

**INSTITUTE OF CHARTERED ACCOUNTANTS OF NEW ZEALAND
NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE**

At a meeting of the Professional Conduct Committee of the Institute of Chartered Accountants of New Zealand held in private on 20 July 2010, the Committee considered matters relating to the conduct of a Chartered Accountant ("the Member"). The Committee found that the following matters would otherwise warrant being referred to the Disciplinary Tribunal:

In his role as a Chartered Accountant in public practice, the Member:

- 1) In relation to his operation Company A, a company of which at all material times he was the sole director and/or shareholder and which met the definition of an Associated Finance Entity:
 - a) did not obtain prior written authority from clients to lend and/or invest and/or otherwise deal with client monies through Company A; and/or
 - b) did not inform clients in writing of his interest in Company A; and/or
 - c) did not cause Company A to be audited in each year of lending and/or investing and/or dealing; and/or
 - d) did not cause his activity in respect of client monies to be audited annually; and/or
 - e) did not provide a copy of the latest financial statements of Company A and the audit report to the clients and/or the Institute of Chartered Accountants each year;

in breach of Rule 11 *Compliance with Technical and Professional Standards* of the Code of Ethics and/or paragraph 45 of PS – 2 *Client Monies and Members' Trust Accounts* (issued in June 2003, being the standard in force at the time the investments were made); and/or

- 2) Did not sufficiently manage the conflicts of interest that arose by virtue of:
 - i) his relationship with Mr X, who acted as legal advisor to Company A when the Member knew or ought to know that Mr X also acted as legal advisor to investors and/or borrowers of Company A; and/or
 - ii) his role as accountant and/or advisor through Company B to both investors and borrowers of Company A;

In that the Member:

- a) did not disclose to clients in writing the circumstances of the conflicts of interest; and/or
- b) did not advise clients in writing that they may wish to seek independent advice; and/or
- c) did not obtain the informed consent of the clients to act;

in breach of Rule 5 *Disclosure of Conflicts of Interest*, and/or Rule 6 *Independent Advice* and/or paragraphs 60 and/or 64 of the Code of Ethics; and/or

- 3) Was not objective in his role as accountant and/or advisor to clients of Company B, whom also had investments in Company A, by virtue of his failure to disclose his conflicts of interest as particularised in 2 above and/or his failure to offer clients an opportunity to take independent advice, in breach of the Fundamental Principle of Objectivity and Independence and/or Rule 3 *Objectivity* of the Code of Ethics; and/or
- 4) Engaged in a business and/or activity which impairs or might impair the good reputation of the profession, in that he was the director and shareholder of Company A, a company in the business of taking deposits from investors for the purpose of lending to others, and yet the investment terms detailed in paragraph 6 of the debenture application form (being that investors may not be paid interest when it is due and/or are unable to compel repayment of their investments) are such that no reasonable investor would invest in Company A, as a reasonable

commercial investment opportunity, in breach of Rule 1 *Incompatible Activities* of the Code of Ethics.

With the written consent of the Member, the Committee made the following orders, which shall be entered on the Member's record:

- 1) in accordance with Rule 21.6(d)(iv) and (vii) that the Member be reprimanded and pay costs to the Institute in the sum of \$2,500.00 (plus GST); and
- 2) in accordance with Rule 21.6B that notice of the Committee's decision and orders be published in the *Chartered Accountants Journal*, and on the Institute's website, without mention of the Member's name or the name of any other party; and
- 3) in accordance with Rule 21.54A(b) that the Committee accept the Member's written undertakings in relation to Company A.

The Committee considered it was in the public interest to direct publication of its decision and the orders made.

Details of the decision and the Professional Conduct Committee's orders are published in the September edition of the *Chartered Accountants Journal* and on the Institute's website www.nzica.com/pcc.

DJ Barker
Chairman
Professional Conduct Committee
Institute of Chartered Accountants of New Zealand
5 August 2010