

RULE 209 Borrowing from clients

209.1 A member, student or firm shall not, directly or indirectly, borrow from or obtain a loan guarantee from a client unless either

- (a) the loan or guarantee has been made under normal commercial terms and conditions, and
 - (i) the client is a bank or similar financial institution whose business includes lending money to the public; or
 - (ii) the client is a person or entity, a significant portion of whose business is the private lending of money;
- or
- (b) (i) in the case of a member or student, the client is a family member or an entity over which a family member exercises significant influence; or
- (ii) in the case of a firm, the client is a family member of a partner or shareholder of the firm or an entity over which a family member of a partner or shareholder of the firm exercises significant influence.

209.2 Rule 209.1 does not apply to:

- (a) the financing of a bona fide business venture between a member, student or firm and a client that is not an assurance client;
- (b) amounts received from a client as a retainer or as a deposit on account of future services to be provided by the member, student or firm; or
- (c) a loan received from a member or student's employer.

209.3 For purposes of Rule 209.1, a client includes a person or entity who has, within the previous two years, engaged the member or firm to provide a service and who relies on membership in the Institute as giving the member or firm particular competence to provide that service.

COUNCIL INTERPRETATION 209 Borrowing From Clients

209/1 It is a fundamental principle of the profession that members, students and firms provide advice to their clients that is free of prejudice, conflict of interest or undue influence that may impair sound professional judgment. When a member, student or firm borrows money from a client, there is an inherent conflict between the interests of the member, student or firm and those of the client. Accordingly, members, students and firms who enter into the types of financing or borrowing arrangements that are allowed under Rule 209.1 or 209.2 are cautioned that they must comply with all of the other Rules of Professional Conduct including, but not limited to :

- (a) 201 – Maintenance of reputation of profession;
- (b) 202 – Integrity and due care;
- (c) 204 – Independence;
- (d) 208 – Confidentiality of information; and
- (e) 210 – Conflict of interest

209/2 When a member or student borrows money from or has a loan guaranteed by a client who is a family member or an entity over which a family member exercises significant influence, the member or student should consider setting out the terms and conditions of the loan or

guarantee in writing. Before the loan or guarantee is made, the member or student should also consider advising the client to obtain independent advice with respect to the matter. Similar considerations should apply when a firm borrows money from or has a loan guaranteed by a family member of a partner or shareholder of the firm or an entity over which a family member of a partner or shareholder of the firm exercises significant influence.

209/3 For purposes of Rule 209.1(b), a family member means any of the following persons

(a) a spouse (or equivalent); or

(b) a parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin who is related to the member or the member's spouse (or equivalent) by blood, marriage or adoption.

209/4 Rule 209.1 applies only to new borrowings or guarantees or amendments to the terms of existing borrowings or guarantees that occur after the lender becomes a client. When an existing lender or guarantor becomes a client, the member, student or firm should be mindful of the need to provide services with due care and an objective state of mind and, accordingly, should consider whether the loan should be repaid or the guarantee released.