

New Zealand Institute of Chartered Accountants

**RULES OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
EFFECTIVE [INSERT DATE]**

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Notice of legal status of the Rules:

The Rules of the New Zealand Institute of Chartered Accountants are made pursuant to the *New Zealand Institute of Chartered Accountants Act 1996* (the **Act**). The Act specifies certain matters that the Rules must provide for, and also states that the Rules may contain any other provisions that are not inconsistent with this Act or any other Act or any rule of law.

The Act also states, in section 8, that the rules that relate to matters referred to in specified sections of the Act, as well as the code of ethics required by section 7 of the Act, are disallowable instruments, but not legislative instruments, for the purposes of the *Legislation Act 2012*.

1. INTERPRETATION

Definitions

1.1 In these Rules (and the Appendices to these Rules), unless the context otherwise requires:

- (a) **Act** means the *New Zealand Institute of Chartered Accountants Act 1996* as amended or substituted from time to time.
- (b) **Amalgamation** means the arrangement for the combining of NZICA with CA ANZ under which Members of NZICA became members of CA ANZ on the Effective Date.
- (c) **Amalgamation Agreement** means the amalgamation agreement entered into by and between CA ANZ and NZICA to effect the Amalgamation.
- (d) **Auditor Regulation Act** means the *Auditor Regulation Act 2011* as amended or substituted from time to time and (unless the context otherwise requires) includes all regulations and other notices, standards, conditions, or requirements promulgated under that Act (including by the Financial Markets Authority).
- (e) **CA ANZ** means Chartered Accountants Australia and New Zealand (formerly called the Institute of Chartered Accountants in Australia) constituted under the Supplemental Royal Charter.
- (f) **CA ANZ Board** means the board of CA ANZ.
- (g) **CA ANZ By-Laws** means the By-Laws of CA ANZ as amended or replaced from time to time.
- (h) **Certificate of Public Practice** means a certificate issued by NZICA to a Member in accordance with these Rules.
- (i) **Charter** means charters for each Statutory Body and Advisory Group, as referred to in Rules 8.2 and 8.5 respectively, and any document that is approved by the Regulatory Board and referred to as a Charter.
- (j) **Code of Ethics** means the code of ethics that governs the professional conduct of Members prescribed by the Regulatory Board from time to time.
- (k) **Compliance Obligations** has the meaning given to it in Rule 4.
- (l) **Council** means the council of NZICA established under these Rules in accordance with the Act.
- (m) **Disclosure Event** means those matters set out in Rule 13.4.
- (n) **Effective Date** means the date on which the Amalgamation Agreement became unconditional in all respects.
- (o) **Former Member** means any person who was at any time previously admitted to full or provisional Membership of NZICA or any of its predecessor organisations including the New Zealand Society of Accountants or the Institute of Chartered Accountants of New Zealand and who is not a current Member in accordance with these Rules.
- (p) **Financial Reporting Act** means the *Financial Reporting Act 2013* as amended or substituted from time to time.
- (q) **FMC Audit** is defined in the Auditor Regulation Act.
- (r) **Member** means any person admitted to full or provisional membership of NZICA in accordance with these Rules and the CA ANZ By-Laws. The terms **Member** and **Membership** shall have corresponding meanings.

- (s) **New Zealand Appendix** means the New Zealand Appendix to the CA ANZ By-Laws as amended or replaced from time to time.
- (t) **New Zealand Council** has the meaning given to that term in the CA ANZ By-Laws.
- (u) **NZICA** means the New Zealand Institute of Chartered Accountants constituted under the Act.
- (v) **Regional Council** has the meaning given to that term in the CA ANZ By-Laws.
- (w) **Register of Members** means the register of Members maintained in accordance with these Rules.
- (x) **Regulatory Board** means the Executive Board of NZICA established under these Rules in accordance with the Act.
- (y) **Supplemental Charter** means the Supplemental Royal Charter of CA ANZ as amended or added to from time to time.

Commencement

- 1.2 These Rules take effect on the Effective Date and thereafter on the date on which any amendments are approved in accordance with Rule 20.

Interpretation

- 1.3 A reference to a statute, enactment, legislation or other law includes regulations, rules, orders and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2. FUNCTIONS

- 2.1 The functions of NZICA are:
- (a) to carry out the duty imposed under Rules 2.2 and 2.3;
 - (b) to promote quality, expertise and integrity in the profession of accountancy by its Members in New Zealand;
 - (c) to promote the profession of accountancy by its Members in New Zealand;
 - (d) to promote the training, education, and examination of persons practising, or intending to practise, the profession of accountancy in New Zealand or elsewhere;
 - (e) any other functions that are conferred on NZICA by these Rules, the Act or any other enactment; and
 - (f) any other functions that are ancillary to the above functions.
- 2.2 NZICA must, with reasonable skill and care, control and regulate the practice of the profession of accountancy by its Members in New Zealand.
- 2.3 The duty under Rule 2.2 includes:
- (a) maintaining, complying with, monitoring compliance with, and enforcing the Rules referred to in section 6(1)(f) to (ja) of the Act (which relate to the investigation and hearing of complaints and other matters, appeals, disciplinary matters, and the recognition of auditors); and

- (b) maintaining, monitoring Members' compliance with, and enforcing:
 - (i) professional and ethical standards, including the Code of Ethics; and
 - (ii) these Rules; and
 - (c) monitoring Members' compliance with the Auditor Regulation Act and other enactments that relate to the practice of accountancy; and
 - (d) monitoring compliance with, and enforcing section 14 of the Act (which relates to improper use of terms implying Membership); and
 - (e) complying with NZICA's duties:
 - (i) as an accredited body under the Auditor Regulation Act; and
 - (ii) that are imposed on NZICA (by name) under any other enactment.
- 2.4 NZICA must not delegate the duty under Rules 2.2 and 2.3 (in whole or in part) to any person.
- 2.5 NZICA may delegate the functions specified in Rules 2.1(b), (c), (d), (e) and (f) (except to the extent that those functions relate to the duty in Rules 2.2 and 2.3), either generally or specifically, to any other person in accordance with the Act. Any such delegate may sub-delegate any of the delegated powers and responsibilities to another director, employee of NZICA or CA ANZ or any other person subject to any regulations imposed by the Regulatory Board, the New Zealand Appendix and these Rules.
- 2.6 NZICA may enter into and carry into effect any arrangement (including the Amalgamation) for the joint-working of NZICA's functions and activities with the functions and activities of CA ANZ including agreements relating to the funding of the activities of NZICA and to the transfer of all or any part of the assets and liabilities of NZICA to CA ANZ provided that such arrangement permits NZICA to comply with its statutory duty to control and regulate the practice of the profession of accountancy by its Members in New Zealand.

3. MEMBERSHIP

- 3.1 NZICA shall consist of all persons whose names are for the time being entered in the Register of Members as Members.
- 3.2 A person shall be a Member if the person:
 - (a) is a member of CA ANZ in any of the classes of membership prescribed by the CA ANZ By-Laws from time to time; and
 - (b) resides in New Zealand; and
 - (c) satisfies any requirements (in respect of training, education, examinations or otherwise) for Membership set out in these Rules or the New Zealand Appendix or as may be specified from time to time by the Regulatory Board; and
 - (d) subject to these Rules, has not had his or her name removed from the Register of Members by order of the Disciplinary Tribunal or Appeals Council.
- 3.3 NZICA shall, if it is satisfied that a person meets the Membership requirements set out in Rule 3.2, cause the person's name to be entered in the Register of Members as a Member. On entry of that person's name in the Register of Members, that person becomes a Member.
- 3.4 Notwithstanding Rule 3.3, NZICA may, in its absolute discretion and without giving any reason, refuse to admit as a Member a person whom it shall consider not to be a fit and proper person to be so admitted even if he or she has fulfilled the prescribed conditions of such admission.

- 3.5 A person:
- (a) who was a Member immediately prior to the Effective Date and who does not for any reason become a member of CA ANZ; or
 - (b) who is a member of CA ANZ and who for any reason ceases to be a member of CA ANZ, shall, unless NZICA otherwise determines, automatically cease to be a Member.
- 3.6 For the purposes of NZICA carrying out its regulatory and disciplinary functions pursuant to the Act and these Rules, NZICA may treat a person who is a member of CA ANZ in any of the classes of membership prescribed by the CA ANZ By-Laws from time to time, who does not reside in New Zealand but who practises the profession of accountancy in New Zealand, as a Member of NZICA. Nothing shall take away from CA ANZ's jurisdiction to the extent that the relevant person practises the profession of accountancy in locations other than New Zealand.
- 3.7 Every Member:
- (a) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ:
 - (i) in the class of membership known as "Chartered Accountant Fellow"; or
 - (ii) the class of membership known as "Chartered Accountant",
and who satisfies the relevant requirements relating to Chartered Accountants set out in the New Zealand Appendix or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use:
 - (iii) if a Chartered Accountant Fellow, (in addition to the designation "Chartered Accountant" and the initials "CA"), the designation "Fellow Chartered Accountant" and the initials "FCA"; and
 - (iv) if a Chartered Accountant Fellow or a Chartered Accountant, the designation "Chartered Accountant" and the initials "CA";
 - (b) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ in the class of membership known as Associate Chartered Accountant and who satisfies the relevant requirements relating to Associate Chartered Accountants set out in the New Zealand Appendix or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use the designation "Associate Chartered Accountant" and the initials "ACA" and if a Fellow Associate Chartered Accountant immediately prior to the Effective Date, the designation "Fellow Associate Chartered Accountant" and the initials "FACA";
 - (c) who, under the CA ANZ By-Laws, is admitted as a member of CA ANZ in the class of membership known as Accounting Technician and who satisfies the relevant requirements relating to Accounting Technicians set out in the New Zealand Appendix or as may be specified by or on behalf of the Regulatory Board from time to time, shall be entitled to use the designation "Accounting Technician" and the initials "AT" and if a Fellow Accounting Technician immediately prior to the Effective Date, the designation "Fellow Accounting Technician" and the initials "AT (Fellow)"; and
 - (d) who, under the CA ANZ By-Laws, is admitted as a provisional member of any of the classes of membership referred to in Rules 3.7 (a) – (c), may only describe themselves as a "Provisional Member of CA ANZ" and is otherwise not entitled to refer to any post-nominal designations, or use letters, or abbreviations referring to a specific class of membership.

Resignations

- 3.8 Any member of NZICA who wishes to resign from Membership must send in writing to NZICA or CA ANZ a request to resign together with all monies owing by him or her to NZICA or CA ANZ.:
- 3.9 Any Member whose notice of resignation was not received by NZICA or CA ANZ prior to 30 June in any year shall remain liable for any subscription, fee or other amount payable by him or her to NZICA or CA ANZ in respect of the year ending the following 30 June, save that, in any case, NZICA may in its absolute discretion remit the whole or any part of such subscription, fee or other amount.
- 3.10 No resignation shall take effect unless and until it has been accepted by NZICA. NZICA may refuse to accept the resignation of any Member if:
- (a) NZICA reasonably believes, by virtue of matters brought to its attention, that the Member's conduct may become the subject of professional conduct proceedings;
 - (b) any matter concerning the Member is before the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council for investigation or hearing, whether or not the Member has been notified of the complaint or is subject to a written complaint, and whether or not the period for appeal to the Appeals Council under Rule 13.63 has expired; or
 - (c) the Member has been requested to provide information, given notice of or is undergoing a review or investigation under Rule 12 or any follow up process arising thereof or pursuant to the Auditor Regulation Act or any other legislation or standard.
- 3.11 The decision to accept or refuse a resignation shall be communicated to the Member.
- 3.12 Resignation of Membership from NZICA shall be taken as a resignation of membership from both CA ANZ and NZICA, unless the Member gives notice that they are no longer resident in New Zealand and wish to resign from Membership of NZICA but remain a member of CA ANZ.
- 3.13 Subject to any refusal under 3.10 and 3.11, if CA ANZ advises NZICA that a Member has resigned from his or her membership of CA ANZ, NZICA shall treat that Member as having resigned from NZICA.

Right of Appeal for Admission and Membership Decisions

- 3.14 There shall be a final right of appeal to the Regulatory Board for decisions made in respect of admissions and Membership matters.
- 3.15 The Regulatory Board shall have the power to dispense with, or vary, any of the Membership requirements set out in Rule 3.2 if the Regulatory Board in its sole discretion considers that there are grounds to justify the dispensation or variation, and gives notice in writing to CA ANZ.
- 3.16 The Regulatory Board shall also have the power to confirm or vary or reverse any decision made by NZICA under Rules 3.3 and 3.4

4. COMPLIANCE OBLIGATIONS

- 4.1 A Member must at all times comply with the CA ANZ Supplemental Charter, CA ANZ By-Laws and CA ANZ Regulations (to the extent that these apply to Members resident or practising in New Zealand), the Act, any other enactments, these Rules, the Code of Ethics, any standards or pronouncements issued by NZICA, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board (or their successor entities), and any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in New Zealand or in a foreign jurisdiction.

5. REGISTER OF MEMBERS

- 5.1 NZICA (or any person on its behalf) shall maintain or procure that there be maintained a Register of Members that records (among other things):
- (a) the names of each Member, and each Former Member;
 - (b) the date on which each Member's name was entered in the Register of Members as a Member;
 - (c) the date on which each Former Member's name was removed from the Register of Members as a Member and the reason for that removal;
 - (d) the designation (if any) applicable to the Member under Rule 3.7; and
 - (e) all other information about each Member or each Former Member contemplated by the Act, any other enactment, these Rules or the CA ANZ By-Laws.
- 5.2 CA ANZ may maintain a copy of the Register of Members as part of its register of members.

6. NEW ZEALAND COUNCIL

- 6.1 NZICA must have a Council.
- 6.2 The functions of the Council are to:
- (a) act as the Council of NZICA under the Act and as the New Zealand Council of CA ANZ;
 - (b) carry out the functions of the New Zealand Council under the CA ANZ By-Laws; and
 - (c) carry out any other functions that are ancillary to the above functions or are conferred by these Rules, the Act, any other enactment, the CA ANZ By-Laws or the Supplemental Royal Charter.
- 6.3 The Council shall have all the powers necessary or desirable for the discharge of its functions, provided that when the Council is acting as a Regional Council of CA ANZ its powers shall be such as are conferred on it by the CA ANZ By-Laws.
- 6.4 Clauses 7 and 8 of the New Zealand Appendix are deemed to be incorporated herein and govern Membership, election to Membership, proceedings, the constitution of committees and remuneration of the Council.

7. REGULATORY BOARD

- 7.1 NZICA must have an Executive Board which is to be known as the Regulatory Board.
- 7.2 Except to the extent that the Act or these Rules provide otherwise, the business and affairs of NZICA shall be managed by, and under the direction or supervision of, the Regulatory Board and for such purposes the Regulatory Board shall have all the powers necessary or desirable for managing, and for directing and supervising the management of, the business and affairs of NZICA.
- 7.3 Without derogating from the generality of Rule 7.2, the Regulatory Board shall:
- (a) prescribe the Code of Ethics;
 - (b) appoint, authorise delegations for, and oversee the permanent bodies specified in Appendix I;

- (c) carry out any other functions or responsibilities that are conferred by the Act, any other enactment, these Rules or the CA ANZ By-Laws; and
- (d) may from time to time prescribe rules to be incorporated into the Appendices to these Rules (whether as amendments to an existing Appendix or by introducing a new Appendix) to give effect to the above, provided that:
 - (i) any amendments to an existing Appendix or the introduction of a new Appendix must not be inconsistent with these Rules; and
 - (ii) no amendment can be made to Appendix II without the prior written consent of CA ANZ.

7.4 The Regulatory Board may, at any time and from time to time:

- (a) appoint any person under the common seal of NZICA to be the attorney of NZICA for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Regulatory Board under the Act, any other enactment, these Rules or the CA ANZ By-Laws) and for such period and subject to such conditions as the Regulatory Board may from time to time think fit and the power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Regulatory Board thinks fit;
- (b) delegate the performance of any of its powers and duties and may enter into agreements to appoint any person or persons in New Zealand or elsewhere to perform any part of the functions or activities carried on by NZICA which the Act and these Rules permit NZICA to delegate, with such powers and authority and on such terms and conditions as the Regulatory Board may think fit; and
- (c) enter into and carry into effect any arrangement (including the Amalgamation) for the joint-working of NZICA's functions and activities with the functions and activities of CA ANZ including agreements relating to the funding of the activities of NZICA and to the transfer of all or any part of the assets and liabilities of NZICA to CA ANZ on such terms and conditions as the Regulatory Board shall think fit.

7.5 A Regulatory Board member who is appointed by, or on behalf of, CA ANZ in accordance with these Rules, may when exercising powers or performing duties as a Regulatory Board member act in a manner that he or she believes is in the best interests of CA ANZ (or its members) even though it may not be in the best interests of NZICA (or NZICA's Members). This Rule does not permit a Regulatory Board member to act in a manner that may materially prejudice NZICA's ability to carry out the duty imposed under Rules 2.2 and 2.3.

7.6 Appendix II governs Membership, appointment to Membership, proceedings and remuneration of the Regulatory Board.

8. PERMANENT BODIES

Statutory Bodies

- 8.1 The Regulatory Board shall appoint (at such times as it considers appropriate) members to the Statutory Bodies specified in Appendix I.
- 8.2 The Regulatory Board may approve from time to time Charters for each Statutory Body specified in Appendix I, which shall comply with requirements specified in Appendix I, and shall recognise and be consistent with any functions the Statutory Body has under these Rules and the Act.
- 8.3 Subject to the relevant Charter, each Statutory Body shall regulate its own affairs and may delegate any of its functions or powers.

Advisory Groups

- 8.4 The Regulatory Board shall establish and appoint (at such times it considers appropriate) members to the Advisory Groups specified in Appendix I to provide NZICA with guidance, advice, assistance or other input of a technical or other nature.
- 8.5 For each Advisory Group established under Rule 8.4, the Regulatory Board may approve from time to time a Charter which shall comply with the requirements specified in Appendix I, and shall recognise and be consistent with any functions the Advisory Group has under these Rules.
- 8.6 Subject to the relevant Charter, each Advisory Group shall regulate its own affairs and may delegate any of its functions.

9. SPECIAL GENERAL MEETINGS OF MEMBERS

- 9.1 The Regulatory Board or the Council may call a Special General Meeting of Members either of their own volition, or within 60 days of receiving a request that a Special General Meeting be called which:
 - (a) states the object of the proposed meeting; and
 - (b) is signed by not less than 1% of Members.
- 9.2 Every Member (other than provisional Members) shall be entitled to vote at any Special General Meeting.
- 9.3 Every Special General Meeting shall be conducted in accordance with the procedure set out in Appendix III.
- 9.4 A resolution of Members passed at a Special General Meeting does not become binding on NZICA, the Council and the Regulatory Board until it is countersigned as approved by the Chair of the CA ANZ Board, and the Chair of the CA ANZ Board may grant or withhold his or her approval as he or she thinks fit, and may in formulating his or her decision act in a manner that he or she believes is in the best interests of CA ANZ (or its members) even though it may not be in the best interests of NZICA (or NZICA's Members).
- 9.5 A Special General Meeting called under this Rule is a meeting of Members and is distinct from any ordinary or special general regional meeting of CA ANZ convened under the CA ANZ By-Laws.

10. CERTIFICATE OF PUBLIC PRACTICE AND AUDITOR LICENCES

- 10.1 For the purposes of these Rules the following terms are defined in Appendix IV:
 - (a) Accounting services
 - (b) Offering accounting services to the public
- 10.2 Subject to Rules 10.3 10.5, 10.6, 10.7 and 10.12, only Members who hold the designation "Chartered Accountant" and a Certificate of Public Practice are entitled to offer accounting services to the public.
- 10.3 Notwithstanding Rule 10.2, and subject to Rules 10.5 and 10.7, Members holding the following designations may offer accounting services to the public without holding a Certificate of Public Practice provided fees earned do not exceed the level prescribed by the Regulatory Board from time to time, as specified in Appendix IV:
 - (a) Chartered Accountant;
 - (b) Associate Chartered Accountant; and
 - (c) Accounting Technician.

- 10.4 Provisional Members are not entitled to offer accounting services to the public.
- 10.5 Assurance engagements shall only be conducted:
- (a) by a Member who is entitled under these Rules to use the designation “Chartered Accountant”; or
 - (b) in the case of assurance engagements pursuant to a statute, by a Member who is entitled under these Rules to use the designation “Chartered Accountant”, and who both holds a Certificate of Public Practice and also satisfies any applicable regulatory requirements set by the Regulatory Board from time to time; or
 - (c) in the case of an FMC Audit, in accordance with the Auditor Regulation Act.
- 10.6 Notwithstanding Rule 10.2, but subject to Rules 10.5 and 10.7, NZICA may approve any Member to provide certain services to the public upon such terms and conditions as NZICA considers appropriate.
- 10.7 The Regulatory Board may set additional requirements, restrictions or conditions for Members undertaking insolvency engagements or other engagements governed by any enactment in an Appendix to these Rules.
- 10.8 Subject to these Rules and to any applicable regulatory requirement, for the purposes of section 19 of the Act, a Member who is entitled under these Rules to use the designation “Chartered Accountant” and who holds a Certificate of Public Practice shall be entitled to hold any office (including the office of auditor), perform any function, exercise any power or act in any particular capacity which an enactment provides is to be held, performed, exercised or acted in by a chartered accountant, a chartered accountant in private practice or a chartered accountant who holds a Certificate of Public Practice.
- 10.9 A Member who is entitled under these Rules to use the designation “Chartered Accountant” who:
- (a) has been a full Member holding the designation Chartered Accountant for the preceding 2 years;
 - (b) is a fit and proper person to offer accounting services to the public;
 - (c) intends to offer accounting services to the public;
 - (d) has had 2 years’ acceptable practical experience while a Member holding the designation Chartered Accountant;
 - (e) has within the preceding 2 years attended a course for new practitioners approved by NZICA and/or CA ANZ; and
 - (f) has satisfied any other requirements imposed by the Regulatory Board from time to time,
- shall be entitled to a Certificate of Public Practice issued by NZICA.
- 10.10 NZICA may vary or dispense with any of the requirements in Rule 10.9 if it considers this would be in the interests of NZICA or the public.
- 10.11 Any Member who does not offer accounting services to the public may apply to NZICA for a Certificate of Public Practice.
- 10.12 NZICA may issue a Certificate of Public Practice requested under Rule 10.11 subject to any terms and conditions it thinks fit.
- 10.13 NZICA may investigate and report on whether a Member is offering accounting services to the public in circumstances which require the Member to hold a Certificate of Public Practice.
- 10.14 Where required by NZICA, a Member shall produce any evidence specified to enable NZICA to determine whether the Member is offering accounting services to the public in circumstances which require the Member to hold a Certificate of Public Practice.

- 10.15 Where a Member not holding a Certificate of Public Practice is offering accounting services to the public in circumstances which require the Member to hold a Certificate of Public Practice, NZICA may do either or both of the following:
- (a) issue a Certificate of Public Practice subject to any terms and conditions it thinks fit;
 - (b) lodge a complaint with the Professional Conduct Committee.
- 10.16 A Member who is the holder of a Certificate of Public Practice and who is offering accounting services to the public may use the initials “(PP)” after their designation.
- 10.17 Any member may appeal a decision of NZICA to the Regulatory Board concerning that member under Rules 10.6, 10.12 and 10.15(a) . The Regulatory Board shall have the power to confirm or vary or reverse any decision made by NZICA under those Rules.
- 10.18 Whenever any Member ceases offering accounting services to the public:
- (a) the Member must advise NZICA that the Member has ceased offering accounting services to the public; and
 - (b) NZICA may declare the Member’s Certificate of Public Practice to have lapsed and may require that the physical certificate issued to the Member be returned to NZICA.
- 10.19 Any Member who is involved in undertaking FMC Audit work, or who is a partner, director, or employee of, or contractor to, a firm involved in undertaking an FMC Audit, must provide NZICA with any information requested by NZICA for the purpose of NZICA performing any functions or satisfying any obligations under the Auditor Regulation Act.

11. PUBLIC PRACTICE RULES

Mode of Practice

- 11.1 A holder of a Certificate of Public Practice may practise using any name and practice entity provided the holder meet the requirements set out in Appendix IV.

Practising with non-Members

- 11.2 NZICA shall permit Members to practise in a practice entity with non-Members of NZICA provided they meet the requirements set out in Appendix IV.

Approval of changes in a practice entity

- 11.3 Any change to the structure of a practice entity whether relating to its ownership or control or otherwise, including any change in the principals of the practice entity requires the consent of NZICA.
- 11.4 NZICA may revoke approval of any practice entity where it is satisfied that the practice entity no longer meets the relevant requirements set out in Appendix IV.

12. PRACTICE REVIEWS AND INVESTIGATIONS

- 12.1 NZICA may review the operation of any Member's practice, whether or not they hold a Certificate of Public Practice, from time to time to ensure that professional standards are being maintained.
- 12.2 NZICA may review the conduct of a licensed auditor or registered audit firm in response to a request under any legislation as a practice review under Rule 12 rather than as a complaint under Rule 13.
- 12.3 The Regulatory Board may from time to time set out the professional standards and the procedures in a manual of procedure to be followed by NZICA in carrying out its functions under Rule 12.
- 12.4 NZICA may:
- (a) require the Member to respond to any request for information and/or to produce any document or other material in the Member's possession or power which may be required for the purposes of determining the timing and scope of a review or for a review;
 - (b) interview any Member and examine any document or other material or undertake any other form of enquiry which may be required for the purposes of determining the timing and scope of a review or for a review;
 - (c) take a copy of any document or other material mentioned in Rule 12.4 (a) or (b);
 - (d) subject to any applicable regulatory requirements, engage any person to undertake a review, on NZICA's behalf;
 - (e) charge the Member a fee for the review of their practice; and
 - (f) seek guidance, advice or assistance from the Practice Review Advisory Group, constituted under Rule 8.4 on any matter relating to the performance of its functions under Rule 12.
- 12.5 Where required by NZICA under Rule 12.4, a Member shall produce documents or other material in the Member's possession or power and shall co-operate in any interview. A Member shall respond to any request for information or response within the timeframe specified by NZICA.
- 12.6 On completion of a review, NZICA may do 1 or more of the following:
- (a) determine that no further action is required;
 - (b) determine that further action should be taken in accordance with the powers given, and the procedures set, by the Regulatory Board from time to time, or (where applicable) in accordance with its statutory powers as an accredited body under the Auditor Regulation Act or any other enactment;
 - (c) following consultation with the Practice Review Advisory Group, lodge a complaint with the Professional Conduct Committee where it considers that a Member (irrespective of whether that Member is the person whose practice is under review) has failed to maintain professional standards or has breached the Act, these Rules, the Code of Ethics the Auditor Regulation Act or any other enactment; and/or
 - (d) direct the Member or the Member's practice not to undertake specified assignments (such as audits or receiverships) except under the supervision of a Member approved by NZICA and/or after having undertaken a period of training as specified by NZICA.

- 12.7 No person acting on behalf of NZICA in performing NZICA's functions under Rule 12 shall disclose any review report or information obtained from a Member or a Member's practice in the course of a review to any other person except:
- (a) to the Professional Conduct Committee if, as a result of a review, NZICA is of the opinion that a complaint should be lodged with the Committee in respect of any Member;
 - (b) to the Professional Conduct Committee, where there has been a direction or an order to review the Member's practice under Rules 13.11(c), 13.24, 13.51(f) or 13.51(g);
 - (c) to any Permanent Body of NZICA that requests information for the purpose of discharging its functions under these Rules;
 - (d) as may be required by a statute or as NZICA may consider necessary or desirable to avoid prejudice to the maintenance of the law, including assistance with the prevention, detection, investigation, prosecution, and punishment of offences under any statute, or the enforcement of a law imposing a pecuniary penalty;
 - (e) as may be required by a court;
 - (f) as may otherwise be permitted in accordance with NZICA's powers under Rule 12.6; or
 - (g) in connection with NZICA's functions under any enactment.

13. DISCIPLINE

Purpose

- 13.1 The purpose of the discipline rules under Rule 13 is to allow the hearing of complaints and the investigation of other disciplinary related matters in a manner which:
- (a) is consistent with the purpose and spirit of the Act; and
 - (b) promotes the resolution of complaints in a fair, efficient, speedy and simple manner, consistent with the rules of natural justice and taking account of the public interest.
- 13.2 The discipline rules are to be interpreted and applied in a way that is consistent with their purpose.
- 13.3 Members must be open and honest in their dealings with the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council. Members must provide such information as is required of them by NZICA, the Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council in connection with an investigation, a complaint or any matters arising from or in relation to it, in a timely fashion and in any event within any timeframe prescribed under the Rules.

Disclosure Events

- 13.4 A Disclosure Event occurs in relation to a Member when:
- (a) that Member or a Practice Entity of which that Member is a Principal, has been convicted of an offence punishable by imprisonment or a fine under any enactment or other legislation in New Zealand or any other territory or jurisdiction;
 - (b) that Member or a Practice Entity of which that Member is a Principal enters a state of insolvency, including:
 - (i) bankruptcy;
 - (ii) admission to the no asset procedure under the Insolvency Act 2006;
 - (iii) entering into a composition or compromise with creditors;

- (iv) receivership;
 - (v) statutory management;
 - (vi) liquidation;
 - (vii) voluntary administration;
 - (viii) having a receiver or receiver and manager appointed; or
 - (ix) entering into some similar state arising from an inability to meet debts as they fall due.
- (c) has misappropriated, defalcated or taken without claim of right, monies, property or things, or otherwise acted in a manner that is fraudulent, dishonest, deceptive or unethical;
- (d) has acted in a manner which brings discredit to NZICA, CA ANZ or the practice of the profession of accountancy;
- (e) has failed to comply with the fundamental principles of the Code of Ethics;
- (f) has in any civil proceedings before any court of law, tribunal or similar body in New Zealand or elsewhere been found to have acted dishonestly (provided that such a finding has not been entirely set aside on appeal);
- (g) has been the subject of an adverse or unfavourable finding in relation to the Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission, or inquiry in New Zealand or elsewhere;
- (h) with or without any admission, has given or entered into any undertaking (whether enforceable or not) or consented to, had imposed upon, or otherwise been the subject of, any order in connection with any matter or proceedings or any threatened or proposed proceedings or any review, audit or investigation by any statutory or regulatory authority or body, or professional body in New Zealand or elsewhere (other than any undertaking or order in respect of procedural matters in respect of or in the course of the conduct of the proceedings or investigation); and/or
- (i) has agreed to, or has had imposed, any condition or restriction on any professional membership, registration or licence in the Member's name.
- 13.5 When a Disclosure Event occurs, the Member must give notice to the Professional Conduct Committee of the Disclosure Event within 7 days.
- 13.6 The fact that a Member has given notice of a Disclosure Event may be considered as a mitigating factor in the event of any investigation or disciplinary proceedings.

Professional Conduct Committee

Lodging a Complaint

- 13.7 A complaint about the conduct of a Member or Former Member (including a Member who is suspended), whether or not the conduct occurred in New Zealand, may be:
- (a) lodged by any person; or
 - (b) initiated and made by NZICA or the Professional Conduct Committee at any time following an investigation or receipt of information (including the kind specified in Rule 13.12).

13.8 Every complaint shall be:

- (a) in writing; and
- (b) with respect to complaints lodged by a person pursuant to Rule 13.7(a), in such form as prescribed by the Professional Conduct Committee and supported by any statutory declaration or additional information the Professional Conduct Committee may require.

Initial Investigation and Decision

13.9 On receipt of a complaint, the Professional Conduct Committee shall refer it to the Member concerned, unless it considers the complaint:

- (a) is trivial, frivolous, vexatious or made in bad faith;
- (b) is lacking in substance, vague, imprecise or unsupported by evidence;
- (c) is, or may be, an abuse of process;
- (d) relates to historical issues that would no longer be practical to investigate;
- (e) is of an insufficient nature to warrant investigation; or
- (f) comes within the jurisdiction of another forum and in all the circumstances it is reasonable for the complaint to be so resolved.

13.10 Where a complaint is referred to the Member concerned, the Member must respond in writing within such period of time as the Professional Conduct Committee specifies in its notification. The Member's written response must address all matters raised in the complaint and any other matters required by the Professional Conduct Committee.

13.11 The Professional Conduct Committee may investigate any matter that it considers may result in disciplinary action being taken in respect of a Member or Former Member under the Rules. For the purposes of any investigation, the Professional Conduct Committee may:

- (a) make, or engage any person to make, such inquiries as the Professional Conduct Committee considers necessary; and
- (b) require any Member or Former Member to whom the investigation relates to provide the Professional Conduct Committee or any person so engaged within such period of time as specified by the Professional Conduct Committee any documents, things or information that are in the possession or under the control of that Member or Former Member and that relate to the subject matter of the investigation; and
- (c) require the Member or the Member's Practice Entity to submit, at the Member's cost, to a review or reviews on such matters and on such terms as determined by the Professional Conduct Committee, such terms to include that the results of such reviews are made available to the Professional Conduct Committee; and
- (d) make and retain copies of any documents that are provided to the Professional Conduct Committee, including those containing personal information for the purposes of the *Privacy Act 1993*; and
- (e) require the Member at the Member's own cost to attend before the Professional Conduct Committee on at least 14 days' notice to confer regarding the complaint; and
- (f) request the complainant at the complainant's own cost to attend before the Professional Conduct Committee on at least 14 days' notice to confer regarding the complaint.

- 13.12 To avoid doubt, the powers of the Professional Conduct Committee under Rule 13.11:
- (a) may be exercised for the purpose of obtaining evidence to be placed before the Disciplinary Tribunal in respect of a complaint that has been referred to the Disciplinary Tribunal for hearing; and
 - (b) may be exercised after a case conference has been held and the Professional Conduct Committee has determined to refer a complaint against a Member to the Disciplinary Tribunal for hearing.
- 13.13 During an investigation, the Professional Conduct Committee may make a decision and adopt 1 or more of the following courses of action:
- (a) decide that no further action be taken;
 - (b) issue the Member with a professional reminder that the Member's conduct has fallen short of best practice;
 - (c) caution the Member, whether or not the Member has breached the Act, these Rules or the Code of Ethics;
 - (d) set the matter down for a case conference, and decide whether the Professional Conduct Committee requires the Member to attend the case conference;
 - (e) where the matter is not set down for a case conference or referred to the Disciplinary Tribunal for hearing, order the Member to pay costs to the complainant and/or NZICA of such amount (if any), as the Professional Conduct Committee thinks fit;
 - (f) investigate and make a decision in regard to any other matter arising out of the complaint or the Professional Conduct Committee's investigation of the complaint; and/or
 - (g) refer the matter directly to the Disciplinary Tribunal for a hearing without setting the matter down for a case conference, where the Professional Conduct Committee is satisfied on reasonable grounds that:
 - (i) a Disclosure Event has occurred;
 - (ii) it has concluded its investigation of any complaint(s) pertaining to a Member who is subject to an interim suspension order in accordance with Rule 13.36;
 - (iii) the Member has provided information to NZICA or CA ANZ which is false or misleading;
 - (iv) the Member has failed to comply with any order made by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
 - (v) the Member has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council in accordance with Rule 13.81;
 - (vi) the Member has confirmed that he or she will not contest the complaint and the Professional Conduct Committee considers the sanctions it may impose are not sufficient; and/or
 - (vii) the complaint is otherwise appropriate to be referred directly to the Disciplinary Tribunal.

Case Conferences

- 13.14 If the Professional Conduct Committee decides that the complaint or any matter arising out of the complaint or the Professional Conduct Committee's investigation of the complaint be set down for a case conference, it shall send a notice of the decision to the Member concerned:
- (a) setting out the reasons why the complaint has been set down for a case conference; and
 - (b) advising (if the Professional Conduct Committee has so decided under Rule 13.13(d)) that the Member is required to attend the case conference; or
 - (c) advising (if the Professional Conduct Committee has not decided to require the Member to attend the case conference under Rule 13.13(d)) that the Member has 14 days to notify the Committee if the Member wishes to attend and be heard at the case conference.
- 13.15 Following consideration of a complaint at a case conference, the Professional Conduct Committee may make a decision and adopt 1 or more of the following courses of action:
- (a) determine that no further action should be taken;
 - (b) issue the Member with a professional reminder that the Member's conduct has fallen short of best practice;
 - (c) caution the Member, whether or not the Member has breached the Act, these Rules or the Code of Ethics;
 - (d) subject to Rule 13.16, when a complaint would otherwise warrant being referred to the Disciplinary Tribunal, make (with the written agreement of the Member given in accordance with Rule 13.17) 1 or more of the following orders which shall be entered on the Member's record:
 - (i) the Member shall waive the whole or part of any fee agreed to or invoiced;
 - (ii) the Member shall return the whole or part of any fee already paid;
 - (iii) another Member shall be appointed to undertake or complete work that the Member had been engaged to perform;
 - (iv) the Member shall be reprimanded;
 - (v) the Member shall be severely reprimanded;
 - (vi) the Member shall pay to NZICA a fine of such sum as the Professional Conduct Committee determines, not exceeding \$25,000;
 - (vii) the Member shall pay costs to the complainant and/or NZICA;
 - (viii) the Member shall at their own expense, complete any professional development course or courses prescribed by the Professional Conduct Committee within the timeframe and terms stipulated by the Professional Conduct Committee;
 - (ix) the Member shall, at their own expense engage an adviser, consultant or other person, as approved by the Professional Conduct Committee for the period of time and on terms stipulated by the Professional Conduct Committee;
 - (x) the Member shall comply with such other requirements as deemed appropriate by the Professional Conduct Committee (including acceptance of and compliance with the terms of a written undertaking from the Member in accordance with Rule 13.81);
 - (e) refer the matter to the Disciplinary Tribunal for hearing; and/or

- (f) where the matter has not been referred to the Disciplinary Tribunal for hearing, order the Member to pay costs to the complainant and/or NZICA of such amount (if any), as the Professional Conduct Committee thinks fit (which amount may include part or all of the costs to the complainant of attending before the Professional Conduct Committee pursuant to Rule 13.11).
- 13.16 No orders shall be made under Rule 13.15(d) where, in the view of the Professional Conduct Committee, the complaint involves:
- (a) a dispute that should be resolved with the benefit of evidence given on oath or with evidence from independent experts retained by both parties; or
 - (b) matters of high public interest or significance to the accounting profession as a whole.
- 13.17 Where the Professional Conduct Committee considers that it is appropriate to make an order under Rule 13.15(d), the Committee shall give a written notice to the Member setting out:
- (a) the order which the Professional Conduct Committee proposes to make;
 - (b) whether the Professional Conduct Committee proposes to direct that the making of the order be published under Rules 13.19 and/or 13.20; and
 - (c) the period within which the Member must advise the Committee in writing whether or not the Member agrees to the making of the order, which must not be less than 14 days.

If the Professional Conduct Committee receives advice in writing from the Member within the period specified in the notice that the Member agrees to the making of the order, the order shall be treated as having been made by the Professional Conduct Committee. If the Member advises the Professional Conduct Committee in writing within the period specified in the notice that the Member does not agree to the making of the order, or if the period specified in the notice expires without the Professional Conduct Committee receiving written advice from the Member that the Member agrees to the making of the order, the Professional Conduct Committee shall be treated as having decided to refer the matter to the Disciplinary Tribunal for hearing under Rule 13.15(e).

- 13.18 The Professional Conduct Committee will not publish its decisions unless:
- (a) the decision is made under Rule 13.15(d) or Rule 13.81; and/or
 - (b) the Professional Conduct Committee considers that it is in the public interest to do so.
- 13.19 Subject to Rule 13.18, the Professional Conduct Committee may publish a notice of its decision and the orders made, in such form and publication as the Professional Conduct Committee considers appropriate, including:
- (a) in NZICA's and/or CA ANZ's official publication and on NZICA's and/or CA ANZ's website; and
 - (b) in any other manner that it may in its discretion direct.

Any such publication must not disclose the Member's name and location unless the Professional Conduct Committee considers that there are special circumstances for doing so.

- 13.20 If the Professional Conduct Committee considers that there are special circumstances for publishing the Member's name and location, it may also order the circulation of the notice of its decision in such form as it considers appropriate to interested parties, including other professional bodies; regulatory authorities; and any current or former clients, employers, or partners of that Member or their Practice Entity who are or may be affected by the Member's conduct to which the disciplinary investigation or proceedings relate.
- 13.21 Written notice of every decision following a case conference shall be given to the complainant (if any) and to the Member concerned within 21 days of the Professional Conduct Committee's decision. Where the Professional Conduct Committee decides not to refer the matter to the

Disciplinary Tribunal for hearing under Rule 13.15(e) the notice must include a summary of the reasons for that decision.

General

13.22 Where the Professional Conduct Committee finds that the Member concerned:

- (a) has failed within the time specified in Rules 13.10 or 13.14(c) to respond in writing to all matters raised;
- (b) has failed, within the time specified in Rule 13.11(b) or such longer period of time as the Professional Conduct Committee thinks fit, to provide any documents, things or information required by Rule 13.11(b);
- (c) has failed to attend before the Professional Conduct Committee, having been required to do so under Rule 13.11(e); or
- (d) has failed to attend a case conference, having been required to do so under Rule 13.13(d);

the Professional Conduct Committee may, without giving further notice to the Member:

- (e) refer the matter to the Disciplinary Tribunal without setting the matter down for a case conference; or
- (f) make a decision to take any course of action prescribed in Rules 13.13 or 13.15.

13.23 Before making a decision in respect of a complaint, the Professional Conduct Committee may explore with the complainant and the Member the possibility of the complaint being referred to conciliation, mediation, arbitration or other dispute resolution process and referring it accordingly if the parties agree. Where any complaint is referred to conciliation or mediation under this Rule and the parties fail to resolve the dispute within 60 days of such reference, or other such time period as specified by the Professional Conduct Committee, the Professional Conduct Committee shall make a decision to take any course of action prescribed in Rules 13.13 or 13.15.

13.24 Where the Professional Conduct Committee adopts 1 of the courses of action specified in Rule 13.13, 13.15 or 13.81 it may also direct NZICA to conduct a review or reviews of the Member's practice on such terms as the Professional Conduct Committee sees fit, including to report its findings directly to the Professional Conduct Committee.

13.25 The Professional Conduct Committee:

- (a) may at any time review and reconsider a decision which it has made under Rule 13.13, Rule 13.15 or Rule 13.22 where new information has been obtained by the Professional Conduct Committee after the date of the decision which the Professional Conduct Committee considers would have been material to its decision; and
- (b) must review and reconsider a decision made by it under Rules 13.13 or 13.15 if directed to do so by the Reviewer of Complaints. In doing so, the Professional Conduct Committee must have regard to any recommendations made by the Reviewer of Complaints.

13.26 The Professional Conduct Committee may adjourn, for such period as it deems appropriate, its investigation of a complaint, a case conference or the making of any decision, at any time in its sole discretion, including where it considers that to do so may aid resolution of the matter giving rise to the complaint or investigation by an alternative means. The Professional Conduct Committee will give notice of any adjournment with reasons for its decision to the complainant (if any) and the Member who is the subject of the complaint.

13.27 Subject to these Rules, the Professional Conduct Committee shall regulate its procedures as it thinks fit.

Reviewer of Complaints

- 13.28 The Regulatory Board shall appoint 1 or more Reviewers of Complaints. A Reviewer of Complaints must not be a Member.
- 13.29 Either the complainant (other than the Professional Conduct Committee) or the Member who is the subject of the complaint may request a review of a decision made by the Professional Conduct Committee:
- (a) that a complaint falls within one of the grounds under Rule 13.9 for not referring the complaint to the Member concerned;
 - (b) to adopt, in respect of a complaint, any of the courses of action set out in Rule 13.13(a), (b) and (c); or
 - (c) following a case conference to make a decision in respect of a complaint to adopt any of the courses of action set out in:
 - (i) Rule 13.15 (a), (b), (c), and (f); or
 - (ii) in respect of the complainant only, Rule 13.15(d). The Member may not request a review of a decision to adopt any course of action set out in Rule 13.15(d).
- 13.30 A request for review under Rule 13.29 must be made in writing, be received by NZICA within 21 days after the date of notification of the decision by the Professional Conduct Committee, and be accompanied by payment of an application fee prescribed by NZICA, and a costs agreement duly executed by the party who has applied for the review.
- 13.31 NZICA shall refer every request received under Rule 13.29 to a Reviewer of Complaints who shall review every such request and consider whether:
- (a) to accept a request which was received by NZICA outside the period specified in Rule 13.30 which the Reviewer of Complaints may only do if he or she considers that there are exceptional circumstances which make this appropriate;
 - (b) the procedure followed by the Professional Conduct Committee in making its decision was in all the circumstances appropriate;
 - (c) the decision made by the Professional Conduct Committee was one which could reasonably have been made by the Professional Conduct Committee, taking into account all the material which was before the Professional Conduct Committee; and
 - (d) the applicant for review should pay the costs and expenses of the review, or some part thereof, in accordance with the costs agreement executed under Rule 13.30.
- 13.32 The Reviewer of Complaints need not proceed to review a decision in respect of which a request has been made under Rule 13.29 if the Reviewer of Complaints considers that the request is trivial, frivolous, vexatious or made in bad faith. The Reviewer of Complaints must give notice to the applicant of a decision not to proceed with a review on these grounds, including a summary of the reasons for the Reviewer of Complaints' decision.
- 13.33 In reviewing a decision of the Professional Conduct Committee, the Reviewer of Complaints may examine the Professional Conduct Committee's file and any other documents or other material held by NZICA concerning the original complaint.
- 13.34 The Reviewer of Complaints:
- (a) must report to the complainant, the Member, the Professional Conduct Committee and to NZICA on the matters the Reviewer of Complaints is required to consider under Rule 13.31;
 - (b) may, if the Reviewer of Complaints considers that it is appropriate to do so, direct the Professional Conduct Committee to review and reconsider its decision. The Reviewer of Complaints may make such recommendations with respect to the procedure to be

followed by the Professional Conduct Committee, or its consideration of the matter (having regard to Rule 13.31(b)), as the Reviewer of Complaints considers appropriate;

- (c) may make recommendations with regard to procedure to the Regulatory Board, where the Reviewer of Complaints considers this to be appropriate;
- (d) may recommend that NZICA refund all or part of the application fee to the applicant where the Reviewer of Complaints considers this to be appropriate.

Interim Suspension

- 13.35 At any time after receipt of a complaint, the Professional Conduct Committee may apply to the Disciplinary Tribunal for an order that the member concerned be suspended from the membership on an interim basis until further order of the Disciplinary Tribunal.
- 13.36 Where a complaint has been lodged with the Professional Conduct Committee and the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so having regard to the urgency of the matter, the interests of the public, the financial interest of any person, the reputation of NZICA or CA ANZ and/or the integrity of the profession of accountancy, the Disciplinary Tribunal may make an order:
- (a) suspending the Member from Membership until further order of the Disciplinary Tribunal; and
 - (b) directing that after 14 days has elapsed, notice of the suspension be published in accordance with Rule 13.55.
- 13.37 A Member who is suspended under Rule 13.36 may apply to the Disciplinary Tribunal for revocation of the suspension order or the order directing publication.
- 13.38 Within 14 days of receiving notice of any refusal of the Disciplinary Tribunal to revoke a suspension order or an order directing publication under Rule 13.37, a Member may appeal against the refusal in writing stating the grounds of appeal to the Appeals Council.
- 13.39 Where a Member who has been suspended under Rule 13.36 applies to the Disciplinary Tribunal under Rule 13.37 or appeals to the Appeals Council under Rule 13.38 publication of the notice of the suspension shall be delayed until the application or appeal has been determined.
- 13.40 If, at the conclusion of an investigation into a complaint which has resulted in an interim suspension order under Rule 13.36, the Professional Conduct Committee decides not to refer the matter to the Disciplinary Tribunal under Rules 13.13, 13.15 or 13.22, the relevant Member or the Professional Conduct Committee may apply to the Disciplinary Tribunal to have the interim suspension order revoked. Where suspension is revoked under this Rule 13.40, the Disciplinary Tribunal may publish details of the revocation of the interim suspension order as it thinks fit.

Disciplinary Tribunal

- 13.41 Subject to any directions made under Rule 13.42, where the Professional Conduct Committee refers any matter to the Disciplinary Tribunal for hearing:
- (a) the Professional Conduct Committee must give written notice to the Disciplinary Tribunal of the charges against the Member;
 - (b) the Disciplinary Tribunal must give the Member, not less than 35 days prior to the hearing before the Disciplinary Tribunal, notice of the date of the hearing and of the charges against the Member;
 - (c) the Professional Conduct Committee must give the Member, not less than 28 days prior to the hearing before the Disciplinary Tribunal, a bundle of evidence to be presented by the Professional Conduct Committee at the hearing including:
 - (i) copies of any briefs of evidence and/or a summary of any oral evidence that the Professional Conduct Committee proposes to place before the Disciplinary Tribunal; and

- (ii) copies of all documents that the Professional Conduct Committee intends to place before the Disciplinary Tribunal as evidence at the hearing;
 - (d) the Member must, not less than 7 days before the date of the hearing, give written notice to the Disciplinary Tribunal of:
 - (i) which charges (if any) are admitted, and which are disputed;
 - (ii) whether the Member intends to attend the hearing;
 - (iii) whether the Member intends to be represented by a lawyer or by some other representative at the hearing and, if so, the name and contact details of the representative;
 - (iv) whether the Member intends to call any evidence at the hearing, and if so, the names of the witnesses; and
 - (e) the Member must also, not less than 7 days before the date of the hearing, provide to the Professional Conduct Committee, copies of all written evidence that the Member will rely on at the hearing, including:
 - (i) copies of any briefs of evidence and/or a summary of any oral evidence that the Member proposes to place before the Disciplinary Tribunal; and
 - (ii) copies of all documents that the Member intends to place before the Disciplinary Tribunal as evidence at the hearing.
- 13.42 The Chair of the Disciplinary Tribunal may, of the Chair's own motion or on the application of the Professional Conduct Committee or the Member, give such directions as the Chair thinks fit in respect of the exchange of evidence or submissions in advance of a hearing. For example, the Chair may direct that 1 or both parties must provide written briefs of all evidence to be given at the hearing, or that one or both parties must provide written submissions in advance of the hearing, or that the time frames in Rule 13.41 be extended. No direction under this Rule may reduce the periods of notice provided for in Rule 13.41(b) or (c).
- 13.43 The Professional Conduct Committee may amend the charges against a Member by giving written notice of the amended charges to the Disciplinary Tribunal and to the Member:
- (a) not less than 28 days prior to the date of the hearing of the charges before the Disciplinary Tribunal; or
 - (b) at any other time, with the consent of the Member or with the leave of the Disciplinary Tribunal. Where the Disciplinary Tribunal grants leave under Rule 13.43(b), it may adjourn the hearing for such period as it deems is appropriate and may give such directions as it thinks fit under Rule 13.42.
- 13.44 If the Professional Conduct Committee seeks to present evidence at a hearing before the Disciplinary Tribunal, notice of which has not been given in accordance with Rule 13.41(c) or in accordance with any direction given under Rule 13.42 that evidence may only be presented:
- (a) with the consent of the Member; or
 - (b) with the leave of the Disciplinary Tribunal. The Disciplinary Tribunal may grant leave only if it is satisfied that doing so will not materially prejudice the Member, and it is in the interests of justice to do so. The Disciplinary Tribunal may, as a condition of granting leave:
 - (i) adjourn the hearing for such period as it deems is appropriate to enable the Member to consider and respond to the evidence in respect of which leave is sought; and
 - (ii) make such order as it thinks fit with respect to any costs and expenses of the Member or of the Disciplinary Tribunal that are wasted as a result of the adjournment.

- 13.45 If a Member fails to comply with Rule 13.41 (d) or (e):
- (a) that failure does not prevent the Member from disputing any charges, attending the hearing, being represented at the hearing, or calling any evidence at the hearing; and
 - (b) the Disciplinary Tribunal may at the request of the Professional Conduct Committee adjourn the hearing for such period as it deems is appropriate, and may make such order as it thinks fit with respect to any costs and expenses of the Professional Conduct Committee or of the Disciplinary Tribunal that are wasted as a result of the adjournment.
- 13.46 Subject to these Rules, the Disciplinary Tribunal shall regulate its procedure as it thinks fit, including to delegate to the Chair of the Disciplinary Tribunal power to deal with any interlocutory or procedural issues that may arise before or during any hearing.
- 13.47 The Disciplinary Tribunal may appoint a legal assessor, who may be present at the hearing and may at any time advise the Disciplinary Tribunal on matters of law, procedure, and evidence.
- 13.48 At every hearing before the Disciplinary Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned.
- 13.49 The Disciplinary Tribunal may:
- (a) permit:
 - (i) a person to give evidence under oath or affirmation administered by the Chair of the Disciplinary Tribunal;
 - (ii) a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath administered by the Chair of the Disciplinary Tribunal;
 - (b) receive as evidence any statement, document, thing or information whether or not it would be admissible in a Court;
 - (c) inspect and examine any documents, thing and information;
 - (d) require that copies of any such documents or information be provided to any person appearing at the hearing; and
 - (e) impose any terms and conditions in respect of the provision of copies of any document or information to a person appearing at the hearing and the use that may be made of them.
- 13.50 The Disciplinary Tribunal may, after conducting a hearing, exercise 1 or more of the disciplinary powers set out in Rule 13.51 if the Disciplinary Tribunal finds:
- (a) the Member has been convicted of an offence punishable by imprisonment or a fine, and is of the opinion that the conviction reflects on the Member's fitness to practise accountancy and/or tends to bring the profession into disrepute;
 - (b) the Member is guilty of misconduct in a professional capacity;
 - (c) the Member is guilty of conduct unbecoming an accountant;
 - (d) the Member is guilty of negligence or incompetence in a professional capacity, and that this has been of such a degree or so frequent as to reflect on the Member's fitness to practice as an accountant or tends to bring the profession into disrepute;
 - (e) the Member or a practice entity of which the Member is a Principal has entered a state of insolvency as defined in paragraph 13.4(b), within 3 years of the matter being referred to the Disciplinary Tribunal;
 - (f) the Member has breached any of these Rules or the Code of Ethics;

- (g) the Member, being a Chartered Accountant in Public Practice, has engaged in any other business which is inconsistent with the integrity of a Chartered Accountant in Public Practice;
- (h) the Member at any time has supplied any information to NZICA and/or CA ANZ which is false or misleading;
- (i) the Member has failed at any time to respond promptly to communications from NZICA and/or CA ANZ to that Member or to persons or entities controlled by that Member whether alone or in conjunction with others, or to persons or entities employing that Member;
- (j) the Member has failed to pay any sum due to NZICA and/or CA ANZ by the date specified for payment;
- (k) the Member has failed to comply with any order made by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council;
- (l) the Member has failed to comply with any undertaking given to the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council; and/or
- (m) the Member has failed to comply with any requirement of the Auditor Regulation Act.

13.51 Where the Disciplinary Tribunal finds a Member guilty of a charge it may exercise 1 or more of the following powers:

- (a) terminate that Member's Membership and remove the Member's name from the Register of Members;
- (b) suspend the Member from Membership for any period not exceeding 5 years;
- (c) impose a fine on the Member not exceeding \$50,000;
- (d) cancel or suspend any Certificate of Public Practice held by the Member;
- (e) declare that the Member is ineligible to hold a Certificate of Public Practice for a period not exceeding 5 years and on such terms and conditions as to the earlier termination of such period of ineligibility as the Disciplinary Tribunal may prescribe;
- (f) order the investigation of the Member's practice by the Professional Conduct Committee;
- (g) order an investigation, review or reviews of the Member or their practice on such terms as the Disciplinary Tribunal sees fit, including that the findings of any such investigation or review(s), if not otherwise conducted by the Professional Conduct Committee, be reported to the Professional Conduct Committee;
- (h) order the Member, at their own expense, to complete any professional development course or courses prescribed by the Disciplinary Tribunal within the timeframe and terms stipulated by the Disciplinary Tribunal;
- (i) order the Member, to engage an adviser, consultant or other person, at their own expense, as directed by the Disciplinary Tribunal.
- (j) appoint another Member to undertake or complete work that the Member has been engaged to perform;
- (k) order the Member to waive the whole or part of any fee agreed to or invoiced;
- (l) order the Member to return the whole or part of any fee already paid;
- (m) censure the Member;
- (n) order that the Member be prohibited from practising with a non-Member;

- (o) order the Member to pay to the complainant such amount as the Disciplinary Tribunal thinks fit in respect of any costs or expenses incurred by the complainant in relation to the complaint or the matters which gave rise to it;
- (p) order the Member or the Member's practice not to undertake specified assignments (without limitation, including assignments such as audits, receiverships, FMC Audits, or particular types of FMC Audit) for a specified period;
- (q) without limiting NZICA's ability to exercise its powers in this regard of its own volition, act under sections 20 or 21 of the Auditor Regulation Act including making an order that any licence issued by NZICA pursuant to its powers under the Auditor Regulation Act be varied, suspended for any period, or cancelled;
- (r) order that any licence, accreditation, recognition, specialisation or status issued to the Member by NZICA or CA ANZ in accordance with any enactment, regulation, other legislation, these Rules, CA ANZ By-Laws or CA ANZ Regulation, be varied, suspended for any period, or cancelled;
- (s) order the removal of Fellowship status and alter it to that of Chartered Accountant, Associate Chartered Accountant or Accounting Technician (as the case may be); and/or
- (t) cancel or suspend for a period not exceeding 12 months any non-Member's recognition or standing as a non-Member principal granted in accordance with clause 3 of Appendix IV.

13.52 Where the Disciplinary Tribunal orders an investigation of a Member or their practice by the Professional Conduct Committee under Rule 13.51(f), the investigation shall be conducted as if a complaint has been lodged.

Costs and Expenses

13.53 The Disciplinary Tribunal may make such order as it thinks fit as to the payment of the costs and expenses of:

- (a) the investigation and prosecution by the Professional Conduct Committee;
- (b) the Disciplinary Tribunal's hearing;
- (c) the consideration of any application to the Disciplinary Tribunal under Rules 13.35, 13.37, 13.40, 13.60 and 13.82; and
- (d) the publication of the Disciplinary Tribunal's decision.

Publicity of Decisions

13.54 Written notice of every decision of the Disciplinary Tribunal, including a summary of the reasons for the decision and any penalty imposed, shall be given to:

- (a) the Member, the Professional Conduct Committee and to the Regulatory Board within 21 days of the Disciplinary Tribunal's decision; and
- (b) the complainant within 14 days of receipt by the Professional Conduct Committee under Rule 13.54(a).

13.55 Where the Disciplinary Tribunal makes a decision under Rule 13.36, Rule 13.51 and/or Rule 13.81:

- (a) the Disciplinary Tribunal shall direct, unless in the Disciplinary Tribunal's view there are exceptional circumstances for not doing so, that notice of its decision including the Member's name, location, the particulars of any charges and a summary of the reasons for the decision and any penalty imposed, be published in NZICA and/or CA ANZ's official publication and/or on NZICA and/or CA ANZ's website; and

- (b) the Disciplinary Tribunal may in its discretion order:
 - (i) the publication of notice of its decision in such form as it considers appropriate in any other publication which it directs;
 - (ii) the circulation of the notice of its decision in such form as it considers appropriate to interested parties, including other professional bodies; regulatory authorities; and any current or former clients, employers, or partners of that Member or their Practice Entity who are or may be affected by the Member's conduct to which the disciplinary investigation or proceedings relate; and/or
 - (iii) a general media release in relation to its decision in such form as it considers appropriate.

13.56 Where the Disciplinary Tribunal finds a Member not guilty of a charge the Disciplinary Tribunal may direct publication of its decision as it thinks fit.

General

13.57 Where a member has been suspended from Membership under Rule 13.36 or 13.51(b) or had their Membership terminated under Rule 13.51(a), the member shall immediately return his or her Membership certificate and Certificate of Public Practice (if any) or prove their loss.

13.58 A person who has been suspended from Membership shall remain subject to the disciplinary processes in this Rule 13 as if that person were still a Member.

13.59 While a Member remains entitled to appeal against a decision of the Disciplinary Tribunal in accordance with Rule 13.63 or while an appeal by a Member awaits a determination by the Appeals Council:

- (a) a decision of the Disciplinary Tribunal under Rule 13.51. shall not take effect; and
- (b) Rules 13.55, 13.56 and 13.78 as to publication of the Disciplinary Tribunal's decision shall take effect, unless the Disciplinary Tribunal orders otherwise, but any such publication shall include a statement that the decision of the Disciplinary Tribunal under Rule 13.51 does not take effect pending the determination of any appeal by the Member.

Readmission

13.60 Where a Member's name has been removed from the Register of Members by order of the Disciplinary Tribunal or any predecessor disciplinary body established under any enactment, the Former Member may apply to the Disciplinary Tribunal for re-admission to Membership and entitlement to use the designation and initials previously applicable to that Member under the relevant admission requirements in Rule 3, in which case the following shall apply:

- (a) the Disciplinary Tribunal shall consider the application and make a recommendation to the Regulatory Board as to whether or not the application should be granted;
- (b) Rules 13.46 to 13.49, 13.53, 13.76 and 13.78 to 13.80 shall, with any necessary modifications, apply to the application; and
- (c) the Disciplinary Tribunal's recommendation shall be considered by the Regulatory Board, which shall decide whether or not to accept the recommendation.

13.61 On granting any application for re-admission to Membership and entitlement to use any designation and initials under Rule 13.60, the Regulatory Board may dispense with, or vary, any of the Membership requirements set out in Rules 3.2 and 3.7 except for the requirement that the Member be a member of CA ANZ and impose any conditions it thinks fit. The Regulatory Board must notify CA ANZ of any decision made under this Rule 13.61 and the reasons supporting that decision.

13.62 On expiry of the period of suspension imposed under Rule 13.51(b), a person shall be entitled to be readmitted to Membership (and to use the designation and initials previously applicable to the person under Rule 3.7) if:

- (a) any outstanding prescribed sums or any other amounts due to NZICA or CA ANZ (as the case may be) have been paid or are being paid in accordance with an agreement with NZICA and/or CA ANZ; and
- (b) the person is or will be a member of CA ANZ and at the end of his or her period of suspension, he or she remains of “good character and reputation”; and
- (c) he or she has completed continuing professional development during the period of suspension as prescribed by NZICA and/or CA ANZ.

Appeals Council

- 13.63 Within 21 days after the date of notification of a decision of the Disciplinary Tribunal made under Rule 13.51, the Member or the Professional Conduct Committee may appeal in writing stating the grounds of the appeal to the Appeals Council. The Appeals Council may accept an appeal lodged after this date, at its discretion.
- 13.64 Where an appeal has been lodged with the Appeals Council and the Appeals Council is satisfied that it is necessary or desirable to do so having regard to the urgency of the matter, the interests of the public, the financial interests of any person, the reputation of NZICA or CA ANZ and/or the integrity of the profession of accountancy, the Appeals Council may make an order:
- (a) suspending the Member from Membership until further order of the Appeals Council; and
 - (b) directing that notice of the suspension be published in accordance with Rule 13.73 and/or Rule 13.74.
- 13.65 When any appeal is lodged with the Appeals Council under Rule 13.63, the Appeals Council shall give the Member not less than 14 days written notice of the appeal hearing.
- 13.66 Every appeal shall be by way of rehearing but, unless the Appeals Council directs otherwise, it shall not be permissible to recall witnesses who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.
- 13.67 Subject to these Rules, the Appeals Council shall regulate its procedure as it thinks fit including to delegate to the Chair of the Appeals Council power to deal with any interlocutory or procedural issues that may arise before or during any hearing.
- 13.68 The Appeals Council may, at any time and for any reason, adjourn the appeal hearing for such period as it deems is appropriate.
- 13.69 The Appeals Council may require the Member to pay such amount as it determines to NZICA as security against the anticipated costs which NZICA may incur in the conduct and hearing of the appeal. The Appeals Council may stipulate a time period of not less than 28 days within which the Member must pay the amount and, if it does so and the Member has not paid the amount at the expiry of that period, the appeal will automatically lapse.
- 13.70 Where the Appeals Council permits the recall of a witness or the introduction of new evidence, it may:
- (a) permit:
 - (i) a person to give evidence under oath or affirmation administered by the Chair of the Appeals Council;
 - (ii) a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath or affirmation administered by the Chair of the Appeals Council;
 - (b) receive as evidence any statement, document, thing or information whether or not it would be admissible in a Court;
 - (c) inspect and examine any documents, thing and information;

- (d) require that copies of any such documents or information be provided to any person appearing at the hearing; and
 - (e) impose any terms and conditions in respect of the provision of copies of any document or information to a person appearing at the hearing and the use that may be made of them.
- 13.71 The Appeals Council may:
- (a) after the hearing of any appeal, confirm or vary or reverse the Disciplinary Tribunal's decision and make any order as to the payment of the costs of the appeal as it thinks fit; or
 - (b) where a Member discontinues an appeal prior to or during the hearing by the Appeals Council, make any order as to the payment of costs of any or all incidental steps up to and inclusive of the discontinuance as it thinks fit. If the Member has paid an amount to NZICA pursuant to Rule 13.69, then NZICA may apply any part of that amount in satisfaction of the costs so awarded.
- 13.72 Written notice of every decision of the Appeals Council, including a summary of the reasons for the decision, shall be given to:
- (a) the Member, the Professional Conduct Committee and to the Regulatory Board within 21 days of the Appeals Council's decision; and
 - (b) the Complainant within 14 days of receipt by the Professional Conduct Committee under Rule 13.72(a).
- 13.73 The Appeals Council shall direct, unless it considers there are exceptional circumstances for not doing so, that notice of its decision including the Member's name, location, the particulars of any charges and a summary of the reasons for the decision and any penalty imposed, be published in NZICA and/or CA ANZ's official publication and/or on NZICA and/or CA ANZ's website.
- 13.74 The Appeals Council may in its discretion order:
- (a) The publication of notice of its decision in such form as it considers appropriate in any other publication which it directs;
 - (b) the circulation of notice of its decision in such form as it considers appropriate to interested parties, including other professional bodies; regulatory authorities; and any current or former clients, employers, or partners of that Member or their Practice Entity who are or may be affected by the Member's conduct to which the disciplinary investigation or proceedings relate; and/or
 - (c) a general media release in relation to its decision in such form as it considers appropriate.
- 13.75 Where the Appeals Council finds a Member not guilty of a charge the Appeals Council may direct publication of its decision as it thinks fit.
- Hearings to be in public**
- 13.76 Unless the Disciplinary Tribunal orders otherwise, every hearing of the Disciplinary Tribunal shall be held in public.
- 13.77 Unless the Appeals Council orders otherwise, every hearing of the Appeals Council shall be held in public.
- 13.78 If the Disciplinary Tribunal or the Appeals Council considers that it is appropriate to do so, having regard to the interests of any person or to the public interest, it may:
- (a) hold a hearing, or any part of a hearing, in private; and

- (b) make an order prohibiting the publication of all or any of the following:
 - (i) a report of any proceedings before it or any part of those proceedings;
 - (ii) any document, or any part of any document, produced at any hearing before it; and
 - (iii) the name of, or any matter that may identify, the person to whom any hearing relates or any other person.
- 13.79 An order made under Rule 13.78 shall continue in force for the period specified in the order or, if no period is specified, until the order is revoked by the Disciplinary Tribunal or the Appeals Council, as the case may be.
- 13.80 An order prohibiting publication made under Rule 13.78 shall not apply to communications between any or all of the following:
- (a) the Regulatory Board;
 - (b) the Professional Conduct Committee;
 - (c) the Disciplinary Tribunal;
 - (d) the Appeals Council;
 - (e) an employee or officer of NZICA; or
 - (f) CA ANZ.

Acceptance of written undertakings

- 13.81 To avoid doubt, the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council may, if it considers that it is appropriate to do so in connection with the consideration or determination of any matter before that body, accept a written undertaking from a Member including:
- (a) an undertaking to pay compensation to any person; or
 - (b) an undertaking to do, or refrain from doing, any act.

Relationship with Members suspended or removed from the Register of Members

- 13.82 A Member must obtain the consent of the Disciplinary Tribunal prior to:
- (a) entering into or continuing in a practice entity with any person; or
 - (b) acting as an agent carrying out any person's practice; or
 - (c) employing or engaging or continuing to employ or engage any person; or
 - (d) becoming or remaining a principal in a practice entity (as described in Appendix IV) which has any person as an employee, agent, or contractor;

where that person is known to have had their name removed from the Register of Members or known to have been suspended from Membership by the Disciplinary Tribunal or any predecessor disciplinary body, unless that person has been re-admitted to Membership.

Complaints against Former Members

- 13.83 Any person may lodge a complaint with NZICA concerning a Former Member, where that complaint relates to conduct of that Former Member at a time when he or she was a Member.

- 13.84 Where a complaint has been made against a Member, and that person ceases to be a Member before the complaint has been finally disposed of, that complaint may continue to be considered and determined in accordance with these Rules in the same manner as a complaint concerning a Former Member.
- 13.85 Rule 13 will apply to a complaint concerning a Former Member:
- (a) as if references to a Member against whom a complaint is made were references to the Former Member;
 - (b) with the exceptions and modifications specified in Rules 13.86 to 13.88 below; and
 - (c) with all other necessary modifications.
- 13.86 Rules 13.24, 13.35 to 13.40, 13.57, 13.58, 13.62 and 13.64 do not apply to complaints in respect of Former Members.
- 13.87 Rules 13.51 (a), (b), (d), (e), (g), (h), (i), (n), (p) and (t) do not apply in respect of a Former Member. However, where the Disciplinary Tribunal finds a Former Member guilty of a charge it may make a finding that, if the Former Member had still been a Member, it would have:
- (a) removed that person's name from the Register of Members; or
 - (b) suspended that person from Membership for a specified period not exceeding 5 years.
- 13.88 Rules 13.60, 13.61 and 13.82 apply to a Former Member in respect of whom a finding has been made under Rule 13.87 as if that person were a Member whose name had been removed from the Register of Members, or who had been suspended from Membership, as the case may be.
- 13.89 A Former Member in respect of whom a finding has been made under Rule 13.87(b) may not apply for readmission to Membership during the specified period.

Appearance as an expert witness

- 13.90 A person who is a member of the Disciplinary Tribunal or of the Appeals Council may not appear as an expert witness, or as a representative of a Member, before any of the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.

Recordings and Stenography

- 13.91 The Professional Conduct Committee, Reviewer of Complaints, Disciplinary Tribunal and Appeals Council may record their meetings, interviews, investigation, proceedings and hearings in any manner they decide, including by the use of stenography and sound recording technology.

Disclosure of information to the Financial Markets Authority or Registrar of Companies

- 13.92 NZICA, the Professional Conduct Committee, the Disciplinary Tribunal, and the Appeals Council may, upon the request of the Financial Markets Authority or on its own volition, disclose to the Financial Markets Authority or the Registrar of Companies any information obtained in the performance of their respective functions or prescribed under the Auditor Regulation Act that is relevant to the regulation or registration under the Auditor Regulation Act of those involved in FMC Audits.

Right to Comment

- 13.93 Where the Professional Conduct Committee commences an investigation, NZICA and/or CA ANZ is entitled in its discretion to publicise the fact that an investigation is or has taken place, and to publicise the Member's name and location and the name of the Member's Practice Entity, and the status and/or outcome of that investigation.

Reciprocity of Decisions between NZICA and CA ANZ

- 13.94 Every decision made by the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or any other disciplinary body of NZICA under these Rules, shall have reciprocal effect with CA ANZ in accordance with the By-Laws.
- 13.95 To the extent that a Member is subject to any professional conduct investigation or proceedings by CA ANZ:
- (a) every decision made by the Professional Conduct Committee, Disciplinary Tribunal, Appeals Tribunal or any other disciplinary body of CA ANZ in respect of a Member, including the imposition of a sanction or an interim suspension, will automatically form part of the Member's record with NZICA;
 - (b) any sanction (other than a fine) which is imposed on the Member by the Professional Conduct Committee, Disciplinary Tribunal, Appeals Tribunal or any other disciplinary body of CA ANZ will automatically result in the imposition on the Member of the equivalent sanction in respect of their NZICA membership, but only if these Rules provide for an equivalent sanction; and
 - (c) any interim suspension which is imposed on the Member by the Professional Conduct Committee, Disciplinary Tribunal, Appeals Tribunal or any other disciplinary body of CA ANZ will automatically result in the imposition on the Member of an interim suspension in equivalent terms in respect of their NZICA membership.
- 13.96 NZICA will notify CA ANZ of any sanction or interim suspension imposed on the Member under these Rules.
- 13.97 NZICA may provide CA ANZ with any information in its possession relating to the Member, whether in respect of disciplinary proceedings or otherwise, as it considers appropriate.

Confidentiality Obligations

- 13.98 Subject to Rule 13.98(c) below:
- (a) the complaints and disciplinary process in this Rule 13 is confidential. All information, correspondence and other documentation sent and/or received by NZICA, the Professional Conduct Committee, Disciplinary Tribunal, Appeals Council or Reviewer of Complaints or any person engaged on their behalf, in connection with a complaint, its investigation and outcome, any review of that outcome (including the Reviewer of Complaints' report, recommendation and/or any directions) and any disciplinary hearings or appeal (including decisions) is confidential (**Confidential Information**);
 - (b) Members must:
 - (i) keep the Confidential Information confidential;
 - (ii) securely store and not disclose or permit disclosure of the Confidential Information;
 - (iii) comply with any directions by NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council or Reviewer of Complaints regarding the Confidential Information;
 - (iv) do all other things prudent or desirable to safeguard the confidentiality of the Confidential Information; and
 - (v) not publish or make a public announcement or statement in relation to the Confidential Information;

- (c) this Rule 13.98 does not apply to:
 - (i) information that is already in the public domain (unless it is in the public domain because of a breach of the confidentiality obligations under these Rules); or
 - (ii) details of complaints, investigations and/or decisions that NZICA, the Professional Conduct Committee, Disciplinary Tribunal or Appeals Council have published or made available to the public in accordance with the Rules.
- 13.99 The obligations contained in Rule 13.98 do not prevent the disclosure of Confidential Information:
- (a) that is required to be disclosed to comply with applicable law;
 - (b) to the Member's advisers and/or representatives (including business partners and staff of those advisers and/or representatives) for the provision of advice in relation to the complaint, its investigation, any review and any disciplinary hearings;
 - (c) to the Member's current employer and business partners, including staff of the Member and/or that employer, to assist with responding to the complaint and any disciplinary hearings and/or to comply with any disclosure obligations;
 - (d) to the Member's insurer or the insurer of the Member's current and/or former employer, to comply with any disclosure obligations;
 - (e) if required, and with the consent of NZICA, for the purpose of the complaint, investigation and any disciplinary hearings pursuant to these Rules; and
 - (f) otherwise made in accordance with these Rules.
- 13.100 Any disclosure of Confidential Information pursuant to Rules 13.99 (c) to (f) can only be made by Members if the person to whom disclosure is made is subject to the equivalent confidentiality obligations as Members set out in Rule 13.98.

14. FEES AND OTHER SUMS PAYABLE BY MEMBERS

- 14.1 Subject to Rules 14.2 to 14.9 the New Zealand Appendix shall govern the fees and other sums payable by Members.
- 14.2 Every person, whether or not remaining a Member of NZICA, shall pay to NZICA the following as "prescribed sums":
- (a) any costs and expenses which the person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council or the Reviewer of Complaints; and
 - (b) any sum which the person is ordered to pay by the Professional Conduct Committee, the Disciplinary Tribunal or the Appeals Council.
- 14.3 Regulatory Board may resolve that:
- (a) any prescribed sum paid before its due date shall receive a discount;
 - (b) any prescribed sum paid after its due date shall attract penalty interest; and
 - (c) any prescribed sum not paid within a time specified by the Regulatory Board shall result in the name of the Member in default being removed from the Register of Members.
- 14.4 The rate of any discount or penalty interest under Rule 14.3 shall be determined by the Regulatory Board and notified with the invoice or request for payment.
- 14.5 Where a person's name has been removed from the Register of Members for non-payment of a prescribed sum the person may apply to CA ANZ for readmission as a Member.

- 14.6 A person shall be entitled to be re-admitted as a Member (and to use the designation and initials previously applicable to that person under Rule 3.7) under Rule 14.5 on satisfying all conditions for re-admission to CA ANZ and on satisfying all such conditions for readmission to NZICA which may be fixed by the Regulatory Board from time to time, and on payment of all outstanding prescribed sums together with any additional sum.
- 14.7 Where in any financial year the name of any person has been removed from the Register of Members, that person shall remain liable to pay any prescribed sum which that person would otherwise have been obliged to pay for that financial year.
- 14.8 Every prescribed sum shall be recoverable as a debt due to NZICA.
- 14.9 All costs and expenses incurred by NZICA to recover any prescribed sum shall be recoverable from the person in default in full, including legal costs on a solicitor and own client basis.

15. MEMBER'S NOTIFICATION AND SERVICE OF NOTICES

- 15.1 Every Member shall notify NZICA and/or CA ANZ as soon as practicable:
- (a) of any change of address;
 - (b) of any change of business or employment;
 - (c) that he or she has commenced or ceased offering accounting services to the public; and
 - (d) that he or she is subject to a Disclosure Event.
- 15.2 Every notice required by these Rules to be given to any Member shall:
- (a) be sent by post or electronic transmission to the Member's last notified address;
 - (b) where sent by post, be deemed to have been received by the Member 72 hours after it was sent; and
 - (c) where sent by electronic transmission, be deemed to have been received by the Member on the day of its transmission (provided the sender has not received a transmission report indicating that the transmission has not occurred).
- 15.3 Any notification given by a Member to CA ANZ shall be deemed to have been given to NZICA.

16. DECLARATIONS

- 16.1 In carrying out their functions under the Act, any other enactment, these Rules, CA ANZ By-Laws, CA ANZ Regulations, or any other regulation, NZICA or CA ANZ may request information from Members from time to time.
- 16.2 The form of response to a request under Rule 16.1 may be in any form determined by NZICA from time to time, including a declaration, statutory declaration, periodic questionnaire relating to a Member's practice or an opinion poll.
- 16.3 Every Member shall respond to any request for information from NZICA or CA ANZ pursuant to Rule 16.1 and shall answer any question required to be answered in the request and produce any document or other material in the Member's possession or power which may be required.

17. COMMON SEAL

- 17.1 The Common Seal of NZICA shall remain in the custody of the Regulatory Board, and shall only be used by the authority of the Regulatory Board members and every instrument to which the seal shall be affixed shall be executed in accordance with the Property Law Act 2007.

18. AUDIT

- 18.1 Subject to compliance with applicable law, the auditor of NZICA shall be the person holding office as auditor of CA ANZ or such other person as may be determined by the Regulatory Board.
- 18.2 The Regulatory Board shall deliver to the auditor the annual financial statements as approved by the Regulatory Board for the financial year, as soon as practicable after they have been approved. After receipt of the annual financial statements, the auditor shall complete an audit and provide an audit report to the Regulatory Board and to the CA ANZ Board by a date fixed by the Regulatory Board.
- 18.3 CA ANZ may at any other time request an audit of NZICA to be carried out.

19. INDEMNITY OF OFFICERS

- 19.1 Every member of the Council, the Regulatory Board and every Permanent Body established under these Rules, any executive officer and every other officer of NZICA shall be indemnified by NZICA from all losses and expenses incurred by them in connection with the discharge of their duties, except in the case of their wilful default. This indemnity is in addition to any indemnity given to such persons by CA ANZ under the CA ANZ By-Laws.

20. ALTERATIONS TO RULES

- 20.1 Subject to Rules 7.3 and 20.3 alterations to any of these Rules, including those in the Appendices, shall be made by a resolution passed by Members, which may be done via meeting, electronic or postal vote, or other appropriate method as determined by the Regulatory Board, provided that no alteration may be made to any of Rules 2.1(a) to (d) whilst those functions are required to be performed by NZICA under the Act.
- 20.2 A notice of motion to alter any of these Rules shall be lodged with the Regulatory Board not less than 60 days before the conclusion of the voting process.
- 20.3 The Regulatory Board shall (in addition to the power in Rule 7.3) have the power to add to, delete or vary any Rule appearing in the Appendices to these Rules provided that no amendment can be made to Appendix II without the prior written consent of CA ANZ.
- 20.4 The Regulatory Board may from time to time publish guidance notes on the interpretation of these Rules. In the event of any doubt as to the appropriate interpretation of these Rules in any particular situation, any such guidance shall be authoritative on the position.
- 20.5 No alteration to these Rules (other than pursuant to Rules 7.3 or 20.3) shall be binding unless the resolution passed by Members has been countersigned as approved by the Chair of the CA ANZ Board and, in exercising his or her power to approve any such change, the Chair of the CA ANZ Board may act in a manner that he or she believes is in the best interests of CA ANZ (or its members) even though it may not be in the best interests of NZICA (or NZICA's Members).

APPENDIX I - PERMANENT BODIES

Permanent Bodies (Rule 8)

1. The New Zealand Vice President of CA ANZ shall be an ex officio member of the Permanent Bodies listed herein, with full voting rights, except for the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council.

Statutory Bodies

- (a) Appeals Council.
- (b) Disciplinary Tribunal.
- (c) Professional Conduct Committee.

Advisory Groups

- (a) Practice Review Advisory Group.
- (b) Tax Advisory Group.

Charters (Rules 8.2 and 8.5)

2. The Regulatory Board shall approve from time to time, for each Permanent Body specified in clause 1 above, a Charter that includes some or all of the following:
 - (a) the membership, chair, and quorum of the Permanent Body;
 - (b) the purpose, functions, powers (in the case of a Statutory Body only), operating policies/procedures, and reporting obligations of the Permanent Body; and
 - (c) such other matters relating to the Permanent Body as the Regulatory Board considers appropriate.

APPENDIX II - MEMBERSHIP, APPOINTMENT TO MEMBERSHIP, PROCEEDINGS, DELEGATIONS AND REMUNERATION OF THE REGULATORY BOARD (RULE 7)

Membership

1. The Regulatory Board shall comprise up to 6 persons (excluding any ex officio member) who shall be appointed from time to time by the CA ANZ Board by a notice in writing signed by the Chair of that Board delivered to the New Zealand Vice President of CA ANZ at the principal office of NZICA in New Zealand. The New Zealand Vice President of CA ANZ shall be an ex-officio member of the Regulatory Board, with speaking rights and no voting rights.
2. Every Member shall be eligible for appointment to the Regulatory Board. However, no Member may be a member of both the Council and the Regulatory Board at the same time, except for the person who is the New Zealand Vice-President of CA ANZ.
3. Any Regulatory Board member (excluding an ex-officio member) may be removed from office by a notice in writing signed by the Chair of the CA ANZ Board delivered to NZICA at the principal office of NZICA in New Zealand.
4. A Regulatory Board member may retire from office by giving notice in writing to NZICA of that member's intention to retire. A notice of resignation takes effect at the time which is the later of:
 - (a) the time of giving the notice to NZICA; or
 - (b) the expiration of the period, if any, specified in the notice.
 - (c) The office of a Regulatory Board member shall become vacant if the Regulatory Board member dies or resigns his or her office or the Regulatory Board member is removed pursuant to clause 3 of this Appendix.

Proceedings

5. The Regulatory Board may meet together for the dispatch of business, adjourn, and otherwise regulate meetings, as the Regulatory Board members think fit. Notice of every meeting of the Regulatory Board shall be given to each Regulatory Board member with the period of such notice being that approved by the Regulatory Board from time to time. The notice shall specify the place, day and hour of the meeting and shall contain as far as practicable a statement of the general nature of the business to be transacted at the meeting. The accidental omission to give any notice or the non-receipt of any notice shall not affect the validity of the proceedings at the meeting.
6. Every Regulatory Board member (other than an ex-officio member) has 1 vote. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chair shall not have a second or casting vote and the resolution submitted to the meeting shall be deemed to have lapsed.
7. The quorum of the Regulatory Board shall be 1 half of the number of full members of the committee (rounded up to the next whole number) provided that 1 of the members present must be an independent member (if there was one appointed) and there must be a minimum of 2 members.
8. The continuing Regulatory Board members may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the Rules as the necessary quorum of Regulatory Board members, the continuing Regulatory Board members or member may act only for the purposes of requesting the CA ANZ Board to increase the number of Regulatory Board members to that number, but for no other purpose.
9. The Regulatory Board members may elect a chair of their meetings who may be any member of the Regulatory Board (other than an ex-officio member) and determine the period for which he or she is to hold office; but if no such chair is elected, or if at any meeting the chair is not present within 5 minutes after the time appointed for holding the meeting, the Regulatory Board members present may choose 1 of their number to be chair of the meeting.

10. The Regulatory Board may delegate any of its powers to committees consisting of such member or members of the Regulatory Board and such other persons as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Regulatory Board.
11. A committee may elect a chair of its meetings; if no such chair is elected, or if at any meeting the chair is not present within 5 minutes after the time appointed for holding the meeting, the members present may choose 1 of their number to be chair of the meeting.
12. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chair shall not have a second or casting vote, and the resolution submitted to the meeting shall be deemed to have lapsed.
13. All acts done by any meeting of the Regulatory Board or of a committee of the Regulatory Board or by any person acting as a Regulatory Board member shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such member or person had been duly appointed and was qualified to be a Regulatory Board member.
14. A resolution in writing signed or approved by an electronic mail message to the chair of the Regulatory Board by all Regulatory Board members for the time being entitled to receive notice of a meeting of the Regulatory Board members, shall be as valid and effectual as if it had been passed at a meeting of the Regulatory Board duly convened and held. Any such resolution may consist of several documents in like form, each signed or approved by 1 or more Regulatory Board members.

Delegations

15. Any person to whom any of the functions of the Regulatory Board are delegated in accordance with Rule 7.4(b) shall have all the powers and authorities necessary to discharge those functions, provided that any delegated powers and authorities shall:
 - (a) be subject to any restrictions the Regulatory Board may impose in the terms of the delegation; and
 - (a) not extend to controlling and regulating the practice of the profession of accountancy by any Member of NZICA.
16. The effect on NZICA of any delegation made in accordance with Rule 7.4(b) is that any function discharged in accordance with the delegation shall be treated as having been discharged by NZICA but shall not prevent the Regulatory Board from attending to the discharge of any functions itself.
17. Subject to its terms, any delegation made by the Regulatory Board in accordance with Rule 7.4(b) may be revoked in whole or in part at any time by the Regulatory Board in its discretion by giving written notice to that effect to the person to whom the functions in question have been delegated.

Remuneration

18. The remuneration of the Regulatory Board members shall be determined from time to time by the CA ANZ Board and the Regulatory Board may pay out of the funds of NZICA any remuneration and the expenses incurred by Regulatory Board members or other persons (whether or not Members) in attending meetings of the Regulatory Board or of any committee or sub-committee thereof. The Regulatory Board may also pay out of the funds of NZICA the expenses reasonably and properly incurred by the President or the New Zealand Vice President of CA ANZ or any other Regulatory Board member when acting in his or her official capacity for and on behalf of NZICA.

APPENDIX III – RULES RELATING TO THE CONDUCT OF SPECIAL GENERAL MEETINGS (RULE 9.3)

1. At least 28 days before a Special General Meeting, the Regulatory Board shall:
 - (a) appoint 1 or more scrutineers who shall not be a member of the Council or the Regulatory Board;
 - (b) send to every Member by way of any communication channel (including electronic means) notice of the meeting, the business to be conducted at the meeting, a ballot paper or polling form listing the notices of motion to be submitted to the meeting, details of the procedures for online and for postal voting, and the name and address of every appointed scrutineer; and
 - (c) where the business to be conducted at a meeting contains a notice of motion moved by a Member, include any explanatory material of reasonable length supplied by the Member subject only to the Regulatory Board's right to edit the material when it is necessary to render it factually correct.
2. The Chair of every meeting shall be:
 - (a) the New Zealand Vice President of CA ANZ;
 - (b) in the New Zealand Vice President of CA ANZ's absence, a Councillor appointed by the meeting; or
 - (c) in the absence of them all, a Member appointed by the meeting.
3. The quorum requirements of a Special General Meeting shall be:
 - (a) 15 Members present within half an hour of the time fixed for the commencement of the meeting;
 - (b) where the quorum requirements are not met, the meeting shall be adjourned;
 - (c) at the adjourned meeting the quorum shall be as set out in clause 3(a) above; and
 - (d) where the quorum requirements of the adjourned meeting are not met, those present at the adjourned meeting shall be deemed to form the quorum.
4. Every Member shall be entitled to 1 vote only, irrespective of the method of voting. If it is found that a Member has voted more than once, or the Member has not voted in accordance with the relevant prescribed procedures, the Member's vote shall be void.
5. Every Member may vote either personally or by postal ballot (including facsimile transmission), or by way of on-line polling according to the procedure as prescribed by the Regulatory Board from time to time.
6. Where a Member wishes to vote by postal ballot or by on-line polling the Member shall:
 - (a) in the case of a postal ballot, record his or her vote on the postal ballot paper in the manner provided and sign it;
 - (b) in the case of an on-line polling vote, record his or her vote using the polling form in accordance with the procedure prescribed in respect of the poll in question; or
 - (c) forward the postal ballot or transmit the on-line polling form (as appropriate) to the scrutineer or scrutineers at the notified contact address, so as to be received by the scrutineer at least 48 hours before the time appointed for the commencement of the meeting.

7. Prior to the meeting the scrutineer or scrutineers shall count the votes received by postal ballot and by on-line polling in respect of each motion and at the meeting notify the results to the Chair of the meeting.
8. If there is an equality of votes at any general meeting, the Chair shall have a second or casting vote.
9. At every general meeting the Chair may require a poll be taken and shall require a poll where, to the Chair's knowledge, the counting of the votes cast at the meeting could affect the outcome of a vote after taking account of the votes received by postal ballot.
10. At every general meeting a poll shall be taken where demanded by 5 Members present at the meeting.
11. Where a poll is required or demanded, it shall be conducted as the Chair directs.
12. Where those present at a general meeting resolve to adjourn the meeting:
 - (a) new business shall be transacted at the adjourned meeting; and
 - (b) no notice need be given of the adjourned meeting unless the meeting directs otherwise.

APPENDIX IV – MATTERS PERTAINING TO MEMBERS OFFERING ACCOUNTING SERVICES TO THE PUBLIC

1. Definitions

1.1 For the purpose of the Rules and this Appendix, the following terms shall have the following meanings:

accounting services shall be deemed to be services relating to any 1 or more of the following:

- (a) the preparation of financial information;
- (b) assurance engagements;
- (c) taxation;
- (d) insolvency;
- (e) business valuation.

majority means more than 50 percent.

offering accounting services to the public shall include any conduct from which it may be reasonably inferred that the Member is offering or providing accounting services to, or accepting assignments from, the New Zealand public.

principal means a person having a direct or indirect ownership interest in a practice entity and a governance role in that same structure in the nature of a shareholder and director of a company, a partner of a partnership, a person with the power of appointment of trustees, or a trustee in respect of a trust.

qualifying principal means a principal holding a Certificate of Public Practice.

practice entity means a practice structure through which 1 or more principals offer accounting services to the public, including sole practices, partnerships, companies, trusts, and other entities, and including combinations of entities.

2. Mode of Practice

2.1 A holder of a Certificate of Public Practice may practise using any name they wish unless the name:

- (a) breaches any Rules of NZICA or guidance note referred to at Rule 20.4 or
- (b) is unprofessional, offensive, or amounts to conduct unbecoming a Chartered Accountant;
or
- (c) is false, misleading or deceptive; or
- (d) so closely resembles a name already in use as to be likely to cause confusion; or
- (e) is otherwise unlawful or undesirable; or
- (f) is a name published by NZICA to the holder as being in breach of clauses 2.1 (a) to (e) above.

- 2.2 A holder of a Certificate of Public Practice may practise using any structure provided it meets the following requirements:
- (a) Control at the ownership level of the practice entity must lie at all times with qualifying principals. Control may be exercised through qualifying principals having a majority of voting shares or holding a casting vote or through any other mechanisms which allow them to exercise control at that level. Control must extend to appointments to the governing body of the practice entity, such as: in the case of a corporate practice entity the power to appoint directors to the board; in the case of a practice entity that is a partnership the power to appoint partners; and, in the case of a practice entity that is a trust the power to appoint trustees.
 - (b) Governance of the practice entity below the ownership level, such as: in the case of a corporate practice entity, the level of the board of directors; in the case of a practice entity that is a partnership, the level of the partners; and in the case of a practice entity that is a trust, the level of the trustees, must be exercised at all times by qualifying principals having a majority of voting shares or holding a casting vote or through other mechanisms which allow them to exercise control at that level in respect of the practice entity.
 - (c) NZICA's consent to the use of the practice entity is received prior to it being used to offer accounting services to the public.
- 2.3 Notwithstanding the requirements detailed in clauses 2.2 (a), (b) and (c) above, the Regulatory Board may vary those requirements in particular situations where it believes that there are valid reasons to vary them and where the Regulatory Board is satisfied the interest of Members and the public are not significantly compromised as a consequence of that variation.
- 2.4 Except with the consent of NZICA, no Member shall:
- (a) allow any other person who is not a Member of NZICA, or any firm, body, corporation or other structure to practise in their name;
 - (b) practise under a trade or association name;
 - (c) directly or indirectly obtain financial benefit from an entity which offers accounting services to the public, other than by earnings as an employee not holding a position in the entity equivalent to that of a director in a corporate entity, unless the entity is a practice entity meeting the requirements of clause 2.2 above or the requirements of that clause as varied by the Regulatory Board in terms of clause 2.3 above; or
 - (d) in respect of an entity that offers accounting services to the public and which does not meet the requirements of clause 2.2 above or the requirements of that clause as varied by the Regulatory Board in terms of clause 2.3 above:
 - (i) directly or indirectly control that entity either personally or through their spouse (whether legal or de facto), child, parent or the spouse (legal or de facto), child or parent of any such person or through any other entity or person; or
 - (ii) enter into any arrangement under which the principal financial benefit is vested directly or indirectly in their spouse (whether legal or de facto), child, parent, sibling or the spouse (whether legal or de facto), child, parent or sibling of any such person or any other entity or person.
- 2.5 An application for NZICA's consent to the use of a practice entity for the purpose of offering accounting services to the public under clause 2.2 (c) above shall be made on the application form prescribed by NZICA from time to time.

- 2.6 Subject to clause 2.4, and unless NZICA decides that a practice entity or type of practice entity should not be used and withholds its consent in the interests of NZICA or the public, NZICA shall approve an application for consent to the use of a practice entity for the purpose of offering accounting services to the public provided:
- (a) the application form is completed correctly;
 - (b) the criteria set out in this Appendix IV are met; and
 - (c) the sum prescribed by NZICA (if any) is paid on application.
- 2.7 Once NZICA's consent has been provided under clause 2.2(c) above, the qualifying principals and other principals of a practice entity are responsible for and accountable to NZICA for the conduct of that entity and shall ensure that the practice entity at all times complies with the Rules of NZICA, including the requirements set out in this Appendix and the Code of Ethics, and has regard to any guidance notes referred to at Rule 20.4.
- 2.8 NZICA shall not be liable for any decision it makes to consent or to withhold consent to the use of a particular practice entity for the provision of accounting services to the public, nor shall it be liable for the actions of any practice entity where consent for the practice entity has been granted.
- 2.9 Pursuant to Rule 10.3, the fixed current level of gross fees that may be earned before the Member concerned is required to hold a Certificate of Public Practice is \$13,000 (excluding GST) in any period of 12 consecutive months.
- 2.10 The practice entity shall at all times have professional indemnity insurance cover appropriate to the nature and scale of the accounting services it offers to the public.

3. Practising with non-Members

- 3.1 NZICA shall permit Members to practise in a practice entity with a non-Member provided the practice entity meets the following requirements:
- (a) the practice entity has received the consent of NZICA in accordance with clause 2.2(c) above;
 - (b) the number of non-Member principals does not exceed 49% of the total number of principals on a national basis;
 - (c) the equity or the entitlement to profits of the non-Member principal are approved by NZICA;
 - (d) the services to be provided by any non-Member principal are approved by NZICA; and
 - (e) any non-Member principal:
 - (i) is ordinarily resident in New Zealand;
 - (ii) is a fit and proper person to practise in conjunction with Members;
 - (iii) in the opinion of NZICA possesses the skills, qualifications and experience to enable them to perform competently the services they are to provide;
 - (iv) is a member of an acknowledged or appropriate professional body, unless NZICA in its discretion waives this requirement;
 - (v) if required, attends a course for non-Member principals approved by NZICA;
 - (vi) agrees in writing to abide by the Act, the Rules and the Code of Ethics, and to have regard to any guidance notes referred to in Rule 20.4;
 - (vii) agrees in writing to subject themselves to the disciplinary processes of NZICA, as if they were a Member;

- (viii) pays an initial fee as fixed by NZICA from time to time;
- (ix) pays an annual non-Member association fee as fixed by NZICA from time to time.

3.2 Where the maximum number of non-Member principals permitted in clause 3.1 above is exceeded for reason of the death, retirement or resignation of 1 or more principals, the practice entity must notify NZICA immediately and NZICA may allow the remaining principals to continue in practice on any terms and conditions it thinks fit.

3.3 Any non-Member of NZICA who is permitted to practise in conjunction with Members:

- (a) may describe themselves as a partner, director or otherwise as appropriate to the form of the practice entity but may not describe themselves as a Member;
- (b) shall comply with the Act, the Rules and the Code of Ethics and have regard to any guidance notes referred to in Rule 20.4; and
- (c) shall be subject to the jurisdiction of the Professional Conduct Committee, Disciplinary Tribunal and Appeals Council in the same manner and to the same extent as if they were a Member.

3.4 Every Member practising with a non-Member shall ensure that the non-Member principal complies with the Act, the Rules and the Code of Ethics and has regard to any guidance notes referred to at Rule 20.4.

4. Practice Entity

4.1 The constitution, rules, trust deed or other similar governing document of the practice entity shall provide that:

- (a) a quorum for a meeting or adjourned meeting of principals is present if a majority of qualifying principals:
 - (i) are present in person; or
 - (ii) are present by proxy; or
 - (iii) have cast in advance of the meeting a written vote on each motion to be considered at the meeting, and who between them are able to execute a majority of the votes that may be cast at the meeting;
- (b) in the event that the chair has a second and casting vote, the chair shall be a qualifying principal; and
- (c) no resolution may be passed or decision may be made at a meeting of principals by less than a majority of qualifying principals.

5. Other Agreements

5.1 The principals are prohibited from entering into an agreement, arrangement or understanding, whether written or oral, that is inconsistent with the requirements set out in this Appendix IV.

6. Insolvency

6.1 In the event that a practice entity;

- (a) enters into a composition with its creditors; or
- (b) goes into bankruptcy, liquidation or has a receiver, or receiver and manager, or statutory receiver appointed or enters into some similar state arising from its inability to meet its debts as they fall due,

then the practice entity shall on the happening of that event cease offering accounting services to the public and notify NZICA within 7 days in accordance with Rule 13.5.

7. Returns and Fees

- 7.1 It shall be the responsibility of qualifying principals of a practice entity in respect of that practice entity to:
- (a) complete an annual return in the form prescribed by NZICA; and
 - (b) pay any fee prescribed by NZICA.

APPENDIX V – MATTERS PERTAINING TO RECOGNITION OF MEMBERS AND OTHER PERSONS FOR THE PURPOSES OF THE FINANCIAL REPORTING ACT (RULE 7.3)

1. Definitions

1.1 For the purpose of this Appendix, the following terms have the following meanings:

conditions of recognition means the conditions that a Member must satisfy on an ongoing basis when NZICA has recognised the Member for the purposes of the Financial Reporting Act.

engagement director has the same meaning as under the Financial Reporting Act.

general conditions means conditions of recognition, other than restrictive conditions, that the Board sets from time to time that may be applied to all or any recognition by NZICA.

incorporated audit firm has the same meaning as the term “audit firm” as defined in section 6(1) of the Auditor Regulation Act except that for the purposes of this Appendix it excludes partnerships.

recognition and **recognised** means, for the purposes of clauses 2 to 7 of this Appendix, a status conferred by NZICA that a person is a qualified auditor of a specified entity or of its financial statements under the Financial Reporting Act.

recognition agreement means an agreement between NZICA and an incorporated audit firm that NZICA has recognised for the purposes of the Financial Reporting Act.

restrictive conditions means a condition of recognition that has the effect of limiting the statutory assurance engagements that a Member is qualified to undertake.

specified entities means the entities that are the subjects of statutory assurance engagements.

statutory assurance engagement means an engagement required by law to be performed by a qualified auditor under the Financial Reporting Act.

2. Recognition of Members

2.1 NZICA will recognise a Member who:

- (a) meets the requirements for the carrying out of assurance engagements as specified in Rule 10.5(b);
- (b) applies to NZICA using the prescribed form;
- (c) pays the prescribed fee; and
- (d) has not otherwise had their recognition cancelled or suspended.

2.2 For the avoidance of doubt, Members that hold a licence under the Auditor Regulation Act are automatically qualified auditors under section 36(1)(b) of the Financial Reporting Act by virtue of their licence and do not require separate recognition by NZICA.

3. Recognition of non-Members

3.1 NZICA may recognise the following types of non-Members:

- (a) incorporated audit firms; and
- (b) certain members of religious societies or orders.

Incorporated audit firms

- 3.2 NZICA may recognise an incorporated audit firm if the incorporated audit firm:
- (a) meets the prescribed requirements and minimum standards specified in the Financial Reporting Act;
 - (b) specifies an engagement director of the incorporated audit firm who would be a qualified auditor of the specified entity to which the recognition relates had he or she accepted the engagement in his or her own name;
 - (c) is, in the opinion of NZICA, suitable to be recognised for the specified entity or kind of specified entity particularised in the application or otherwise determined by NZICA under clause 3.3 of this Appendix in accordance with section 36C(2) of the Financial Reporting Act;
 - (d) has entered into a binding recognition agreement with NZICA if, in the opinion of NZICA, a recognition agreement is necessary, and on such terms and conditions as NZICA thinks fit;
 - (e) applies to NZICA using the prescribed form;
 - (f) pays the prescribed fee; and
 - (g) has not otherwise had its recognition cancelled or suspended.
- 3.3 NZICA may recognise incorporated audit firms in respect of all specified entities or 1 or more kinds of specified entities in accordance with section 36C(2) of the Financial Reporting Act as it determines from time to time.
- 3.4 For the avoidance of doubt, incorporated audit firms registered under the Auditor Regulation Act are automatically qualified auditors under section 36(1)(e) of the Financial Reporting Act by virtue of their registration and do not require separate recognition by NZICA.

Members of religious societies and orders

- 3.5 NZICA may recognise a member of a religious society or order if:
- (a) NZICA is satisfied that the person qualifies for the exemption to the qualification requirements in section 36(1)(a)(i) of the Financial Reporting Act under section 36R(1)(a);
 - (b) the person applies to NZICA using the prescribed form;
 - (c) the person pays the prescribed fee;
 - (d) the person has entered into a binding arrangement with NZICA that satisfies the requirements of section 36T of the Financial Reporting Act and which, in accordance with section 36T(3), is binding on the person as if they were a Member of NZICA and which, without limitation includes an agreement to be subject to the disciplinary Rules of NZICA;
 - (e) the term of the arrangement has not come to an end; and
 - (f) the recognition has not otherwise been cancelled or suspended.

3.6 Prior to entering into an arrangement with a member of a religious society or order, NZICA will:

- (a) assess the person's experience in undertaking assurance engagements of the kind for which it seeks recognition; and
- (b) assess the person's education and training in the areas of auditing, assurance and financial reporting.

In carrying out its assessments under this clause, NZICA will consider whether the person has demonstrated that they are sufficiently qualified to complete statutory assurance engagements in compliance with New Zealand's auditing and assurance standards issued by the New Zealand Auditing and Assurance Board.

3.7 If the procedures undertaken by NZICA in clause 3.6 of this Appendix do not, in NZICA's view, demonstrate that the person is sufficiently qualified, NZICA may either:

- (a) decline to enter into an arrangement; or
- (b) request the person to undertake 1 or more of the following courses of action in order to proceed with entering into an arrangement:
 - (i) successfully complete an education or training course specified by NZICA; and/or
 - (ii) submit for review a sample of prior engagements selected by NZICA; and/or
 - (iii) agree with NZICA a remedial action plan that includes specified goals and time frames to be further assessed by NZICA.

3.8 If, after having completed the procedures in clauses 3.6 and 3.7 of this Appendix, NZICA has determined that the person is not sufficiently qualified in terms of clause 3.6 of this Appendix, it will exercise its right not to enter into the arrangement.

3.9 The costs incurred by NZICA associated with the procedures undertaken under clause 3.7 above will be payable in addition to the prescribed fee specified in clause 3.5(c) of this Appendix.

4. Conditions of recognition of Members

4.1 All recognitions of Members granted under clause 2.1 of this Appendix will be subject to any general conditions set by the Regulatory Board from time to time.

4.2 NZICA may apply restrictive conditions to any Member's recognition under clause 2.1 of this Appendix if NZICA considers it is in the public's interest to do so, whether at the time of recognition or subsequent to a practice review, or otherwise.

4.3 NZICA may consider that it is in the public's interest to apply restrictive conditions where circumstances including, but not limited to, the following are present:

- (a) At the time of the application for recognition, the Member has insufficient experience or training to satisfy NZICA that the Member will be able to undertake a particular type of statutory engagement; for example an audit of a Public Interest Entity (as defined by the New Zealand Auditing and Assurance Board).
- (b) At the time of the application for recognition (or following recognition), the Member has been subject to a Disciplinary Tribunal decision limiting the types of statutory assurance engagements the Member may undertake.

- (c) At the time of the application for recognition, the Member has been directed not to undertake certain types of statutory assurance engagements except under the supervision of a Member approved by NZICA and/or after having undertaken a period of training specified by NZICA in accordance with Rule 12.6(d).
 - (d) Following consultation with the Practice Review Advisory Group, practice review results indicate that the Member has materially breached the general conditions of recognition and that remediation is necessary in respect to a particular kind of specified entity or a particular type of statutory assurance engagement prior to accepting further appointments for these kinds of engagements.
- 4.4 Prior to any restrictive conditions (other than those applied at the time of recognition) under clause 4.2 of this Appendix having any effect, NZICA will:
- (a) give the Member at least 10 working days' written notice that it intends to subject recognition to a restrictive condition, along with the reason why and the requirements for removal of the restrictive condition;
 - (b) give the Member an opportunity to make a written submission on the matter within the notice period; and
 - (c) consider whether it is satisfied in light of the submission that the restrictive conditions proposed are still required.

5. Returns and Fees

- 5.1 Each recognised person must provide any information requested by NZICA which NZICA requires in connection with its obligation under section 36E of the Financial Reporting Act to keep the person's recognition under review. Without limitation, each recognised person must complete an annual return in the form prescribed by the Regulatory Board in order to verify that the requirements and any minimum standards for recognition continue to be satisfied.
- 5.2 Each recognised person must pay any fee prescribed by the Regulatory Board from time to time as and when they fall due.

6. Cancellation or suspension of recognition

- 6.1 NZICA may cancel or suspend any recognition granted in accordance with section 36I of the Financial Reporting Act and the terms of this clause.

Grounds of cancellation or suspension

- 6.2 NZICA may cancel or suspend the recognition of any Member recognised under clause 2.1 of this Appendix if:
- (a) NZICA is satisfied that the Member no longer meets the requirements for the carrying out of assurance engagements pursuant to a statute as specified in Rule 10.5(b); or
 - (b) NZICA is satisfied that the Member no longer meets the prescribed requirements under the Financial Reporting Act; or
 - (c) NZICA is satisfied that the Member has breached any conditions of recognition, whether general conditions or restrictive conditions; or
 - (d) the Member requests, by written notice, that NZICA cancel or suspend recognition.

- 6.3 NZICA may cancel or suspend the recognition of any incorporated audit firm recognised under clause 3.2 of this Appendix if:
- (a) NZICA is satisfied that the incorporated audit firm no longer meets the prescribed requirements and minimum standards under section 36C of the Financial Reporting Act; or
 - (b) the incorporated audit firm has failed to comply with the recognition agreement (if one applies) in any material respect; or
 - (c) the recognition agreement (if one applies) has expired; or
 - (d) the incorporated audit firm requests, by written notice, that NZICA cancel or suspend recognition.
- 6.4 NZICA may cancel or suspend the recognition of any member of a religious society or order recognised under clause 3.5 of this Appendix if:
- (a) NZICA is no longer satisfied that the exemption in section 36R(1)(a) of the Financial Reporting Act, referred to in clause 3.5(a) of this Appendix, is satisfied and gives written notice accordingly; or
 - (b) the person has failed to comply with the arrangement in any material respect, or
 - (c) the arrangement has expired, or
 - (d) the person requests, in accordance with the arrangement, that NZICA cancel or suspend recognition, or
 - (e) the terms of the arrangement otherwise require cancellation or suspension.

Cancellation or suspension procedures

- 6.5 Recognition may only be cancelled under clause 6.2(c) of this Appendix if the Disciplinary Tribunal orders a Member to cease undertaking assurance engagements pursuant to a statute under Rule 13.51(p).
- 6.6 NZICA will not suspend recognition under clause 6.2(c) of this Appendix unless:
- (a) the Disciplinary Tribunal suspends a Member from undertaking assurance engagements pursuant to a statute under Rule 13.51(p) or suspends a Member's Certificate of Public Practice under Rule 13.51(d); or
 - (b) NZICA, following consultation with the Practice Review Advisory Group in accordance with Rule 12.6(c), considers that:
 - (i) the breach of conditions is material; and
 - (ii) suspension is appropriate to allow the Member time to remediate the matters that gave rise to the breach or for a complaint to be lodged with the Professional Conduct Committee pursuant to Rule 12.6(c).
- 6.7 Any cancellation or suspension of recognition under clause 6.3(b) of this Appendix will be carried out in accordance with any procedures set out in a recognition agreement.
- 6.8 Any cancellation or suspension of recognition under clause 6.4 of this Appendix will be carried out in accordance with any procedures set out in the arrangement.
- 6.9 Where NZICA suspends recognition it may do so for any period it considers necessary.
- 6.10 When NZICA cancels recognition it may give written notice to the Member that a specified period must elapse before the Member can reapply to be re-recognised or re-approved.

7. Register of qualified auditors

Pursuant to section 36M of the Financial Reporting Act, NZICA will keep a public register of qualified auditors on its Internet site of every person recognised by it under section 36 of the Financial Reporting Act. The public register of qualified auditors will include the information specified in section 36M(3) of the Financial Reporting Act.

8. Recognition of members of religious societies and orders as qualified statutory accountants

NZICA may recognise a member of a religious society or order as a qualified statutory accountant in accordance with sections 36S and 36T of the Financial Reporting Act if:

- 8.1 NZICA is satisfied that person meets the requirements set out in section 36S(1) of the Financial Reporting Act;
- 8.2 the person pays the prescribed fee;
- 8.3 the person has entered into a binding arrangement with NZICA that:
 - (a) satisfies the requirements of section 36T of the Financial Reporting Act;
 - (b) in accordance with section 36T(3) of the Financial Reporting Act, is binding on the person as if they were a Member;
 - (c) includes an agreement to be subject to the disciplinary Rules of NZICA and the Code of Ethics; and
 - (d) includes or accompanies a statement of recognition in accordance with section 36S(2) of the Financial Reporting Act;
- 8.4 the term of the arrangement has not come to an end; and
- 8.5 the recognition has not otherwise been cancelled or suspended.

9. Non-Members to be bound by Code of Ethics

The Code of Ethics shall apply to any person recognised by NZICA as:

- (a) a qualified statutory accountant in accordance with clause 8 of this Appendix; or
- (b) a qualified auditor in accordance with clauses 3.2 or 3.5 of this Appendix,

as if that person was a Member, and every such person shall be bound by, and must comply with, the Code of Ethics.