of the signed engagement letter, the firm\* could retain the commission only if the client gave full and informed consent on each occasion after receiving full disclosure of the amount involved, whereas, once the letter is signed, the firm\* can keep the commission.*

**(d) Obtain the client's subsequent consent**

*If the member\* does not obtain the client's consent in one of the ways referred to in paragraph 240.7b above, the commission may still be able to be retained if the client subsequently expressly consents to such retention (on the basis of full disclosure of the amount, terms and timing of payment).*

**240.7c** *Alternatively professional accountants\* will be able to retain the commission if the client (with knowledge of all relevant facts) impliedly consents by acquiescing in such retention, for instance by deciding to proceed with the transaction having been notified both of the fact that the firm\* will receive commission and of the full details of that commission.*

**240.7d** *Even where a fiduciary relationship does not exist, where a professional accountant in public practice\* becomes aware that any commission, fee or other benefit may be received (directly or indirectly), there shall be disclosed to the client in writing:*

- *That commission or benefit will result or is likely to result, and*
- *When the fact is known, that such commission or benefit will be received, and*
- *As early as possible, the amount and terms of the benefit to the professional accountant in public practice\*.*

**240.7e** *As regards payments of referral fees, professional accountants in public practice\* have a responsibility to ascertain that a referral manner is in accordance with this Code because professional accountants in public practice\* must not do, or be seen to do, through others what they may not do themselves. To this end, professional accountants in public practice\* shall consider whether there are any indications that the work or client has been initially procured in an unprofessional manner.*

*In addition, where needed to complete a referred engagement properly, professional accountants in public practice\* shall:*

\* See Definitions for parts A, B and C

- *Satisfy themselves as to the competence and professional standards of staff within their firm\* whose work on the engagement it would be their duty to review; and*
- *Ensure their right of direct access to the client and, in appropriate circumstances, render their own fee account to the client.*

**240.7f** *In the case of insolvency work, Insolvency Practitioners shall have regard to Part D of this Code.*

**240.7g** *Where an invitation to conduct a statutory audit comes other than directly from the client, the professional accountant in public practice\* shall first ensure that the audit appointment has properly been made in accordance with statute. It shall be made clear to all interested parties on all relevant documents that the professional accountant in public practice\* is acting as principal, with all that that function implies. In those circumstances, professional accountants in public practice\* shall deal directly with the client and shall render their own fee account in addition to complying with the other requirements above.*

**240.8** A professional accountant in public practice\* may purchase all or part of another firm\* on the basis that payments will be made to individuals formerly owning the firm\* or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5–240.7 above.

*Attention is drawn to additional requirements in respect of agency and referral arrangements, in section 241.*

## **SECTION 241 AGENCIES AND REFERRALS**

**241.1** *When referring or receiving referred work or when establishing agency arrangements, which are in effect permanent arrangements for making referrals, professional accountants in public practice\* are required to assess threats to compliance with the fundamental principles and to apply safeguards. A referral covers a formal request made in the course of a professional relationship for advice on the selection of a potential professional adviser and may also cover an informal request, regardless of whether there is an existing relationship.*

*Attention is drawn to additional requirements in respect of referral fee arrangements, in section 240.*

### **Duty of Care**

**241.2** *In making a referral, a duty of care may arise. The extent of a duty of care varies according to the circumstances, including whether the exchange or provision of information was solicited or not. A greater duty of care will arise for matters which are reasonably expected to be within a professional accountant in public practice's\* knowledge or where a fee is charged. A professional accountant in public practice\* needs to look at this from the client's or enquirer's*

\* See Definitions for parts A, B and C

*point of view and what their expectations would be of what a professional accountant in public practice\* would be expected to know:*

- *Where a referral fee is received, or where the service referred to is in a professional or finance – related sphere, the client (or enquirer) can reasonably presume knowledge by the professional accountant in public practice\*. Any limitation of knowledge would clearly need to be explained.*
- *Where the enquiry relates to a service outside the normal sphere of expertise of an accountant and no referral fee is contemplated, then it is reasonable to presume that the enquiry is being made in a personal capacity, unless circumstances suggest otherwise. It is still advisable to express any limitations of knowledge and to clarify, in case of doubt, that any opinion is based on personal experience rather than in a professional capacity.*

**241.3** *When making a referral, disclosure of relevant knowledge limitations shall be considered. Professional accountants in public practice\* shall consider whether it would be in their interest for such knowledge limitations to be disclosed in writing, according to the circumstances. Factors that a professional accountant in public practice\* shall consider when making such a decision include:*

- *The nature of the professional relationship with the enquirer (an existing client, someone who could reasonably be considered to be making the enquiry as a prospective client or a casual enquiry).*
- *The context in which the enquiry is made. Is it professional or personal, casual or formal?*
- *The nature of the personal relationship. Does the enquirer know the professional accountant in public practice\* is a Chartered Accountant and are they consulting them as a respected professional?*
- *The scope of enquiry and whether a referral fee is contemplated, as considered in section 240.*
- *The enquirer's expectations.*

**241.4** *A referral arises typically, when the professional accountant in public practice\* does not have the expertise and/or resource in house to undertake the potential engagement. It follows that the professional accountant in public practice\* will not necessarily know enough to be able to completely assess whether the third party is the optimum choice or not. This is an inevitable limitation in most referrals, and what the referral is based on will vary. However, the professional accountant in public practice\* shall consider the fitness for purpose of the third party to address the client's needs.*

**241.5** *In making that consideration, the professional accountant in public practice\*:*

- *Can take account of the professional or regulatory status of the prospective referee;*

\* See Definitions for parts A, B and C

- *Is not normally expected to have to make additional enquiries about the prospective referee and can make the assessment based on what is already known.*

**241.6** *A referral shall not normally be made to a third party even with a disclaimer, when, taking into account known factors, the professional accountant in public practice\* knows of a better alternative. If the client or enquirer insists on being referred to a particular third party and the professional accountant in public practice\* believes there is a better alternative, the reference may be made but the client or enquirer shall be made aware of the professional accountant in public practice's\* concerns. Where the referral relates to an end product or service, rather than an intermediary, and the professional accountant in public practice\* knows there are other alternatives but does not know if they are better, this shall be explained.*

**241.7** *If there is a relationship with the third party, for example a family connection or an automatic referral arrangement, there are clear self-interest or familiarity threats and the connection shall be disclosed. This is particularly important where a professional accountant in public practice\* is considering recommending the products of another supplier with which there is an agency, and/or a principal\* or employee of the professional accountant in public practice's\* firm\* is a principal\* or officer\* of the other supplier. If in substance there is a one-to-one relationship between the professional accountant in public practice\* and the third party (for example, the professional accountant in public practice\* is the only accountant in the area and the third party is the only solicitor), which implies automatic referral, this shall also be disclosed.*

**241.8** *In summary, professional accountants in public practice\* shall:*

- *Consider any factors they are aware of that would indicate the proposed third party is not fit for purpose in terms of the potential engagement. The professional accountant in public practice\* shall take into account what a reasonable person might expect a Chartered Accountant to know;*
- *Make clients (or enquirers), that are proposed to be referred, aware of limitations in knowledge;*
- *Disclose any referral arrangement;*
- *Ensure that any contractual arrangement does not override the needs of an individual client.*

### **Establishing Agencies**

**241.9** *The guidance which follows is intended to assist professional accountants in public practice\* in their arrangements with other suppliers of services and products.*

**241.10** *This section addresses agreements that in effect provide for permanent arrangements for referrals. The issues are considered to be similar to those above for referrals in general except that an agency contract will usually bind the agent in terms of whom it can refer to for particular types of work. When*

\* See Definitions for parts A, B and C

*professional accountants in public practice\* are considering the establishment of an agency, the terms of the agency contract (actual or implied) shall not require exclusive referral of all clients regardless of suitability. For example, professional accountants in public practice\* shall not be party to an agency by which they are constrained to channel all funds received by it for investment into a single bank/building society. Such a clause would make important safeguards inoperable.*

- 241.11** *Before accepting appointment as auditor of another entity of which they are an agent, professional accountants in public practice\* shall consider whether the agency constitutes a material business relationship. See section 290, 'Independence – audit and review engagements.'*
- 241.12** *Professional accountants in public practice\* shall not, because of the self-interest threat, enter into any financial arrangements with another supplier either personally or through their firm\* which would prejudice the objectivity of themselves or their firm\*.*
- 241.13** *Before accepting or continuing an agency with another supplier, professional accountants in public practice\* shall satisfy themselves that their ability to discharge their professional obligations to their clients is not compromised.*
- 241.14** *A professional accountant in public practice\* shall not in any circumstances conduct its practice in such a manner as to give the impression that the professional accountant\* is a principal rather than an agent. This would include considering signs on premises and any other outward signs or literature used. This would relate in particular to agencies with entities such as banks and building societies, where confusion as to status can arise (see also 'The names and letterheads of practising firms' at [www.icaew.com/regulations](http://www.icaew.com/regulations)).*
- 241.15** *Firms\* in the Republic of Ireland must be authorised under the Investment Intermediaries Act, 1995 to hold an agency with a building society and that arrangement shall relate solely to deposit taking and not for example relate to products of a particular insurance company or unit trust organisation for which the building society is an appointed representative. Firms\* holding building society agencies must ensure that their agency agreement contains no obligation which would cause, or would be perceived to cause, them to breach the provisions of either the Act or the Institute of Chartered Accountants in Ireland's Investment Business Regulations and Guidance. Firms\* cannot hold agencies with banks.*

### **Investment Business Agencies and Introductions**

- 241.16** *When considering referrals of investment business ('introductions') or the establishment of investment business agencies, professional accountants in public practice\* shall apply the general principles and requirements set out in the previous Sections. However, they will also need to consider:*
- *Whether the introduction or agency is permitted by regulation; and*

\* See Definitions for parts A, B and C

- Whether the status of the third party investment business provider is compatible with the requirement to give objective advice.

**Regulated activities under the Financial Services and Markets Act 2000 (United Kingdom)**

**241.17** *In order to make a decision about whether an introduction is a regulated activity, the professional accountant in public practice\* must look at how the introduction is made and also what type of investment the client is considering (such as life assurance and pensions, unit trusts, shares, mortgages or general insurance). A regulated introduction can only be made under the terms of the Act by a firm\* which is licensed by ICAEW as a Designated Professional Body ('DPB') (a licensed firm\*) or a firm\* which is authorised by the Financial Services Authority ('authorised'). Unauthorised / unlicensed firms\* are restricted in that they can only make introductions for general financial advice where no specific type of investment is referred to, or for a restricted range of investments, such as shares and unit trusts. Such introductions can only be made to those authorised firms\* who can give independent advice. However, unauthorised / unlicensed firms\* can provide information to a client about a third party provided no recommendation is made.*

**241.18** *Further guidance on the difference between a regulated introduction and the provision of information in respect of insurance business, and the regulatory consequences thereof, is set out in Schedule 6 to Part 3 of the DPB Handbook, available at [www.icaew.com/dpb](http://www.icaew.com/dpb).*

**241.19** *Having established that an introduction can be made in compliance with regulatory requirements, professional accountants in public practice\* shall bear in mind the need to provide their clients with objective advice, in compliance with these ethical standards.*

**241.20** *Professional accountants in public practice\* can become appointed representatives of another authorised firm\*. When selecting which authorised firm\* to become an appointed representative of, professional accountants in public practice\* shall again bear in mind the need to provide their clients with objective advice.*

**Regulated Activities under the Investment Intermediaries Act, 1995 (Republic of Ireland)**

**241.21** *Professional accountants in public practice\* may only make an introduction or refer clients to another authorised firm\* if they are themselves authorised to conduct investment business under the Investment Intermediaries Act 1995 and where required hold an appropriate letter of appointment.*

**241.22** *Professional accountants in public practice\* when selecting an authorised firm\* shall bear in mind the need to provide their clients with objective advice.*

**Status of Investment Business Providers**

**241.23** *Authorised firms\* can fall into the following categories:\**

<b>Type of</b>	<b>What the firm* can recommend</b>	<b>Can there generally be</b>
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\* See Definitions for parts A, B and C

<i>firm*</i>		<b>introductions to this type of firm*?</b>
<i>Independent</i>	<i>Recommend products from the whole market and offer clients the ability to pay by fee. Only these firms* can describe themselves as independent financial advisers. The client may be able to elect for the adviser to be paid by commission</i>	Yes (241.24 below)
<i>Whole of market (UK only)</i>	<i>Recommend products from the whole market but do not offer clients the ability to pay by fee. The firm* is remunerated by commission.</i>	Yes (241.25 below)
<i>Multi-tied (Multi-agency in Rol)</i>	<i>Recommend the products of more than one product provider with whom the firm* has agreements, but recommends on less than the whole market.</i>	Depends on scope of choice (241.26 below)
<i>Tied</i>	<i>Recommend the products of one product provider.</i>	No (241.27 below)

**241.24** *An introduction to an independent firm\* would be likely to meet the requirement to give objective advice but professional accountants\* in public practice are reminded of the general requirements above.*

**241.25** *Professional accountants in public practice\* may also regard ‘whole of market’ authorised firms\* as equivalent to independent firms\* as the method by which the authorised firm\* is remunerated (which is the difference between independent and whole of market) is not relevant for the purposes of compliance with this statement.*

**241.26** *Professional accountants in public practice\* may in some situations be able to introduce to multi-tied firms\* and still comply with the ethical requirements (however, see paragraphs 241.16–241.18 above as to whether the introduction can only be made by a DPB licensed firm\* or an FSA authorised firm\*, if it is a ‘regulated’ activity). Clearly the principal threat is that clients might not be offered the most appropriate choice. The professional accountant in public practice\* shall assess the client’s requirements and whether the multi-tied firm\* places business with the product providers who account for a large majority of the relevant market or offer the sector of the market which is most suitable for the client’s needs. However, members\* must ensure that in making such an assessment, they are not effectively making their own recommendation unless they are able to do so under the terms of a licence or authorisation. The professional accountant in public practice\* may decide that this does not restrict the client’s access to the range of product providers to an extent where there is*

\* See Definitions for parts A, B and C

*any potential detriment. The professional accountant in public practice\* shall make the client aware of restrictions in the range of investments offered by the firm\* to which the client is being referred.*

**241.27** *An introduction to a tied firm\* restricts the client's ability to obtain independent advice and would therefore not be objective.*

**241.28** *Similar considerations to those noted above apply to whether a professional accountant in public practice\* shall become an appointed representative under the Financial Services and Markets Act 2000. Thus, for example, a professional firm\* cannot become an appointed representative for regulated investment business, of a tied firm\* as the agency agreement would probably oblige the firm\* to make referrals to the principal in all circumstances and the firm\* would be unable to provide objective advice.*

## **SECTION 250 - MARKETING PROFESSIONAL SERVICES\***

**250.1** When a professional accountant in public practice\* solicits new work through advertising or other forms of marketing, there may be a threat to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements, or products are marketed in a way that is inconsistent with that principle.

**250.2** A professional accountant in public practice\* shall not bring the profession into disrepute when marketing professional services\*. The professional accountant in public practice\* shall be honest and truthful and not:

- (a) Make exaggerated claims for services offered, qualifications possessed, or experience gained; or
- (b) Make disparaging references or unsubstantiated comparisons to the work of another.

*In particular, where professional accountants in public practice\* seek to make comparisons of their promotional material between their practices or services and those of others, great care will be required. In particular, they shall ensure that such comparisons:*

- *Are objective and not misleading;*
- *Relate to the same services;*
- *Are factual and verifiable; and*
- *Do not discredit or denigrate the practice or services of others.*

*Particular care is needed in unclear or subjective claims of size or quality. For example, it is impossible to know whether a claim to be 'the largest firm' in an area is a reference to the number of partners\* or staff, the number of offices\* or*

\* See Definitions for parts A, B and C

*the amount of fee income. A claim to be 'the best firm' is unlikely to be able to be substantiated.*

If the professional accountant in public practice\* is in doubt about whether a proposed form of advertising\* or marketing is appropriate, the professional accountant in public practice\* shall consider consulting with ICAEW.

- 250.3** *A professional accountant in public practice\* shall ensure that all advertisements, including letterheads, invoices and other practice documents, comply with the law and conform with the requirements of the relevant Advertising Standards Authority (for example, the British Code of Advertising) notably, as to legality, decency, clarity, honesty and truthfulness.*
- 250.4** *If reference is made in promotional material to fees, the basis on which the fees are calculated, or to hourly or other charging rates, the greatest care shall be taken to ensure that such reference does not mislead as to the precise range of services and the time commitment that the reference is intended to cover. Professional accountants in public practice\* are unlikely to be able to comply with the requirements of 250.2 if making a comparison in such material between their fees and the fees of another accounting practice, whether members\* or not. A professional accountant in public practice\* may offer a free consultation at which fees are discussed.*
- 250.5** *Professional accountants in public practice\* shall never promote or seek to promote their services, or the services of other professional accountants in public practice\*, in such a way, or to such an extent, as to amount to harassment of a potential client.*
- It shall be noted that special rules apply in relation to the conduct of Insolvency Practice and licensed practitioners shall have regard to the relevant legislation and to Part D. Similarly professional accountants in public practice\* whose firm\* is registered for the conduct of investment business shall have recourse to the relevant Investment Business Regulations.*
- 250.6** *Further guidance on marketing professional services\* is available to members in a helpsheet from the Ethics Advisory Services ([www.icaew.com/ethicsadvice](http://www.icaew.com/ethicsadvice)). See also sections 210, 'Professional appointment' and 230, 'Second opinions'.*

## **SECTION 260 - GIFTS AND HOSPITALITY**

- 260.1** A professional accountant in public practice\*, or an immediate or close family\* member, may be offered gifts and hospitality from a client. Such an offer may create threats to compliance with the fundamental principles. For example, a self-interest or familiarity threat to objectivity may be created if a gift from a client is accepted; an intimidation threat to objectivity may result from the possibility of such offers being made public.
- 260.2** The existence and significance of any threat will depend on the nature, value, and intent of the offer. Where gifts or hospitality are offered that a reasonable and informed third party, weighing all the specific facts and circumstances,

\* See Definitions for parts A, B and C

would consider trivial and inconsequential, a professional accountant in public practice\* may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the professional accountant in public practice\* may generally conclude that any threat to compliance with the fundamental principles is at an acceptable level\*.

- 260.3** A professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level\*. When the threats cannot be eliminated or reduced to an acceptable level\* through the application of safeguards, a professional accountant in public practice\* shall not accept such an offer.
- 260.4** *Further guidance on dealing with gifts and hospitality in an assurance engagement\* is available in paragraph 290.230.*

## **SECTION 270 - CUSTODY OF CLIENT ASSETS**

- 270.1** A professional accountant in public practice\* shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a professional accountant in public practice\* holding such assets.
- 270.2** The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behaviour and may be a self interest threat to objectivity arising from holding client assets. A professional accountant in public practice\* entrusted with money (or other assets) belonging to others shall therefore:
- (a) Keep such assets separately from personal or firm\* assets;
  - (b) Use such assets only for the purpose for which they are intended;
  - (c) At all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to such accounting; and
  - (d) Comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.

*Regulations on the procedures required to be adopted by professional accountants\* holding client monies are available in the 'Clients' money regulations', available at [www.icaew.com/regulations](http://www.icaew.com/regulations). For firms\* licensed by ICAEW under the Designated Professional Bodies arrangements, additional requirements are included in Chapter 4 of the Designated Professional Bodies Handbook ([www.icaew.com/dpb](http://www.icaew.com/dpb)).*

- 270.3** As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice\* shall make appropriate inquiries about the source of such assets and

\* See Definitions for parts A, B and C

consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant\* may consider seeking legal advice.

*Further guidance on money laundering regulation and legislation is available in 'Anti-money laundering guidance for the accountancy sector' available at [www.icaew.com/regulations](http://www.icaew.com/regulations).*

*See also 'Document and records: ownership, lien and rights of access' at [www.icaew.com/regulations](http://www.icaew.com/regulations).*

## **SECTION 280 - OBJECTIVITY—ALL SERVICES**

- 280.1** A professional accountant in public practice\* shall determine when providing any professional service\* whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or its directors\*, officers\* or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.
- 280.2** A professional accountant in public practice\* who provides an assurance service shall be independent of the assurance client\*. Independence\* of mind and in appearance is necessary to enable the professional accountant in public practice\* to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest, or undue influence of others. Sections 290 and 291 provide specific guidance on independence\* requirements for professional accountants\* in public practice when performing assurance engagements\*.
- 280.3** The existence of threats to objectivity when providing any professional service\* will depend upon the particular circumstances of the engagement and the nature of the work that the professional accountant in public practice\* is performing.
- 280.4** A professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level\*. Examples of such safeguards include:
- Withdrawing from the engagement team\*.
  - Supervisory procedures.
  - Terminating the financial or business relationship giving rise to the threat.
  - Discussing the issue with higher levels of management within the firm\*.
  - Discussing the issue with those charged with governance\* of the client.

If safeguards cannot eliminate or reduce the threat to an acceptable level\*, the professional accountant\* shall decline or terminate the relevant engagement.