

CGA-Canada Provides Feedback on Independence Standards Exposure Draft

The Certified General Accountants Association of Canada has reviewed the September 2002 Exposure Draft entitled *Independence Standards*, and has prepared these comments for your consideration. This response addresses the exposure draft on a detailed level, focusing on both general issues of implementation and specific issues.

The General Approach

CGA-Canada agrees with the assertion that there are weaknesses in current rule-based approaches to codes of conduct. We also agree that a better approach is to focus on ethical principles and concepts. That was the perspective adopted by the Association in 1996 when we revised our rule-based code of conduct and issued our *Code of Ethical Principles and Rules of Conduct*. The importance of the evolution of the IFAC Code to include a framework as a reference for ethical decisions cannot be underestimated. Rules cannot be all-inclusive or all-encompassing, and it is imperative that accountants look to a Code not to see if they are "on side" but rather to confirm that they are "doing the right thing". Thus, the adoption by the CICA of material from Section 8 of the IFAC Code is *a priori*, a positive step.

However, CGA-Canada suggests that the exposure draft ignores a fundamental principle: the CICA and its members are not synonymous with the accounting profession. It is laudable that the CICA is now implanting a methodology that CGA-Canada instituted six years ago. However, we are concerned about the explicit reference to the CICA *Code of Professional Conduct* in the draft. We recognize that the CICA can (and should) make rules that govern the conduct of its members. But entrenching a reference to the CICA Code in the *Handbook* is highly inappropriate vis a vis members of other professional accounting bodies in Canada. Rather, these other professional accountants are obliged to follow the code of conduct of their own self-regulating organizations. Such individuals are not bound to comply with the CICA Code. But now they face the prospect of being required to comply with a code of conduct which is not their own, in order to be able to comply with the requirements of the *Handbook*.

Instead, we suggest that the issue should be put to a joint working group comprised of all three professional accounting bodies mandated to develop a unified and appropriate approach. Another alternative might be to generalize the reference back to the appropriate code of conduct of the appropriate professional accounting body.

The Association notes the statement made in the Foreword that "... Canadian independence standard[s] should be updated based on the IFAC standard, adapted as appropriate for Canadian circumstances." Generally speaking, we support such a notion as long as Canada retains the right to amend the IFAC Code to make it more rigorous or to recognize uniquely Canadian circumstances. However, the assertion that "... the framework should ensure that the independence standard for Canadian public companies is generally as rigorous as the U.S. Securities and Exchange Commission (SEC) rules as they evolve ..." presumes that the SEC rules are consistent with a principle-based approach, and that they are appropriate in the circumstances. No evidence is provided in the exposure draft to demonstrate that such is the case.

The draft's myopia regarding the accounting profession is quite evident in the paragraph describing the changes "in the Canadian independence standard." Page ii of the Foreword states that

... Rule 204 of the Rules of Professional Conduct and the related guidance refer to some circumstances in which a practitioner's objectivity may be impaired and others where objectivity would not ordinarily be impaired. The proposed new Canadian independence standard takes a different approach. Proposed Rule 204 would require independence such that objectivity is not impaired in respect of a particular engagement. Guidance is then provided in a proposed Council Interpretation, which establishes a systematic, principles-based framework for analyzing independence in respect of each engagement.

This approach is acceptable for members of the CICA, but it is wholly inappropriate for practitioners who are not chartered accountants. Such individuals are not subject to the Rules of Professional Conduct of the CICA, and while one may support the guidance they contain, such individuals cannot be compelled to conform to "Rule 204." More critically, this attitude creates an insoluble conundrum when page iii of the Foreword implies that Rule 204 will be enforced by *Handbook — Assurance*. It is true that all assurance engagements are performed in accordance with the *Handbook*, but as indicated, not all practitioners are chartered accountants. But, if the object

is to ensure that all practitioners are "objective" and "independent," then clearly, their own codes of conduct must provide similar comfort as intended by the changes to rule 204. And it is with confidence that CGA-Canada states that our Code does just that.

Furthermore, the statement that "The proposed standard will also form part of the requirements, enforced by the new Canadian Public Accountability Board, that apply to auditors of listed entities" makes mockery of the supposed independence of the CPAB. If the Board is to be truly independent of the profession and represent the interests of stakeholders, it is up to the CPAB to conclude that the rules should (if at all) form part of the requirements.

Lastly, we are troubled by the exposure draft's position that conformance with Sarbanes-Oxley is a necessary action. The US capital markets are an order of magnitude bigger than Canada's. It has been estimated that the US accounts for 47% of all capital while Canada generates perhaps 3%. To adopt a set of requirements developed for the US without recognizing that it is small business in Canada that generates new employment is unfortunate. The smallest of listed entities in the US is likely to be larger than most Canadian listed entities. Small-cap or newly listed firms (such as are found on the TSX Venture Exchange) would not even be on the US "radar screen." To adopt the rules of the SEC regarding non-assurance services because "the US did it" is not a valid reason. The statement on page iv of the Foreword that "the provision of certain non-assurance services is incompatible with the independence in mind or appearance required when providing an assurance service" may be true, but then again, it may not. To simply accept that this perspective is correct is wrong. One adopts a set of proscriptions because there has been demonstrated evidence that failure to do so results in harm. However, no empirical proof is provided to justify the assertion. This seriously undermines the credibility of the proposals.

Specific Questions

The exposure draft requested comments on specific issues.

1. (a) *Do you agree with the Committee's decision to converge Canadian independence standards with global standards?*

In principle, CGA-Canada agrees with the goal of converging Canadian independence standards with global standards. Like the CICA, CGA-Canada is committed to the IFAC objective of adopting the IFAC standards in its own *Code*. But we would like to point out that *CICA* standards are not synonymous with *Canadian* standards. Further, we are unaware of the how or where the "Committee" draws its authority to set such "Canadian" standards.

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- (b) *Do you agree that adopting the IFAC principles-based framework with the incorporation of the SEC prohibitions is an appropriate method to converge with global standards while providing rigour for the audit of listed entities?*

CGA-Canada suggests that the adoption of SEC prohibitions is a case of overkill. One must bear in mind that the *Handbook* applies to all assurance engagements, whether a firm is a major listed entity, a small-cap firm or a non-public CCPC. Insisting "one size fits all" ignores the nature of Canada's economy. Moreover, the prohibitions betray a "big firm" focus as they impose considerable hardship on those practitioners who provide assurance services to the majority of entities in Canada.

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- (c) *Do you have any concerns that are so fundamental that in your view Canada should abandon its commitment to adopt the IFAC principles?*

No.

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- (d) *Are there any aspects of the SEC rules for listed entities as incorporated in this exposure draft that are fundamentally inappropriate to Canada?*

CGA-Canada believes there are many aspects of the SEC rules that are fundamentally inappropriate for Canada's small and medium sized enterprises. We are less concerned regarding the major listed entities. Please see our comments in specific sections.

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2. *Is the framework approach with threats, safeguards and prohibitions clear and understandable?*

The approach embodied in the exposure draft seems appropriate at first reading. It is only when one begins to drill down those inconsistencies and problems arise. Please see our detailed comments.

3. *The proposed standard provides examples of the application of the framework to specific common circumstances and cases. Are these examples appropriate? Are there any other examples of common circumstances and cases that should be addressed?*
One of the weaknesses inherent in any rule-based approach is the fact that no set of rules can be all-inclusive or exhaustive. Rules tend to instill a "comply with the rule" mindset rather than a "meet the spirit" perspective. Moreover, the use of examples seems to suggest that the principles are so complex that a plethora of illustrations is needed to demonstrate the concepts. If the principles are not clear and concise, and the examples are needed to make them clear, then they have failed the ultimate test of understandability. The risk is that they will hinder, not help, compliance.
4. *The examples distinguish between situations where an activity or relationship is prohibited and situations where a member or firm is required to apply professional judgment to determine if they are independent. Is the distinction between these situations clear?*
See our comments to question 3 above.
5. *The Committee continues to consider the application of independence standards to engagements to report on the results of applying specified auditing procedures. The Committee would welcome comments on this topic.*
Reporting on the results of applying specified auditing services is not an assurance service. It is considered a Related Service under section 9100 of the *Handbook*. Accordingly, CGA-Canada suggests that these services are not within the scope of the proposed standard.

Rules of Professional Conduct

Definitions

Relatives:

As indicated at the outset, CGA-Canada believes that this exposure draft should have taken the opportunity to expand on the IFAC *Code*. The revision of the IFAC *Code* was a long and arduous process, and many compromises were made in order to gain support from a varied group of participants. The proposals for Canada face no such limits. For example, the definition of relatives was one that the IFAC Ethics Committee struggled with. Simply adopting the limited list of specified members ignores the opportunity to tighten the *Code*. To limit the persons comprising immediate and close family to those identified on page 12 of the exposure draft will leave gaping holes in the "safety net". For example, siblings are included as "close family" members; what about in-laws? What about grandparents? In some family situations, it is not uncommon for there to be a closer relationship between in-laws than there is between blood relatives. Even the distinction between immediate family and close family is troublesome. A non-dependent family member may be just as much a threat to independence as a dependent child.

Specific Comments

As noted in the General comments, we must again reiterate our concerns about the explicit reference to the CICA *Code of Professional Conduct*, and by extension, its related *Council Interpretations*, as they apply to professional accountants who are members of **other** professional accounting bodies in Canada. And again, we repeat our proposal here, that a dialogue take place to develop an appropriate **joint** approach or that an explanatory note be inserted to specify that chartered accountants must comply with the CICA *Code* while other professional accountants must follow the dictates of the professional code of conduct specified by their own professional body.

Rule 204.1

This rule lays out the framework under which the rest of the standards operate. The Council Interpretations elaborate on what is meant by the strictures. However, this opening rule is also the first one where uncertainty appears. The rule implies that it is effective for all assurance engagements. This view is supported by Council Interpretation ¶14 which states that "the principles ... apply to all assurance engagements and engagements to issue a report on the results of applying specified auditing procedures." On the other hand, the Foreword appears to focus on listed entities. Paragraph 26 of the Interpretations adds to the muddle when it discusses public interest entities and non-audit services. The implication of the latter paragraph is that there are entities to which the standards do not apply. Lastly, the Foreword also refers to requirements of the CPAB. Since the latter body will only be dealing with public entities, it may be beneficial to clarify the scope unequivocally.

Rule 204.2

This rule states that the firm and the assurance team must identify and evaluate threats to independence and if other than clearly insignificant, identify and apply safeguards to eliminate the threats *or reduce them to an acceptable level* [emphasis added]. As we said when we responded to the IFAC re-exposure draft, the Association firmly supports the directive to eliminate these threats; however, we remain uncomfortable with the notion that they can be reduced to an acceptable level. Permit us an analogy to explain. If one likens the threats to independence to being responsible for an automobile accident, one can eliminate the threat by not driving. However, if one is required to drive, then one can take steps to reduce the *risk* of being responsible for an automobile accident. You cannot completely eliminate the possibility of an accident, and even if safeguards are in place, you do not reduce the *act* of being responsible for an automobile accident; rather you can reduce the *risk* of being responsible for an automobile accident.

In the context of the exposure draft, if one becomes aware of a situation that is a threat to independence, the first course of action is to eliminate that threat. Thus, the goal is the elimination of circumstances that can impair independence; if they cannot be completely eliminated, then one is directed to reduce the risk(s) to independence associated with the threat(s) to an acceptable level. Therefore, it seems to us that the phrasing that should be used is "... apply safeguards to eliminate the threats or reduce the risks from these threats to an acceptable level".

Rule 204.3

There are two issues that need resolution here. What exactly constitutes an appropriate amount/level of documentation? What should be documented to support the decision to accept or continue an engagement? And who will judge that the documentation is appropriate? Is it expected that the notion of "sufficient appropriate audit evidence" is to be extended to include this documentation? We note that ¶23 of the Council Interpretations provides guidance in this matter. If the document is to be useful, at least consider cross-referencing pertinent paragraphs.

Similarly, this paragraph is the first (of many) instances where one sees the phrase "not clearly insignificant." What exactly does that phrase mean? Is it a matter of professional judgment? If so, then what tests must be met or undertaken in order to determine whether the threat *is* clearly insignificant? As with documentation, one must turn to the Interpretations to find guidance. However, in this instance, ¶24 is less than helpful; it still is a matter of judgment.

Rule 204.4

It is CGA-Canada's view that here is where the exposure draft shifts gears from principles to rules. Roughly 11 pages of specific prohibitions (i.e., rules) are provided. It is impossible to define rules that ensure integrity, objectivity and independence. All one can do is identify conditions where such characteristics are not present. The specific prohibitions are an attempt to do just that. And this does not even consider the 40+ pages of Council Interpretations. If the proposals are to be truly principle-based, then they need to be drawn in broad strokes. Detailed prescriptions lead one to focus on the rule, not the spirit.

Rule 204.4 — Financial interests

The exposure draft focuses on situations where the threats from holding a financial interest are so significant that the only way to avoid them is to either not accept the engagement or to "not hold any such financial interests". The Association agrees in principle with the prohibition against direct financial interest. We wonder, however, whether materiality is a factor — as it is with indirect financial interests — or is it an "all or nothing" decision. For example, if my wife owns 500 shares in a public company, am I precluded from an assurance engagement if the total number of shares outstanding is counted in the tens of millions? Similarly, if a financial institution holds the mortgage on my partner's home, does that preclude me from taking on the engagement with the institution, even if the mortgage is \$100,000 in a billion dollar portfolio? To extend the last example, suppose the "partner" is located in Vancouver, while I am doing the audit for the firm headquartered in Halifax. One has to apply reasonableness tests to audit evidence; why do we not do the same for direct financial interests?

Further, the discussion seems to imply that ownership in the assurance client is permitted, provided the interest is less than 5% of the equity shares. The Association disagrees with this position. First, it is completely inconsistent with the proscription regarding direct financial interests. If ownership of the client's equity is not a direct financial interest, then what is? Second, the guidance in rule 204.4(7) seems to suggest that ownership of say, 4.5% is acceptable. What if three or four members of the firm each own 4.5%? Collectively, they are able to exert significant influence on the firm, even though individually, they do not.

It is the Association's view that ownership should not be permitted. It is impossible to defend oneself against allegations of conflict of interest if the auditor is also an owner of the audit client.

Rule 204.4 — Loans and guarantees

This section refers to situations where a member of the firm or the firm itself accepts a loan from, or has a loan guaranteed by, an assurance client that is not a bank or similar institution. The Association agrees that accepting a loan from a financial institution in the normal course of business in no way impairs independence; conversely, accepting a loan from a non-financial institution assurance client has the potential to do so. Why? The optics suggests that no safeguards can eliminate the perception that independence has been impaired. Thus we would support the strictures regarding loans from an assurance client.

However, we are uncomfortable with references to loans guaranteed by an assurance client. It is our position that no safeguard can eliminate the threats incumbent in such circumstances. While it is "business as usual" for a financial institution to *lend* money, it is far from normal for it to *guarantee* a debt incurred by a member of the assurance team. And most certainly, a non-financial institution assurance client cannot in any way be involved with a member of the firm or the firm itself if independence is to exist. We would suggest that while it may be acceptable under certain circumstances to be a debtor of an assurance client, there are no circumstances where the assurance client should be the guarantor for a member of the firm or the firm itself.

Rule 204.4 — Close business relationships

This section states that close business relationships must be avoided unless they are "immaterial and the relationship is clearly insignificant." While we understand what is meant, the potential for problems exists. In dealing with independence, one must be cognizant of perception as well as reality. Further, the reference is to a "financial interest which is immaterial." Does this not conflict with the requirement to avoid direct financial interests? As we have noted, those proscriptions do not contain materiality conditions.

Rule 204.4 — Family and personal relationships

Rule 204.4(14) addresses situations where immediate family is a member of an assurance client's senior management (board or officer), or was a member during the period covered by the engagement. The rule prevents the firm from accepting the engagement. We agree that this is appropriate, as the threats to independence cannot be resolved by any safeguards. However, rule 204.4(15) seems to suggest that threats to independence can be limited or eliminated by the use of safeguards: the prohibition (board or officer) is not extended to close relatives. Instead, the focus is on accounting or financial oversight responsibility.

As we did when IFAC considered this issue, CGA-Canada would like to point out that the distinction between immediate family and close family is somewhat arbitrary. It is not difficult to conceive of circumstances where there is a closer relationship between the assurance team member and a close relative than a relationship between the assurance team member and their immediate family. It is the Association's view that such distinctions are artificial; consequently, the same threats to independence exist no matter if it is a member of the assurance team member's immediate family or a close relative, as defined in the exposure draft.

Rule 204.4 — Recent service with ... client

Rule 204.4(16) addresses situations where a member of the assurance team is, or recently was, a director, officer or employee of the assurance client. However, the guidance from the IFAC *Code* — which refers to situations where a member of the assurance team knows that he or she is to join the assurance client — has not been carried forward to this document. CGA-Canada suggests that in the latter instance, there are no safeguards that can prevent impairment of independence. Further, we suggest that there are other ethical matters requiring attention in such instances, beyond the matter of independence. The assurance team member owes a duty to his firm, and this duty is breached if the assurance team member participates in any engagement for the assurance client. The Association recommends that the appropriate material be included in the standard.

Rule 204.4 — Serving as an officer ...

Rule 204.4(18)(a) states that a firm shall not permit a member of the firm to serve as a Company Secretary of an audit or review client. Rule 204.4(18)(b) then states that a member shall not serve as a Company Secretary of an audit or review client. It is our position that a "member" ought to be permitted to fulfill that duty if the member has no connection with the audit firm or its employees/partners. In addition, CGA-Canada recommends that rule 204.4(19) be renumbered as 204.4(18)(c) and 204.4(18)(c) renumbered as 204.4(18)(d).

Rule 204.4 — Long association ...

The directive in rule 204.4(20) is one of the more vivid examples of the inconsistency of the standard. It specifically precludes the lead auditor from serving in that capacity longer than five years (or resuming the role for two years thereafter) *if the client is a listed entity* [emphasis added]. Presumably the lead partner could continue in that role if the client was *not* a listed entity. This interpretation is at odds with rule 204.1, which implies that the standards apply to *all* assurance engagements.

This rule is also one of the more controversial in that it seems to ignore the reality of the Canadian business environment in the rush to satisfy the demands of those who would have Canadian and US standards be identical. The SME environment as it exists in Canada does not have an equivalent in the United States. Moreover, many of these entities are serviced by their analogues - small and medium-sized practices. Most SMPs lack the ability to meet the guidance required. While it can be argued that this rule has no impact on non-listed entities, it will greatly affect small-cap firms typically found on the TSX Venture Exchange. This rule will also increase the cost for these firms, as they will now be required to "educate" new auditors every five years.

Even more troublesome is the impact on sole practitioners and smaller firms (and even smaller offices of large firms). If the guidance does extend to *all* entities, then it will be virtually impossible for such practices to retain their audit clients. Even medium-sized firms will be affected as they will have to ensure that at least two partners have sufficient knowledge of the client's industry in order to satisfy the examination standard of *Handbook* section 5100. And if it is restricted to listed entities, it will still negatively affect small-cap firms and their auditors. Recent data from the Canada Customs and Revenue Agency suggests that up to 98% of all Canadian companies fall into the SME sector. Therefore, CGA-Canada suggests that a clear delineation needs to be made between the large national and trans-national audit clients, and the SME sector in Canada, which generates more than two-thirds of all employment in Canada.

Rule 204.4 — Provision of non-assurance services

The directive in rule 204.4(21) does not make the same kind of reference as rule 204.4(20), so the assumption is that it applies to *all* assurance engagements. What is confusing is the fact that the heading and the rules that follow do not seem to match. The provision of non-audit services encompasses a range of activities that have nothing to do with the subject of the rule. For example, are tax-related services allowed? It appears that the rule is intended to restrict the firm and its partners and employees from acting in a "management" capacity. That is, the firm or its members should not be the ones making decisions on behalf of the assurance client. Intuitively, such a rule makes sense. It is only when one drills down to actually assess *how* it might be implemented that the problems arise. For example, exactly where is the dividing line which determines if a particular action is acceptable or not? And further, in the small and medium enterprise (SME) environment, the client often relies on the advice of the accountant. If the client accepts a recommendation from the accountant, will that be deemed "management?" This entire point is confusing since the discussion in ¶182 of the Council Interpretations seems to be focused on what the public might understand to be non-audit services rather than the management services implied by rule 204.4(21).

Rule 204.4 — Preparation of accounting records, etc.

This is likely the most controversial aspect of the entire document. This segment is focused on self-review threats to independence. Rule 204.4(22) picks up the thread of management functions and specifically prohibits a firm or member from making management decisions — which on the face of it, seems reasonable. However, the strictures in the rule are totally inappropriate when one considers the scope — any audit or review client. Rule 204.4(22) further restricts the actions of the audit firm by proscribing the provision of accounting or bookkeeping services to listed companies who are also audit clients.

As mentioned above, Canada's SME sector is the major source of employment in Canada. Most, if not all, of these firms are owner-managed. As mentioned earlier, the SME sector accounts for approximately 98% of all Canadian controlled private corporations [CCPCs]. Typically these firms do not have many personnel on staff (if any). Even many small-cap firms are borderline, with few staff other than the owners. The one thing all these entities have in common is that they lack accounting staff capable of generating the data needed by the auditor. Often these entities rely on their auditor to provide bookkeeping services and financial statement preparation. They do not have individuals on staff who are up to date on the latest accounting pronouncements. Sometimes they do not even have individuals on staff capable of generating journal data. Instead the firms prepare cash-based statements and rely on their auditor to prepare the required GAAP-based statements.

The issue is even more critical for small-cap venture firms. These firms tend to lack the resources to employ qualified accounting staff. But as listed entities, there is an unknown group of investors who rely on the financial information contained in these entities' financial statements. Given the increasingly complex accounting, assurance and regulatory environment these firms operate in, it is often the case that they cannot prepare their statements without assistance from their accountants and/or auditors.

Even if one accepts the need to separate these activities, the rules are unreasonably draconian. For example, rule 204.4(22) specifies tasks that a firm or member cannot perform if the firm or member are to be deemed independent. The problem is, the rule requires specifics. For instance, what exactly is meant by the proscription not to prepare a source document or make a change to such document? It is quite usual for an auditor to prepare adjusting entries as the audit progresses. These entries are necessary to correct errors in client records and/or to ensure appropriate presentation in accordance with GAAP. Does the rule mean that the auditor cannot undertake this task? Or does the auditor have to get approval from the client for each and every entry proposed?

Even more specific, if the auditor prepares the notes based on his examination, is this contrary to the rule? What about instances where the auditor calculates future taxes payable based on net income? Is this latter effort "technical assistance" as contemplated by ¶187 of the Council Interpretations? Or is this an "accounting service" as contemplated by rule 204.4(23)? CGA-Canada suggests that this entire section needs re-working. As presented, it has the potential to prevent small and medium sized practices, especially sole practitioners, from providing audit and review services to their clients. As a consequence, there will be pressure to downgrade the engagement to a compilation (unless statutory requirements demand otherwise) or the client will be lost to larger firms. In neither case is the public interest served.

Lastly, the rule permits services to be provided in "an emergency or other unusual situation." Unless specific parameters are provided, the notion of what constitutes an emergency will be open to abuse. It is not inconceivable that a firm will argue it is an emergency — "the statements are due at the regulatory agency in 3 days and unless you help us, we cannot make that deadline." Is this the sort of emergency contemplated by the rule?

Rule 204.4 — Provision of internal audit services

CGA-Canada suggests that there are no circumstances where the audit firm should provide internal audit services to an assurance client. The self-review threat is so large that no safeguards can remove the *perception* of lack of independence. Moreover, the specification of a "bright line" invites abuse as firms will make sure they are on the "right" side of the line, ignoring the spirit of the rule in favor of literal conformance (e.g., 3% rule and special purpose entities).

Rule 204.4 — Provision of IT system services

The provision of IT services is a troublesome issue. As with internal audit services, CGA-Canada suggests that normally, there should be no circumstances where the audit firm provides IT services to an assurance client. The self-review threat is so large that no safeguard can remove the *perception* of lack of independence. Even if the client asserts that the audit firm is not responsible for the IT system (which may be true), the self-review threat is just too overwhelming. However, when extends this limitation to the SME sector, the impact of the prohibition becomes more severe. Many SMEs lack the expertise or resources to define their own IT systems, so they turn to their financial advisor — their accountant — for advice. We suggest that this may be one of the areas where a distinction needs to be made for services provided to public entities and service rendered to SMEs.

Rule 204.4 — Recruiting for an assurance client

As with rule 204.4(23), here the distinction is made between listed and non-listed entities. It is not clear to the Association why these activities are more of a threat to independence in the case of a listed company than for one that is not listed. If the issue is a self-review threat, then the nature of the entity is irrelevant. Self-review threats are just as damaging to a non-listed entity as they are to a listed company.

Rule 204.4 — Pricing

CGA-Canada wonders why this rule has been proposed. The pricing of an engagement is up to the practitioner. Any attempt to limit the freedom of a member to set the fee the member wishes to set would likely be seen by the courts as a restraint of trade, and quickly dismissed (cf. the Saskatchewan case regarding advertising). Moreover, the exclusions are already part of the *Handbook*. Any practitioner who contravened rule 204.4(34) would also contravene the requirements of the *Handbook*.

Rule 204.4 — Gifts and hospitality

While we do not disagree with the intent of the rule, the Association notes that rule 204.4(35)(b) is open to interpretation. The last word of the sentence — firm — has two referents. It could be taken as the firm that provides the gift or it could be read as the firm that accepts the gift. A gift may be insignificant to a large donor but significant to the recipient. CGA-Canada recommends that this be clarified.

Rule 204.6 — Disclosure of Impaired Independence

It is not clear from the rule what is meant by "any related function." Are these the Related Services of *Handbook* section 9100? Or are they something else? Clearly, clarification is necessary.