

Members of the Chamber who obtain a certificate after passing the examinations prescribed by the Agence nationale d'encadrement du secteur financier are exempted, for a period of 12 months after the examinations, from the requirement to accumulate PDUs.”.

3. Section 8 is amended by replacing “cannot carry them forward to a subsequent period” by “may carry forward a maximum of 3 PDUs to the subsequent period”.

4. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

6214

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Chartered accountants — Code of ethics — Amendments

Notice is hereby given in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Bureau of the Ordre des comptables agréés du Québec has adopted the Regulation to amend the Code of ethics of chartered accountants.

This Regulation, the text of which appears below, will be examined by the Office des professions du Québec pursuant to Section 95 of the Professional Code. It will then be submitted, with the recommendation of the Office, to the government which may approve it with or without amendment upon the expiry of 45 days following this publication.

The main purpose of this Regulation is to amend the Code of ethics of members of the Ordre des comptables agréés du Québec to integrate new independence rules respecting the performance of audit, review and other assurance engagements.

New provisions have also been introduced to specify the role of chartered accountants who are called upon to review or approve financial statements as members of boards of directors or audit committees, or as chief executive officers or chief financial officers. These new rules are based on the independence rules already adopted by every other provincial institute of chartered accountants in Canada, the Sarbanes-Oxley Act and the new standards established by the various Securities Regulatory Authorities across Canada.

The amendments are also intended to update a number of rules respecting conflicts of interest and privacy issues.

This Regulation will have no impact on enterprises.

Further information may be obtained by contacting M^e Christiane Brizard, lawyer, Director of Legal Affairs, Ordre des comptables agréés du Québec, 680, rue Sherbrooke Ouest, 18^e étage, Montréal (Québec) H3A 2S3.

Any interested person having comments to make on this Regulation is requested to send them, before the expiry of the 45-day period mentioned above, to the Chairman of the Office des professions du Québec, 800, place D'Youville, 10^e étage, Québec (Québec) G1R 5Z3. These comments will be forwarded by the Office to the minister responsible for the administration of legislation respecting the professions. They may also be forwarded to the professional order that has adopted the regulation, i.e. the Ordre des comptables agréés du Québec, as well as to the persons, departments and agencies concerned.

GAÉTAN LEMOYNE,
*Chairman of the Office des
professions du Québec*

Regulation to amend the Code of ethics of chartered accountants*

Professional Code
(R.S.Q., c. C-26, s. 87)

1. The Code of ethics is amended in section 1 by:

(1) replacing the first paragraph by the following:

“Each member of the Ordre des comptables agréés du Québec shall comply with the Chartered Accountants Act (R.S.Q., c. C-48), the Professional Code (R.S.Q., c. C-26) and the regulations thereunder. The member shall, in particular, take reasonable means to ensure that persons, employees, shareholders or partners who are involved with him in the practice of the profession, comply with the Chartered Accountants Act, the Professional Code and the regulations thereunder. Each member practicing the profession within a partnership or joint-stock company within the meaning of the Civil Code or contemplated in Chapter VI.3 of the Professional Code

* The most recent amendments to the Code of ethics of chartered accountants approved by Order in Council 58-2003 dated January 22, 2003 (2003, *G.O.* 2, 861) were made by the regulation approved by Order in Council 22-2004 dated January 14, 2004 (2004, *G.O.* 2, 809).

who is a partner, shareholder, director or officer shall also make sure that the partnership or joint-stock company complies with the Chartered Accountants Act, the Professional Code and the regulations thereunder.”;

(2) inserting the following in the second paragraph, after subsection (10):

“(11) internal auditing.”.

2. Section 16 of the Code is amended by inserting the phrase “or for which he does not have the proficiency or knowledge required” after the word “prepared.”.

3. Section 19 of the Code is replaced by the following :

“**19.** A member shall act with due care in the practice of his profession, in keeping with professional accounting and assurance standards in effect, and with the other standards, rules, guidance and guidelines set out in the Canadian Institute of Chartered Accountants Handbook and with current scientific knowledge.

A member who is responsible, in whole or in part, for preparing or approving financial statements or for overseeing the accounting and financial reporting processes, shall also ensure that such statements and processes result in a fair presentation in accordance with generally accepted accounting principles.

For the application of this Regulation, generally accepted accounting principles are those set out in the Canadian Institute of Chartered Accountants Handbook or, depending on the circumstances, any other accounting principles that should be applied in such matters.

19.1. A member who participates in an assurance engagement or a specified auditing procedures engagement shall notify the person responsible for the engagement if the financial statements are not presented fairly in accordance with generally accepted accounting principles.

If, after notification, the member considers that the financial statements are still not presented fairly in accordance with generally accepted accounting principles, he shall notify in writing one of the senior partners or shareholders with voting rights of the partnership or joint-stock company within which the member practices his profession.

A member shall also:

(1) take means to send the notifications provided for in the first and second paragraphs prior to the issuance of the financial statements;

(2) record and retain in the file :

(a) the purpose of the notifications ; and

(b) the date on which the notifications were sent.

The information provided for in subsection (2) and all notifications shall be retained for a minimum of 24 months from the date they were sent or for any other period provided for under the standards, rules, guidance and guidelines and contemplated in the first paragraph of section 19.

19.2. A member who practices his professional activities within an enterprise that is the subject of an engagement contemplated in section 19.1 and who is responsible for applying generally accepted accounting principles or for overseeing their application shall notify his immediate superior if he considers that the financial statements are not presented fairly in accordance with these principles.

If, after such notification, the member considers that the financial statements are still not presented fairly in accordance with generally accepted accounting principles, he shall notify in writing the enterprise’s audit committee or similar body or, where there is no audit committee or similar body, the enterprise’s board of directors and the professional responsible for the engagement.

The member is required to comply with the obligations set forth in the third paragraph of section 19.1, adapted as required.

A member who prepares or approves, in whole or in part, financial statements prepared solely for internal use within an enterprise or for a specified user within the meaning of Section 5600 of the Canadian Institute of Chartered Accountants Handbook is not required to comply with the obligations set forth in sections 19.1 and 19.2.”.

4. Section 20 of the Code is revoked.

5. The Code is amended by inserting the following after section 22 :

“**22.1.** A member who signs an assurance report shall indicate that it was prepared by the member alone or by several chartered accountants.”.

6. The Code is amended by replacing the title of Division II, Chapter II by the following : “INTEGRITY”.

7. Section 23 of the Code is replaced by the following:

“**23.** A member shall discharge his professional duties with integrity, objectivity and, when required by professional standards or scientific knowledge, with independence.”.

8. Section 24 of the Code is amended by the replacement of the words “services or” by the following phrase: “services, the professional services generally performed by the other persons who carry out their professional activities within the partnership or joint-stock company within which the member practices his profession, or.”.

9. The Code is amended by inserting the following after section 25:

“**25.1.** A member shall not perform an assurance engagement or a specified auditing procedures engagement for a fee that is significantly lower than that charged by the member or partnership or joint-stock company he is replacing, or charged in other proposals for the engagement, except in the following cases:

(1) the persons assigned to the engagement are qualified and are devoting the appropriate time to it; and

(2) there is compliance with professional assurance standards, and with other standards, rules, guidance and guidelines set out in the Canadian Institute of Chartered Accountants Handbook.

25.2. A member who provides professional services other than engagements referred to in Division II.1 shall disclose any influence, interest or relationship which, in respect of the engagement, is likely to be perceived as impairing his professional judgment or objectivity.

A member shall disclose, in writing, in the report or other document accompanying the financial statements, the financial information or other similar documents, the nature and extent of the influence, relationship or interest.”.

10. Sections 26 to 33 of the Code are revoked.

11. Section 34 of the Code is amended by striking out the phrase “even when subject to a disclaimer of responsibility,” in the portion before subsection (1).

12. Section 35 of the Code is revoked.

13. Section 36 of the Code is amended by inserting the phrase “or who participates in such an engagement” after the words “procedures engagement,” in the portion before subsection (1).

14. The Code is amended by inserting the following after section 36:

“**36.1.** A member shall handle with reasonable care any property entrusted to him by a client or employer.

36.2. A member who receives, handles or holds money or other securities as a trustee, guardian, administrator, agent or liquidator shall maintain such records as are necessary to properly account for his management and custody, mandate or contract.

The money or other securities thus received, handled or held shall be kept in a special account or accounts in a financial institution.

Except when specifically authorized in writing by a client, a member shall not use, transfer, withdraw or otherwise employ such money or securities as payment for his professional fees or for purposes other than those for which they were entrusted.

DIVISION II.1
INDEPENDENCE

§1. General provisions

36.3. A member who performs or participates in an assurance engagement or a specified auditing procedures engagement shall remain free of any influence, interest or relationship which, in respect of the engagement, may impair or be perceived as impairing his professional judgment or objectivity.

A member shall take reasonable means to ensure that the partnership or joint-stock company within which he practices his profession, as well as any other person practicing professional activities therein, comply with the provisions set out in this Division.

36.4. A member who is a partner or shareholder with voting rights of the partnership or joint-stock company within which he practices his profession shall not practice in the main office in which the person with primary responsibility for an audit or review engagement practices, if the member, or a dependent or spouse, owns or controls a financial interest in the client or an affiliate within the meaning of section 36.7, or owns a material indirect financial interest in the client or an affiliate.

36.5. A member who is a partner or shareholder with voting rights of the partnership or joint-stock company within which he practices his profession or who is in a management position within the partnership or joint-stock company shall not provide a service other than an assurance service to a client or an affiliate for which the

partnership or company, or a network partnership or company, performs an audit or review engagement, unless such service is clearly insignificant, if the member, or a dependent or spouse, owns or controls a financial interest in the client or an affiliate, or owns a material indirect financial interest in the client or an affiliate.

36.6. A member who performs or participates in an engagement to provide insolvency services, including as a trustee in bankruptcy, a liquidator, a receiver-manager or an administrator within the meaning of the Bankruptcy and Insolvency Act, shall be and remain free of any influence, interest or relationship which, in respect of the engagement, may impair or be perceived as impairing his professional judgment or objectivity.

§2. Breaches of the independence rule

§§2.1. Definitions

36.7. In this Subdivision, the following terms mean :

“related entity”: an enterprise that controls another enterprise within the meaning of Section 3840 of the Canadian Institute of Chartered Accountants Handbook ;

“listed enterprise”: an enterprise whose shares, debt or other securities are quoted or listed on a stock exchange recognized by the securities regulatory authority having jurisdiction in the province or state in which the enterprise is located, or are subject to the standards established by such stock exchange, and that has market capitalization or total assets of 10 million dollars or more ;

“engagement team”: all persons within the partnership or joint-stock company who participate in the engagement, who provide quality control for the engagement and all other persons within the partnership or joint-stock company who can directly influence the outcome of the engagement ;

“engagement period”: period that starts on the date when the member of a partnership or joint-stock company engages to perform the engagement and ends on the date when the resulting report is issued. For an engagement of a recurring nature, the period ends :

(1) in the case of an audit or review engagement referred to in Subdivision 2.3.1, on the date of notification by the client, the member or the partnership or joint-stock company that the professional relationship has terminated or on the date the final assurance report is issued, whichever is later ;

(2) in the case of an audit engagement referred to in Subdivision 2.3.2, on the date the listed enterprise, the member or the partnership or joint-stock company notifies the securities regulatory authority or other relevant organization that the listed enterprise is no longer an audit client of the partnership or joint-stock company within which the member practices his profession ;

“affiliate”: a company that has control over the client, or over which the client has control, or which is under common control with the client, including the client’s parent company and or its subsidiary ;

“network partnership or joint-stock company”: a partnership or joint-stock company that is, or can be perceived as being, under common control, ownership or management with the partnership or joint-stock company within which the member practices his profession.

§§2.2. Assurance engagement or specified auditing procedures engagement

36.8. A member commits a breach of the obligations set out in section 36.3 if, in the framework of an assurance engagement or a specified auditing procedures engagement, he engages in acts which include, but are not limited to, the following :

(1) the member participates on an engagement team when he, or a dependent or spouse, owns or controls a financial interest in the client, or owns a material indirect financial interest in the client ;

(2) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when the member or partnership or joint-stock company owns :

(a) or controls a direct financial interest in the client ;

(b) a material indirect financial interest in the client ; or

(c) a material financial interest in another enterprise that has a controlling interest in the client ;

(3) the member or partnership or joint-stock company within which he practices his profession performs such an engagement for a client :

(a) when the partnership or joint-stock company has a loan from or has a loan guaranteed by the client, except if the client is a bank or other financial institution and the loan or guarantee is immaterial to the partnership or joint-stock company and the client, the loan or guarantee

was made under commercial terms and conditions that would have been imposed on any other person in similar circumstances, and the member or partnership or joint-stock company is complying with the terms of the loan;

(b) that is not a bank or other financial institution when the partnership or joint-stock company has a loan to the client;

(c) when the partnership or joint-stock company guarantees a loan of the client;

(4) the member or partnership or joint-stock company within which he practices his profession performs such an engagement for a client:

(a) when the partnership or joint-stock company has a loan from or has a loan guaranteed by:

- i. an officer or director of the client; or
- ii. a shareholder of the client who owns more than 10% of the equity securities of the client;

(b) when the partnership or joint-stock company has a loan to or guarantees a loan of:

- i. an officer or director of the client; or
- ii. a shareholder of the client who owns more than 10% of the equity securities of the client;

(5) the member participates on the engagement team:

(a) when he has a loan from or has a loan guaranteed by:

i. the client, unless the client is a bank or other financial institution, the loan or guarantee was made under commercial terms and conditions that would have been imposed on any other person in similar circumstances, and the member or partnership or joint-stock company is complying with the terms of the loan;

ii. an officer or director of the client; or

iii. a shareholder of the client who owns more than 10% of the equity securities of the client;

(b) when he has a loan to or guarantees a loan of:

i. the client, unless the client is a bank or other financial institution;

ii. an officer or director of the client; or

iii. a shareholder of the client who owns more than 10% of the equity securities of the client;

(6) the member or partnership or joint-stock company within which he practices his profession performs an engagement when the partnership or joint-stock company has a business relationship with the client or its management, unless the business relationship is clearly insignificant to the partnership or joint-stock company and the client or its management, as the case may be, and is limited to a financial interest that is immaterial;

(7) the member participates on the engagement team when he has a business relationship with the client or its management, unless the business relationship is clearly insignificant to the member and the client or its management, as the case may be, and is limited to a financial interest that is immaterial;

(8) the member participates on the engagement team when a dependent or spouse of the member is a director or officer of the client or an employee of the client in a position to exercise direct and significant influence, within the meaning of Section 3840 of the Canadian Institute of Chartered Accountants Handbook, over the subject matter of the engagement, or was in such a position during the period covered by the engagement;

(9) the member participates on the engagement team when he is serving as an officer or director for the client or performed functions for the client that put him in a position to exercise direct and significant influence, within the meaning of Section 3840 of the Canadian Institute of Chartered Accountants Handbook, over the subject matter of the engagement during the engagement period;

(10) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when another person within the partnership or joint-stock company serves as an officer or director for the client;

(11) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during the engagement period, the partnership or joint-stock company or any other person practicing professional activities therein makes a management decision or performs management functions for the client;

(12) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during the engagement period, the partnership or joint-stock company or any other person practicing professional activities therein provides any of the following services to the client:

(a) promoting, dealing in or underwriting the client's securities;

(b) making investment decisions on behalf of the client or otherwise having discretionary authority over the client's investments;

(c) executing a transaction to buy or sell the client's investments; or

(d) safeguarding assets of the client;

(13) the member accepts a gift or hospitality, including a product or service discount, from the client, unless the gift or hospitality is clearly insignificant to the member or partnership or joint-stock company;

For the application of subsection (11), the performance of management functions means:

(a) authorizing, approving, executing or consummating a transaction;

(b) acting on behalf of the client or being in a position to do so;

(c) determining which recommendation of the member or partnership or joint-stock company will be implemented; or

(d) reporting in a management role to those charged with governance of the client.

§§2.3. *Audit or review engagement in general and audit of an enterprise listed on a stock exchange or registered with a securities regulatory authority*

§§2.3.1. *In the framework of an audit or review engagement in general*

36.9. A member commits a breach of the obligations set out in section 36.3 if, in the framework of an audit or review engagement, he engages in acts which include, but are not limited to, the following:

(1) the member, partnership or joint-stock company within which the member practices his profession, or a network partnership or joint-stock company violates a provision of subsections 36.8(1) to (5) or (13). For the application of these subsections, the word client includes affiliates;

(2) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when the member, partnership or joint-stock company, or a network partnership or joint-

stock company owns or controls a financial interest in the client or an affiliate, or owns a material indirect financial interest in the client or an affiliate;

(3) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when a pension or retirement plan of the partnership or joint-stock company, or of a network partnership or joint-stock company owns or controls a financial interest in the client or an affiliate, or owns a material indirect financial interest in the client or an affiliate;

(4) the member:

(a) or partnership or joint-stock company within which he practices his profession performs such an engagement when the partnership or joint-stock company, or a network partnership or joint-stock company owns a financial interest in an enterprise, and the member or the partnership or joint-stock company knows that the client or an affiliate, or a director, officer or controlling person of the client or affiliate, also owns a financial interest in the enterprise. However, this provision does not apply if the financial interests of the partnership or joint-stock company, or network partnership or joint-stock company, and those of the director, officer or controlling person of the client or affiliate, within the meaning of subsection 2(3) of the Canada Business Corporations Act (R.S.C. 1985, c. C-44), are immaterial and the client or affiliate cannot exercise significant influence over the enterprise;

(b) participates on the engagement team or any other team within a network partnership or joint-stock company that is in a position to influence the engagement when the member owns a financial interest in an enterprise and he knows that the client or a director, officer or controlling person of the client or an affiliate owns a financial interest in the enterprise. However, this provision does not apply if the financial interests of the member, the client or the affiliate, or the director, officer or controlling person of the client or affiliate, are immaterial and the client cannot exercise significant influence over the enterprise within the meaning of Section 3840 of the Canadian Institute of Chartered Accountants Handbook.

(5) The member:

(a) or partnership or joint-stock company within which he practices his profession performs such an engagement for a client or an affiliate when a partner or shareholder with voting rights of the partnership or joint-stock company within which the member practices his profession or any person contemplated in paragraph (2)(1)a of the Regulation respecting the practice

of the chartered accountancy profession within a partnership or a joint-stock company, approved by Order in Council 57-2003 dated January 22, 2003, employed by the partnership or joint-stock company, or a dependent or spouse, owns more than 0.1% of the securities of the client or affiliate or controls the client or affiliate by means other than the ownership of the majority of the common shares of the client or affiliate;

(b) is a partner or shareholder with voting rights of the partnership or joint-stock company within which he practices his profession and owns more than 0.1% of the securities of the client or an affiliate or controls such client or affiliate by means other than the ownership of the majority of the common shares of the client or affiliate;

(6) the member participates on the engagement team or any other team within a network partnership or joint-stock company within which he practices his profession that is in a position to influence the engagement when the member knows that a parent, non-dependent child or sibling owns more than 0.1% of the securities of the client or an affiliate or controls the client or affiliate by means other than the ownership of the majority of the common shares of the client or affiliate;

(7) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when the partnership or joint-stock company or a network partnership or joint-stock company has a close business relationship with the client or its management, unless such business relationship is clearly insignificant to the partnership or joint-stock company or network partnership or joint-stock company and the client or its management, as the case may be, and is limited to a financial interest that is immaterial;

(8) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when a person within a network partnership or joint-stock company is serving as an officer or a director of the client other than serving as secretary and the practice is specifically permitted under the law, or standards of practice, and the duties undertaken are limited to those of an administrative nature;

(9) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by the financial statements subject to audit or review or the engagement period, a person within a network partnership or joint-stock company makes a management decision or performs management functions for the client, including any of the functions listed in the second paragraph of subsection 36.8;

(10) the member or the partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by the financial statements subject to audit or review or the engagement period, another person within the partnership or joint-stock company or within a network partnership or joint-stock company:

(a) prepares or changes a journal entry, determines or changes an account code or a classification for a transaction, or prepares or changes another accounting record without obtaining the approval of the client's management; or

(b) prepares a source document or originating data, or makes a change to such a document or data;

(11) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by the financial statements subject to audit or review or the engagement period, the member, the partnership or joint-stock company, a network partnership or joint-stock company or a person within the partnership or joint-stock company or network partnership or joint-stock company provides legal services to the client other than those referred to in section 141 of the Act respecting the Barreau du Québec (R.S.Q., c. B-1) in the resolution of a dispute or litigation in circumstances where the matters in dispute or subject to litigation are material in relation to such financial statements;

§§2.3.2. In the framework of an audit of an enterprise listed on a stock exchange or registered with a securities regulatory authority

36.10. A member commits a breach of the obligations set out in 36.3 if, in the framework of an audit of an enterprise listed on a stock exchange or registered with a securities regulatory authority, he engages in acts which include, but are not limited to, the following:

(1) the member participates on the engagement team, or a team within a network partnership or joint-stock company that is in a position to influence the engagement, when a parent, non-dependent child or sibling is in an accounting role or a financial reporting oversight role at the client which puts the parent, non-dependent child or sibling in a position to exercise influence over either the contents of the financial statements or anyone who prepares them, or was in such a position during any period covered by the engagement;

(2) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when a person who participated in audit

activities for the listed enterprise has accepted employment in a financial reporting oversight role with respect to the enterprise until a period of one year has elapsed from the date on which the financial statements were filed with the relevant securities regulatory authority or stock exchange;

(3) the member performs such an engagement for a listed enterprise, or a related entity, when a person who practices his professional activities within the partnership or joint-stock company within which the member practices his profession or within a network partnership or joint-stock company is serving as an officer or a director of the related entity or as secretary for the related entity;

(4) the member continues as the person with primary responsibility for the engagement or as the engagement quality control reviewer for a listed enterprise for more than five years, or thereafter resumes or assumes such functions before a further five years have elapsed from the date on which he ceased to perform these functions;

(5) the member has responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements, or maintains regular contact with the audit committee or management of the listed enterprise during the engagement period, and provides more than ten hours of assurance services in connection with the annual financial statements or the interim financial information of the listed enterprise or has primary responsibility for an audit engagement for a subsidiary of the listed enterprise, and continues in such role or roles for more than seven years or thereafter resumes or assumes such functions before a further two years have elapsed from the date on which he ceased to perform these functions. However, this provision does not apply to members who consult with the engagement team regarding technical or industry specific issues, transactions or events;

(6) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by the financial statements subject to audit or the engagement period, another person within the partnership or joint-stock company or a network partnership or joint-stock company makes a management decision or performs management functions for the listed enterprise, or a related entity, including any of the services listed in the second paragraph of subsection 36.8;

(7) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by

the financial statements subject to audit or the engagement period, the member, the partnership or joint-stock company, a network partnership or joint-stock company or another person within the partnership or joint-stock company or a network partnership or joint-stock company provides the following professional services to the listed enterprise or a related entity:

(a) accounting or bookkeeping services related to the accounting records or financial statements to be audited including:

i. maintaining or preparing the listed enterprise's accounting records;

ii. preparing the listed enterprise's financial statements or preparing financial statements which form the basis of the financial statements on which the audit report is provided; or

iii. preparing or originating source data underlying such financial statements;

(b) valuation services;

(c) actuarial services;

(d) internal audit services that relate to the enterprise's internal accounting controls, financial systems or financial statements;

(e) financial information systems design or implementation services that involve:

i. directly or indirectly operating, or supervising the operation of, the listed enterprise's information system, or managing the enterprise's local area network;

ii. designing or implementing an information technology-based system or software that aggregates source data underlying the financial statements or generates information that is significant to the listed enterprise's financial statements or other financial information systems taken as a whole;

(f) services that consist in providing an expert opinion or other expert service for the listed enterprise or a legal representative thereof, for the purpose of advocating the enterprise's interest in a civil, criminal, administrative or legislative proceeding or investigation;

(g) legal services other than those referred to in section 141 of the Act respecting the Barreau du Québec;

(h) human resource management services that involve:

- i. searching for or seeking out prospective candidates for management, executive or director positions;
- ii. engaging in psychological testing, or other formal testing or evaluation programs;
- iii. undertaking reference checks of prospective candidates for an executive or director position;
- iv. acting as a negotiator or mediator on the listed enterprise's behalf with respect to employees or future employees concerning any condition of employment, including position, status or title, compensation or fringe benefits; or
- v. recommending that the enterprise hire a specific candidate for a specific job or advising it to do so;

(8) the member or partnership or joint-stock company within which he practices his profession performs such an engagement when, during either the period covered by the financial statements subject to audit or the engagement period, an audit partner or shareholder with voting rights who is on the engagement team earns or receives compensation for procuring any engagement that is not an assurance engagement from the listed enterprise, unless the partnership or joint-stock company within which the member practices his profession has fewer than five audit clients that are listed enterprises and fewer than ten partners or shareholders with voting rights;

(9) the member or partnership or joint-stock company provides audit services or other professional services to a listed enterprise or a related entity without the prior approval of the audit committee, except in the following cases:

(a) the services do not represent more than 5% of total audit fees paid by the listed enterprise and a related entity to the member, the partnership or joint-stock company and network partnerships or joint-stock companies in the fiscal year in which the services are provided;

(b) the services are not recognized as services other than assurance services at the time of the engagement;

(c) the provision of these services is promptly brought to the attention of the audit committee; and

(d) the audit committee or one or more designated representatives approves the services prior to the completion of the audit for the listed enterprise or the related entity.

The professional services referred to in paragraphs 36.10(7)a to e may be provided if it is reasonable to conclude that the results of these services will not be subject to audit procedures during the audit of the financial statements. However, these professional services are deemed to be subject to audit procedures.

§§2.4. Measures to evaluate compliance with the independence rule and obligations imposed on members

36.11. A member who is required to be independent pursuant to section 36.3 shall, in respect of the particular engagement, identify threats to independence, evaluate the significance of those threats and, if the threats are other than clearly insignificant, identify and apply safeguards to reduce them. The member shall document the decision to accept or continue the particular engagement. The documentation shall include the following information:

- (1) a description of the nature of the engagement;
- (2) the threats identified;
- (3) the measures identified and applied to eliminate or reduce the threats; and
- (4) an explanation of how these measures eliminate or reduce the threats.

Where measures are not available to reduce the threats, the member shall:

- (1) refuse or eliminate the activity, interest or relationship creating the threats; or
- (2) refuse to accept or continue the engagement.

36.12. A member who violates section 36.3 shall advise in writing on a timely basis any other member, partner or shareholder with voting rights of the partnership or joint-stock company duly appointed by the board of directors or the internal management board of the partnership or joint-stock company.

A member who has been assigned to an engagement team to perform assurance services or apply specified auditing procedures shall also advise the designated partner or shareholder in writing of any other situation or fact that would put the member in violation of section 36.3.

DIVISION II.2 CONFLICT OF INTEREST

36.13. A member shall not place himself in a situation where his loyalty to his client or employer may be compromised.

Except under the conditions set out in section 36.14, a member shall not place himself in a position where his self-interest or the interest of the partnership or joint-stock company within which he practices his profession conflicts, or would be perceived as conflicting, with the interest of his client or the clients of the partnership or joint-stock company.

A member shall inform his client or employer of any interests, business connections or relationships of which the client or employer should be informed.

36.14. A member shall, before agreeing to provide professional services, determine whether there is any restriction, influence, interest or relationship which, in respect of these professional services, would place him, or would be perceived as placing him, in a conflict of interest position.

Conflict of interest situations shall be assessed in respect of all clients of the partnership or joint-stock company.

36.15. A member shall decline to perform professional services or cease to provide such services if they create a conflict of interest or as soon as he discovers a conflict of interest, unless the affected clients have knowledge of the conflict of interest and have consented that the services be performed, or the member uses conflict management techniques and obtains the consent of all affected clients before performing the professional services.”.

15. Section 38 of the Code is replaced by the following:

“**38.** In the practice of his profession, a member shall not, in connection with any transaction involving a client, hold, receive, bargain for, become entitled to or acquire, directly or indirectly, any compensation, fee or benefit for personal advantage or for the advantage of the partnership or joint-stock company within which the member practices his profession without the client’s knowledge and consent.

A member who performs his professional services for an employer is also subject to the obligations set forth in the first paragraph above.”.

16. Sections 40 to 45 of the Code are revoked.

17. The Code is amended by inserting the following after section 39:

“DIVISION II.3 ACCESS TO RECORDS”.

18. The Code is amended by adding the following after section 46:

“**46.1.** A member shall promptly return to a client or, if so instructed by such client, to his successor, the records and documents belonging to the client, whether or not his fees have been paid.”.

19. Section 47 of the Code is revoked.

20. The Code is amended by inserting the following after section 48:

“DIVISION II.4 PROFESSIONAL SECRECY”.

21. Section 52 of the Code is amended by adding the following after subsection (3):

“(4) refusal by the client to recognize an obligation for the professional fees and expenses or, after being given reasonable notice, to pay an amount to the member to cover such fees and expenses.”.

22. Section 57 is amended by inserting the phrase “unless he can reasonably assume that the client is already informed” after the word “services.”.

23. The Code is amended by inserting the following after section 59:

“**59.1.** Barring a decision of a court or other authority, a member shall not agree on a contingent fee, i.e. offer or undertake to perform a professional service for a fee payable only where there is a specified result of the service or determined by reference to the result of the service:

(1) for any professional service requiring the member to hold himself free of any influence, interest or relationship which, in respect to the performance of his professional services, may impair or be perceived as impairing his professional judgment or objectivity;

(2) for a compilation engagement.

59.2. Barring a decision of a court or other authority, a member shall not agree on a contingent fee for a professional service not provided for under section 59.1 when such an agreement is liable to:

(1) impair or be perceived as impairing his professional judgment or objectivity in the performance of his professional services as provided for under subsection 59.1(1);

(2) influence or be perceived as influencing the results of a compilation engagement.

59.3. Notwithstanding section 59.2, a member may, in particular, agree on a contingent fee for the following professional services:

(1) tax refund claims;

(2) assisting in tax appeals and preparing notices of objection to tax or tax assessments and reassessments;

(3) executive search services;

(4) personal financial planning services.

59.4. A member who charges a contingent fee shall have agreed with the client in writing to the basis for determining the fee before he begins to perform his professional services.

If the nature of the professional services changes while they are being performed, the member shall reassess whether the conditions set out in sections 59.1 and 59.2 are still met.”.

MISCELLANEOUS AND FINAL PROVISIONS

24. A member referred to in subsection 36.10(4) who is responsible for an engagement may continue in that role until the end of the client’s second fiscal year commencing after (*date preceding the date of the coming into force of this Regulation*).

25. A member who has commenced to assume primary responsibility for the engagement as provided for in subsection 36.10(4) prior to the end of the client’s second fiscal year commencing after (*date preceding the date of the coming into force of this Regulation*), may continue in that role for five years, notwithstanding the number of years, if any, that the member was previously the engagement quality control reviewer for the client.

26. A member acting as engagement quality control reviewer as provided for in subsection 36.10(4) may continue in that role until the end of the client’s third fiscal

year commencing after (*date preceding the date of the coming into force of this Regulation*).

27. A member referred to in subsection 36.10(5) may continue to perform his functions for a maximum of seven years following (*date preceding the date of the coming into force of this Regulation*).

28. A member or partnership or joint-stock company within which he practices his profession may continue to perform the engagement referred to in subsection 36.10(8), notwithstanding that a partner or shareholder contemplated in that subsection receives compensation during the fiscal year of the partnership or joint-stock company that includes (*date preceding the date of the coming into force of this Regulation*).

29. A member or partnership or joint-stock company within which he practices his profession may continue to offer the professional services referred to in subsection 36.10(7), provided that:

(1) there exists on (*date preceding the date of the coming into force of this Regulation*) or on the earlier of the first annual meeting held by the listed enterprise after July 1, 2004 and July 1, 2005, a binding contract for the member or partnership or joint-stock company within which the member practices his profession to provide the professional service; and

(2) the contract is completed before December 31, 2005.

30. A member or partnership or joint-stock company within which he practices his profession may continue to offer the professional services referred to in subsection 36.10(9) provided that:

(1) there exists on (*date preceding the date of the coming into force of this Regulation*) a binding contract for the member or partnership or joint-stock company to provide the professional services; and

(2) the contract is completed before the 365th day following the date of the coming into force of this Regulation.

31. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.