

## 216 Commission and other compensation arrangements

### DEFINITIONS:

For the purpose of Rule 216 and the related Guidance:

**“assurance client”** means an entity in respect of which a registrant or any related practice has been engaged to perform an assurance engagement as contemplated in the CPA Canada Handbook Assurance. In the application of Rule 216, “assurance client” includes its related entities, and the reference to an assurance client, a client or an entity that is an assurance client shall be read as including all related entities of the assurance client, client or entity as the case may be.

**“clearly insignificant”** means trivial and inconsequential.

**“client”** means any person or entity, and employers, for whom professional services are performed or to whom products or services are sold or provided by the registrant or any related business or practice directly or indirectly or through referral to others. In the application of Rule 216, references to “client” shall be read as including all related entities of the client.

**“Commission and other compensation”** includes, but is not limited to, a commission, rebate, preference, discount, benefit or other consideration paid or received directly or indirectly, whether monetary or non-monetary, but does not include a fee for services and hereinafter, is collectively referred to as compensation.

**“related entity”** has the same meaning as in Rule 204 Independence.

### RULES:

#### 216.1 Circumstances when payment or receipt of compensation is permitted

A registrant engaged in the provision of professional services to a client may pay or receive any compensation in relation to obtaining or referring a client or the referral of products or services of others, provided that:

- (a) the prohibitions outlined in Rule 216.2 do not apply; and
- (b) the registrant:
  - (i) identifies threats to the objectivity of the registrant arising from the proposed payment or receipt of compensation;
  - (ii) evaluates the significance of those threats and, if the threats are other than clearly insignificant, the registrant:
    - (A) identifies and applies any safeguards as appropriate to reduce the threats to an acceptable level;
    - (B) informs the client of the safeguards applied to reduce the threats to objectivity to an acceptable level;
    - (C) discloses the compensation to the client in writing; and
    - (D) obtains the consent of the client prior to the earlier of payment or receipt of the compensation or the provision of the goods or services.

Where safeguards are not available to reduce the threats to an acceptable level, the registrant shall not pay or receive the compensation.

**216.2 Circumstances when payment or receipt of compensation is prohibited in respect of an assurance client**

Other than as allowed by Rule 216.3 and Rule 216.4, a registrant shall not directly or indirectly pay or receive any compensation in relation to or in respect of:

- (a) obtaining an assurance client;
- (b) the referral of an assurance client to others;
- (c) the referral of products or services of others to an assurance client;
- (d) the referral of products or services of an assurance client to others; or
- (e) the provision of other professional services to an assurance client.

**216.3 Circumstances when payment or receipt of compensation is permitted in respect of obtaining or referring a client**

- (a) Notwithstanding Rule 216.2, a registrant engaged or employed in the [practice of public accounting] may pay to another registrant engaged or employed in the [practice of public accounting] a commission or other compensation in relation to obtaining the other registrant's existing client(s) or assurance client(s).
- (b) Notwithstanding Rule 216.2, a registrant engaged or employed in the [practice of public accounting] may receive, in relation to referring an existing client or assurance client, a commission or other compensation from another registrant engaged or employed in the [practice of public accounting.]
- (c) Notwithstanding Rule 216.2, a registrant engaged or employed in the [practice of public accounting] may pay or receive, in relation to obtaining or referring a client or assurance client, a commission or other compensation to or from any person who is a partner, shareholder or employee of the registrant.

For greater certainty, the provisions of Rule 216.1(b) do not apply to the circumstances outlined in Rule 216.3(a), Rule 216.3(b) or Rule 216.3(c).

**216.4 Circumstances when payment or receipt of compensation is permitted in respect of the sale or purchase of a practice**

A registrant may pay or receive compensation in connection with the sale or purchase of a public accounting practice, professional services practice or a portion thereof.

For greater certainty, the provisions of Rule 216.1(b) do not apply to the circumstances outlined in Rule 216.4.

## **GUIDANCE – Rule 216**

### **Compensation arrangements**

- 1 Rule 216 is applicable to all registrants providing professional services to clients and employers.
- 2 Receipt of compensation, whether in the form of money or otherwise, from third parties represents a threat to the fundamental principles, in particular integrity and due care and objectivity (Rule 202). There is a conflict of interest (Rule 210) between receiving this compensation and providing a referral or facilitating the sale of products or provision of services, whether the registrant is in a public accounting practice or providing professional services elsewhere. The conflict also arises when making payments.

A registrant may be asked by a third party such as an investment dealer, portfolio manager, insurance broker or software provider to facilitate the sale of securities or software, provision of investment advice or portfolio management services, or the placement of insurance. A registrant may also be asked to refer clients or assurance clients directly to a third-party provider of such products or services. A registrant may, at the same time, be receiving fees from clients or assurance clients for professional services which include advice on the utilization of surplus funds or on insurance coverage.

When referring a product and/or services of a third party to the client, a registrant also needs to be aware that they could be seen to be endorsing that third party and are subject to the requirements of Rule 217.3.

- 3 Compensation that is billed to or by, and/or paid to or received by the registrant's employer, rather than the registrant, will be considered to be indirectly billed to or by, and /or paid to or received by the registrant.
- 4 Fees based on a percentage of assets under management are not included under the definition of "compensation" because they are not linked to a specific transaction.

### **Compensation permitted with safeguards**

- 5 In considering the significance of any particular threat, qualitative as well as quantitative factors should be taken into account. A threat should be considered clearly insignificant only if it is both trivial and inconsequential.
- 6 When providing a professional service in respect of which Rule 216.1 may permit a registrant to pay or receive compensation, the registrant is required to first identify threats to the fundamental principles (such as objectivity) that may arise in the context of the services to be provided and the proposed compensation methodology. The registrant is then required to identify and apply safeguards to reduce such threats to an acceptable level. Professional services, in this context, could include referral of the client to the products or services of a third party, including software, investment or insurance products and wealth management services, or sale to the client of such products or services by the registrant acting as agent or sub-agent for the third party. An example of such circumstances is where a firm recommends purchase by the client of particular accounting software to assist the firm in providing accounting or bookkeeping services to the client.

- 7 Appropriate safeguards should take into account the nature of the client and the client relationship, such as the level of sophistication of the client. Where the threat is other than clearly insignificant, Rule 216.1 requires the registrant to disclose, at a minimum, the proposed compensation to the client in writing and obtain the client's consent to receipt of the proposed compensation. Safeguards may include, without limitation:
- prior identification and discussion of alternative products or service providers, or alternative compensation structures with the client, allowing the client to make the final choice as to the products or services to be provided and the basis for compensation of the registrant;
  - review of the proposed transaction by others such as the compliance department of the registrant or firm;
  - disclosure of the relationship between the registrant and the provider of the product or services; and
  - ongoing disclosure of the compensation, including any periodic fees that may result to the registrant after the initial purchase/referral.
- 8 When considering which safeguards are appropriate to apply, registrants will also need to consider whether any of the proposed safeguards conflict with their employer's policies and practices. An employer's policies do not, however, provide a registrant with an exemption from meeting the Rules of Professional Conduct. Guidance provided in Rule 210 in respect of the application of conflict management techniques may also be appropriate.

#### **Alternative compensation for assurance clients**

- 9 The effect of Rule 216.2 is that a registrant engaged in the provision of assurance or other professional services to an assurance client is not permitted to receive compensation for a referral of products or services of others to that assurance client. In this case, the self-interest threat to the principles of objectivity and independence is too great to be eliminated by the application of safeguards.
- In order to provide other professional services to assurance clients, the registrant must bill in respect of those services in a manner that does not involve receipt of compensation by the registrant. One such billing method is an hourly fee for services.

#### **Related entities and parties**

- 10 For the purposes of Rule 216, the definition of "related entity" provided in Rule 204 refers to all clients, not just assurance clients.
- The guidance provided in the CPA Canada Handbook is relevant in making a determination of what a 'related entity' is. Ownership interests, degree of influence, and family relationships are some of the factors that should be considered in determining whether a person or entity is a related party.
- 11 The prohibitions in Rule 216.2 extend to any related business or practice of the registrant. Compensation received by any related business or practice of the registrant is considered to be indirectly received by the registrant. "Compensation" includes non-monetary compensation, and also includes compensation in respect of related parties of the assurance client.

### **Substance over Form**

- 12 Where a registrant establishes arrangements and corporate or other structures in order to facilitate transactions involving the receipt or payment of commission-based compensation, such arrangements or structures are unlikely to change the substance of these transactions. [Provincial CPA body] will consider the substance and effect of any such transactions when making a determination as to whether a breach of the CPA Code has occurred.

### **Other regulatory regimes**

- 13 Registrants are reminded that transactions giving rise to the payment or receipt of compensation for the referral of the products or services of others are frequently governed by statute or other regulations setting out specific additional licensing, registration, disclosure and other requirements.

### **Incidental advice**

- 14 Rule 409 exempts taxation services provided by registrants who meet the conditions set out in that Rule from the definition of [insert provincial body term]. Notwithstanding Rule 409, the registrant is considered to be providing professional services and, as such, is required to adopt the threats and safeguards approach discussed above in connection with the provision of services that could result in the receipt of compensation by the registrant.