# ADVISORY BULLETIN

A RISK MANAGEMENT PUBLICATION FOR ACCOUNTING PROFESSIONALS

## CONFLICTS OF INTEREST

Accountants generally are subject to less stringent conflicts of interest rules than attorneys. This is true even where attorney services and accountant services have become functionally equivalent. The American Institute of Certified Public Accountants (AICPA) describes accountants as responsible "to all those who use their professional services," and as having a continuing responsibility to cooperate with each other to "improve the art of accounting, maintain the public's confidence, and carry out the profession's special responsibilities for self-governance." The AICPA Code, Article IV, Section 55, states that "the principle of objectivity imposes the obligation to be impartial, intellectually honest, and free from conflicts of interest. Independence precludes relationships that may appear to impair an accountant's objectivity in rendering attestation services." The United States Supreme Court has recognized that CPAs "must 'maintain total independence' and act with 'complete fidelity to the public trust' when serving as independent auditors." The penalties for noncompliance with the conflict rule can range from fines, to disqualification, to disbarment, or even to civil liability for malpractice.

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### BEST PRACTICES – WHAT IS A CONFLICT OF INTEREST?

A conflict of interest can arise when an accountant or an accounting firm provides services in a matter involving two or more clients whose interests may be in conflict or if an accountant or an accounting firm has an interest in a matter that conflicts with the best interests of the client. To determine whether a professional service, relationship or matter would result in a conflict of interest, an accountant should use professional judgment, taking into account whether a reasonable and informed third party who is aware of the relevant information would conclude that a conflict of interest exists.

In certain situations, an accountant can be held to a higher legal standard for conflicts of interest if they are considered a fiduciary. A fiduciary has a legal duty to act in the best interest of his or her client. In most states, an accountant who provides audit services to a business is typically not considered a fiduciary. However, courts have found that an accountant can be a fiduciary when providing certain services such as asset management, tax services and general business consulting. If the following three elements are present in a client relationship, an accountant may be deemed to be a fiduciary to the client:

1. the accountant holds himself or herself out as an expert in an aspect of business,

2. the client places a high degree of trust and confidence in the accountant and,

3. the client is heavily dependent upon the accountant's advice.

If a fiduciary relationship is established, an accountant owes a heightened duty and must at all times act in the utmost good faith and in the best interest of its client. In this situation, any potential conflicts of interest should be approached with caution and adequate safeguards should be put in place to protect the accountant and the accounting firm.