

# RULES OF CONDUCT

**Financial Advice**  
NEW ZEALAND

1 July 2018

## **Introduction**

These Rules of Conduct establish standards for the level and type of conduct expected of Financial Advice New Zealand members.

The Rules draw upon the Code of Ethics Principles and the Practice Standards. They are binding on members and may be used as the basis for disciplinary action. The Rules are not designed to be a basis for legal liability to any third party.

### **Notes:**

1. The Code of Ethics, Practice Standards and Rules of Conduct, make up a package of requirements for good practice for Financial Advice New Zealand members.
2. A separate Glossary sets out definitions of terms used in these documents.
3. Guidelines on Financial Advice Documents provide additional detailed guidance on good practice.

## Rules of Conduct

- 1 A financial adviser shall at all times place the interest of the client first.
- 2 A financial adviser shall know and apply the Code of Ethics in his or her professional activities.
- 3 A financial adviser shall not communicate, directly or indirectly, to clients or any other parties any false or misleading information directly or indirectly related to the financial adviser's qualifications or services.
- 4 A financial adviser shall not mislead clients or any other parties about the potential benefits of the financial adviser's service.
- 5 A financial adviser shall disclose all relevant facts where the disclosure is necessary to avoid misleading clients or any other parties.
- 6 A financial adviser shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to clients or any other parties.
- 7 A financial adviser will not use, transfer, withdraw or otherwise employ a client's funds or property for his or her fees, or for any other purpose not provided for in the engagement, except with the specific written authority of the client.
- 8 Clients financial and other property, including any income they produce, under the custody of the member, are the property of the client and may be used only for purposes agreed to in writing by the client.
- 9 Only financial advisers who have achieved the CFP<sup>CM</sup> mark may refer to themselves as "Financial Planner".
- 10 A financial adviser shall ensure that his or her personal biases or interests do not adversely affect his or her services to clients.
- 11 A financial adviser shall not borrow money from a client. This Rule does not apply when:
  - a. The client is a member of the financial adviser's immediate family;
  - b. The client is an institution in the business of lending money and the borrowing is unrelated to the professional services performed by the financial adviser.
- 12 A financial adviser shall not lend money to a client. This Rule does not apply when:
  - a. The client is a member of the financial adviser's immediate family;
  - b. The financial adviser is an employee of an institution in the business of lending money and the money lent is that of the institution, not the financial adviser.
- 13 A financial adviser shall not commingle the client's property with the property of the financial adviser, the financial adviser's employer or with other clients' property unless the commingling is permitted by law, is explicitly authorised and defined in a written agreement between the parties, and the financial adviser has sufficient record-keeping to track each client's assets accurately.

- 14 If the services include comprehensive financial advice or material elements of the financial advice process, a financial adviser shall disclose the following information in writing to the client:
- a. An accurate and understandable description of the remuneration arrangements being offered. This description must include information related to costs to the client and general form and source of remuneration to the financial adviser and/or the financial adviser's employer; and terms under which the financial adviser and/or the financial adviser's employer may receive any other sources of remuneration, and if so, what the sources of these payments are and on what they are based;
  - b. A general summary of likely conflicts of interest between the client and financial adviser, the financial adviser's employer or any affiliates or third parties, including, but not limited to, information about any family, contractual or agency relationship of the financial adviser or the financial adviser's employer that has a potential to materially affect the relationship with the client;
  - c. Any information about the financial adviser or the financial adviser's employer that could reasonably be expected to materially affect the client's decision to engage the financial adviser;
  - d. Any information that the client might reasonably want to know in establishing the scope and nature of the relationship, including but not limited to information about the financial adviser's areas of expertise; and
  - e. Contact information for the financial adviser and, if applicable, the financial adviser's employer.

On an ongoing basis, the financial adviser shall make timely disclosure to the client of any material changes to the above information.

- 15 A financial adviser shall treat the client fairly and provide professional services with integrity and objectivity.
- 16 A financial adviser shall exercise reasonable and prudent professional judgment in providing professional services.
- 17 A financial adviser shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a financial adviser, upon Financial Advice New Zealand professional marks, or upon the financial advice profession.
- 18 A financial adviser shall provide reasonable and prudent professional supervision of or direction to, any subordinate or third party to whom the financial adviser assigns responsibility, either personally or through a company of which the member is a director or has effective control, for any client services. When a third party or independent contractor is permitted to hold themselves out as working for a member or a company directed or controlled by the member, the member is responsible for the provision of reasonable and professional supervision of, or direction to, that third party or independent contractor.
- 19 A financial adviser shall be in compliance with all applicable legal and regulatory requirements governing professional services provided to the client.
- 20 A financial adviser who is an employee shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with Financial Advice New Zealand's Code of Ethics.

- 21 A member who has reason to believe that another member has committed a violation of the Code of Ethics or the Rules of Conduct that raises substantial questions as to the member's honesty, trustworthiness or fitness as a member, will promptly inform the Chief Executive of Financial Advice New Zealand. This rule does not require disclosure of information or reporting based on knowledge gained as a consultant or expert witness in anticipation of or related to litigation or other formal complaints or dispute resolution mechanisms.
- 22 A member who has reason to believe that a member of another profession has engaged in unprofessional, fraudulent or illegal conduct will promptly inform the appropriate regulatory and/or professional disciplinary body. This rule does not require disclosure or reporting of information gained as a consultant or expert witness in anticipation of, or related to litigation or other formal complaints or dispute resolution mechanisms.
- 23 A member who has reason to suspect illegal conduct within the member's organisation will make timely disclosure of the available evidence to the member's immediate supervisor and/or partners or co-owners, unless the member has reason to believe that such a course of action is likely to result in his or her unfair treatment or penalty, in which case the member should take his or her concerns directly to the appropriate regulatory authorities including Financial Advice New Zealand. Where the member has approached the member's immediate supervisor and/or partners or co-owners about suspected illegal conduct within the member's organisation and after a reasonable period remains concerned that the illegal conduct continues to exist, and that appropriate measures have not been taken to remedy the situation, the member will, where appropriate, alert the appropriate regulatory authorities including Financial Advice New Zealand in a timely manner.
- 24 A financial adviser shall make and/or implement only recommendations that are suitable for the client.
- 25 A financial adviser shall offer advice to clients only in those areas in which he or she is competent. In areas where the financial adviser is not competent, the financial adviser shall seek the counsel of, and/or refer clients to, qualified professionals.
- 26 A financial adviser shall maintain competence in all areas of his or her professional practice.
- 27 A financial adviser shall keep informed about developments in financial advice and participate in continuing professional development.
- 28 A financial adviser shall meet all of Financial Advice New Zealand's requirements, including continuing professional development requirements, to retain the right to use Financial Advice New Zealand's professional marks.
- 29 A financial adviser shall treat the client's information as confidential except as required in response to proper legal process or regulatory requirements; as necessitated by obligations to a financial adviser's employer or partners; to defend against charges of wrongdoing; in connection with a civil dispute; or as needed to perform professional services on behalf of the client.
- 30 A financial adviser shall take prudent steps to protect the security of the client's information and property, including the security of stored information, whether physically or electronically, that is within the financial adviser's control. This does not preclude a member disclosing

such client information as is essential for the process, to any purchaser of all or part of the member's business.

- 31 A financial adviser shall identify and keep updated records of all funds or other property of the client in the custody, or under the discretionary authority, of the financial adviser.
- 32 A financial adviser shall provide professional services in a timely and thorough manner.
- 33 A financial adviser shall return the client's property upon request as soon as practicable or consistent with a time frame specified in any agreement with the client.
- 34 A financial adviser who provides safe custody services shall have properly documented procedures for these services.
- 35 A financial adviser who receives client funds will hold such funds in a properly constituted trust account. A financial adviser who provides custodial or nominee services, shall have properly documented procedures for these services. A financial adviser shall ensure that their trust account or procedures for custodial or nominee services are audited at least annually by a Chartered Accountant.
- 36 On receiving instructions from a client, and having confirmed that a proposed new adviser is willing to accept the client, a financial adviser will promptly transfer all the client's documents or copies of these (as appropriate) to the client or, where the client so instructs, to the new adviser, and advise the client accordingly.
- 37 A financial adviser will return any client property that is in their possession in a timely manner after the client has requested its return.
- 38 If the services include financial advice or material elements of the financial advice process, prior to entering into an agreement, the financial adviser shall provide written information and/or discuss with the client the following:
  - a. The obligations and responsibilities of each party under the agreement with respect to defining the client's objectives, needs and priorities; gathering and providing appropriate data; examining the result of the client's current course(s) of action without changes; the formulation of any recommended actions; implementation responsibilities for the financial advice recommendations; and responsibilities for reviewing for the financial advice recommendations;
  - b. Remuneration that any party to the agreement or any affiliate to a party to the agreement will or could receive under the terms of the agreement; and factors or terms that determine costs to the client, how decisions benefit the financial adviser and the relative benefit to the financial adviser;
  - c. Terms under which the financial adviser will utilise proprietary products;
  - d. Terms under which the financial adviser will use other entities/professionals to meet any of the agreement's obligations;
  - e. The process for terminating the relationship; and
  - f. Procedures for resolution of client claims and complaints against the financial adviser.
- 39 The financial adviser and the client shall mutually agree upon the services to be provided by the financial adviser.

- 40 If the services include financial advice or material elements of the financial advice process, the financial adviser or the financial adviser's employer shall enter into a written agreement governing the financial advice services ("Agreement"). The Agreement shall specify:
  - a. The parties to the Agreement;
  - b. The date of the Agreement and its duration;
  - c. How and on what terms each party is able to terminate the Agreement; and
  - d. The services to be provided as part of the Agreement.
- 41 A financial adviser shall clearly identify with the client the assets, if any, over which the financial adviser will take custody, exercise investment discretion, or exercise supervision.
- 42 A financial adviser shall take all reasonable steps to ensure the client understands the financial advice recommendation(s) to allow the client to make informed decisions.
- 43 Consistent with the scope of the engagement, a financial adviser shall undertake a reasonable investigation of the products and services to be recommended to clients. A financial adviser may rely upon an investigation undertaken by a third party provided it is reasonable to place reliance on the quality of such investigation.
- 44 A financial adviser shall know and reasonably apply the Practice Standards that are relevant to the scope of the engagement with the client.
- 45 A member will not give the impression that he/she is representing the views of Financial Advice New Zealand or any other group unless the member has been authorised to do so. Personal opinions will be clearly identified as such.
- 46 If a member intends to raise a complaint about another member, before doing so, they should submit that criticism in writing to the other member for explanation and allow a reasonable time for a response, unless there is good reason that means prior notice is not appropriate.
- 47 A financial adviser shall abide by the terms of Financial Advice New Zealand membership, including, but not limited to, using Financial Advice New Zealand's professional marks properly and fully complying with Financial Advice New Zealand's requirements for membership renewal.
- 48 A financial adviser shall notify Financial Advice New Zealand in writing of any conviction of a crime (as defined by the Disciplinary Bylaws), or any professional suspension or revocation within 10 business days of the date of on which the financial adviser is notified of the conviction, suspension or revocation.
- 49 A financial adviser shall notify Financial Advice New Zealand of changes to contact information, including e-mail address, telephone number(s) and physical address, within one month of the change.