

## NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

### NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE

At meetings of the Professional Conduct Committee (“the Committee”) of the New Zealand Institute of Chartered Accountants (“NZICA”) held in private on 18 June 2024 and 15 October 2024, the Committee considered a complaint in respect of **Member X**, a Chartered Accountant. The complaint concerned the Member’s management of a conflict of interest. In brief, having agreed with their business partner, **Member Y**, that they would not be involved with a client while the Member Y was undertaking an independent business review at the request of the client’s banks, Member X continued to do so.

### COMMITTEE’S DECISION

The Committee noted the Code of Ethics provides a conceptual framework that members are required to apply in order to identify, evaluate and address threats to compliance with the fundamental principles. Applying the conceptual framework requires exercising professional judgment, remaining alert for new information and to changes in facts and circumstances, and using the reasonable and informed third party test.

By way of background the Committee noted that Member X and Member Y were both partners at the same firm. Member Y knew that Member X had done some work for the client and his business. It was common ground that the Members agreed in a phone call that Member X would be ‘on-hold’ in terms of becoming the companies’ accountant and taking on an advisory role.

Member X knew that Member Y’s engagement required independence. Independence is linked to the fundamental principles of objectivity, integrity and professional competence and due care. It extends beyond the individual director or partner carrying out an engagement requiring independence but to the firm as a whole. It requires that there be independence both in appearance and in substance.

One of the points made by Member X to argue against there being a potential conflict of interest threat was that they did not have a current engagement with the client and were not providing compliance services for him. In Member X’s words they were keeping the client “warm” until Member Y’s review was completed and they could finish onboarding the client.

The Committee noted that there were several difficulties with this position. Member X had relied on their 2019 engagement letter in issuing an invoice to one of the client’s companies. Member X rightly accepted that they could not invoice without providing a service.

It was not clear to the Committee where the line fell between Member X keeping the client “warm” and providing professional services to the client that included attendances during the time that Member Y was engaged and involved the companies that Member Y was reviewing.

The Committee was troubled that Member X held a meeting at their office with the bank and the client. Member X stated that in the meeting they did not raise any potential conflict of interest when the topic of Member Y doing the review was raised as it was only a potential engagement and may not eventuate. Member X also submitted that there was no potential conflict of interest until Member Y’s engagement letter was issued a couple of days later. The Committee noted, however, that the Members had already agreed that Member X was “on



hold". The Committee considered that they would only have agreed on this if Member Y's engagement was likely to proceed. Further, Member X would have known of the significance of the meeting to the client as he was seeking finance from the bank and Member Y's review was likely a key factor in whether or not he would be successful. It was a missed opportunity for Member Y to make clear to the client what the implications would be for Member X's own involvement while Member Y was conducting a review.

The Committee was concerned that even after receiving a copy of Member Y's engagement letter which Member X had described as the starting point of there being a potential conflict of interest, they continued to have some involvement in the client's business affairs. It noted that in an email to the client, Member X had said "*the first step is to understand what Member Y wants – so I should talk to Member Y*". Member X had said that the email was not clear. The client said he understood from that email that Member X was still able to assist him. The Committee's view was that a reasonable and informed third party would interpret that email as Member X giving advice to the client on how to approach Member Y's review and offering to contact Member Y on his behalf. This was a conflict of interest and could undermine the perception of Member Y's independence.

The Committee referred to a board meeting that Member X attended during this period. Member X had maintained it was a "meet and greet" meeting and an opportunity to learn more about the business. They did not see that their attendance at the meeting presented any potential or perceived conflict of interest. The Committee noted that Member X had charged for their attendance at this meeting and described it in their invoice as an "advisory board meeting". The Committee observed that it was unusual to charge for a "meet and greet" but not unethical to do so, however, in the circumstances it considered that Member X had exercised poor professional judgment in attending the meeting at all. There was an inherent perception issue with a director of the firm engaged to undertake an independent review attending any sort of board meeting of the affected companies while the review was being undertaken.

The Committee considered that the meeting had gone beyond being only a "meet and greet". While the client might have described the meeting this way in his emails before the meeting, he had also said it was an opportunity to bring the board up to speed. Given the concern over whether the business was solvent and the need to obtain finance, Member X could reasonably have expected that the subject of Member Y's review would come up in the meeting. Member X's notes of the meeting refer to solvency issues. They also stated that Member Y's review was discussed in the meeting. Again this was a potential and/or actual conflict of interest

The Committee was of the view that it would have been prudent on Member X's part that if they were considering attending the board meeting they should have discussed this with Member Y prior to doing so, particularly as it appeared to be directly contradictory to the safeguard they had agreed with Member Y of being "on hold" while the review was underway. When they did tell Member Y about their attendance at the board meeting, Member X said that Member Y was clear that they were now dealing with the client and that Member X must cease any involvement. Member X said that they then told the client this. The Committee was concerned that until their conversation with Member Y, Member X may not have fully understood where the boundaries lay in what contact he could have with the client. It was not surprising therefore if the client had not appreciated the distinction. The Committee considered that Member X should have ceased their involvement in their initial phone call about the matter and made it clear then to the client that Member X could not be involved while Member Y was engaged.



Member X had emphasised that after the board meeting they had not instigated any contact with the client for a number of weeks and while they received some emails from the client and other board members, they had no active involvement and did no substantive work. It was apparent that Member X had overlooked an email exchange they had during this time with the client and two board members. Member X replied to emails discussing the serviceability of loans and raised two questions for discussion. Despite being told by Member Y that they should cease their involvement and telling the client this, the Committee was troubled that Member X actively involved themselves again in issues that were directly relevant to Member Y's review.

The Committee regarded Member X's actions as serious. They and Member Y were directors in the same firm. Member Y had an engagement with the client that required independence. Member X needed to be cognisant of that and act accordingly. They had agreed on a safeguard with Member Y intended to protect Member Y's independence. Instead of ceasing their involvement with the client's companies while Member Y was undertaking their review, Member X had no clear boundaries and placed their business partner in a difficult position potentially undermining Member Y's independence and own compliance with the Code of Ethics.

#### **PENALTY**

The Committee considered the complaint met the threshold to warrant referral to the Disciplinary Tribunal, however, it could be appropriately dealt with by way of a consent order. With Member X's consent, the Committee ordered that Member X be severely reprimanded in accordance with Rule 13.15(d)(v)<sup>1</sup>, and that they pay costs to NZICA in the sum of \$2,697.33.

#### **PUBLICATION**

The Committee also determined that it would be of benefit to the wider membership and the public to be aware of the issues raised in this complaint. Accordingly, the Committee determined to publish its decision on the Chartered Accountants Australia and New Zealand website and in the *Acuity* magazine.

The Committee did not consider there to be any special circumstances that would warrant the publication of Member X's name or location.

#### **MEMBER'S OPPORTUNITY TO CONSIDER ORDER**

The terms of the order were provided to Member X and they were given 15 days within which to consider the terms of the order and take legal advice. In the event the Member did not accept the order, the complaint would be referred to the Disciplinary Tribunal. Member X exercised their right to consider the proposed terms of the order and confirmed their agreement in writing.

#### **RESOLUTION**

It was resolved that:

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<sup>1</sup> NZICA's Rules effective 11 May 2020.

- 1) The Member shall be severely reprimanded, in accordance with Rule 13.15(d)(v)
- 2) The Member shall pay costs to NZICA of \$ 2,697.33 in accordance with Rule 13.15(d) (vii);
- 3) The Committee's decision shall be published on the Chartered Accountants Australia and New Zealand website and in the Acuity magazine, without the Member's name or location, in accordance with Rule 13.19(a).

Todd Stevens CA

**Chairman**  
**Professional Conduct Committee**  
**18 December 2024**

