

RULES OF CONDUCT

Financial Advice
NEW ZEALAND

15 March 2021

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. **Client definition.** For the purposes of this document, “client” refers to the person or people the member is providing, or seeking to provide, regulated financial advice to whether directly or on behalf of the member’s Financial Advice Provider (FAP).
3. Where reference is made to a FAP, this includes FAP Licensees and Authorised Bodies.

FAP Licensee - means a Person that is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (or replacement Act) in relation to a financial advice service as a financial advice provider - licensee.

Authorised Body – means an entity that is authorised to provide financial advice services under a FAP Licensee’s licence.

Rules of Conduct

General

1. A member shall at all times abide by the [Code of Professional Conduct for Financial Advice Services](#).
2. A member shall at all times place the interest of the client first.
3. A member shall know and apply the Financial Advice NZ Code of Ethics in their professional activities.
4. A member shall not communicate, directly or indirectly, to clients or any other parties any false or misleading information directly or indirectly related to the member's qualifications or services.
5. A member shall not mislead clients or any other parties about the potential benefits of the member's, or their FAP's, service.
6. A member 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 member shall ensure that his or her personal biases or interests do not adversely affect his or her services to clients.
8. A member shall treat the client fairly and provide professional services with integrity and objectivity.
9. A member shall exercise reasonable and prudent professional judgment in providing professional services.
10. A member shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a financial adviser, nominated representative or FAP, upon Financial Advice New Zealand professional marks, or upon the financial advice profession.
11. A member shall be in compliance with all applicable legal and regulatory requirements governing professional services provided to the client.
12. A member shall make and/or implement only recommendations that are suitable for the client.
13. A member shall offer advice to clients only in those areas in which he or she is competent. In areas where the member is not competent, the member shall seek the counsel of, and/or refer clients to, qualified professionals.
14. A member shall maintain competence in all areas of his or her professional practice.
15. A member shall keep informed about developments in financial advice and participate in continuing professional development.
16. A member shall provide professional services in a timely and thorough manner.

17. A member shall take all reasonable steps to ensure the client understands the financial advice recommendation(s) to allow the client to make informed decisions.
18. Consistent with the nature and scope of the advice engagement, a member shall undertake a reasonable investigation of the products and services to be recommended to clients. A member may rely upon an investigation undertaken by a third party provided it is reasonable to place reliance on the quality of such investigation.
19. A member shall know and reasonably apply the Practice Standards that are relevant to the nature and scope of the advice engagement with the client.

Client Funds

20. A member will not, and will not allow, 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.
21. 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.
22. A member shall not commingle the client's property with the property of the member, their employer or FAP 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 member has sufficient record-keeping to track each client's assets accurately.
23. A member 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.
24. A member 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 member.
25. A member who provides safe custody services shall have properly documented procedures for these services.
26. A member who receives client funds will hold such funds in a properly constituted trust account. A member who provides custodial or nominee services, shall have properly documented procedures for these services. A member shall ensure that their trust account or procedures for custodial or nominee services are audited at least annually by a Chartered Accountant.
27. A member shall clearly identify with the client the assets, if any, over which the member, directly or via his or her FAP, will take custody, exercise investment discretion, or exercise supervision.

Borrowing / Lending to clients

28. A member shall not borrow money from a client. This rule does not apply when:
 - a. The client is a member of the member'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 member.
29. A member shall not lend money to a client. This rule does not apply when:

- a. the client is a member of the member's immediate family; and
- b. the member is an employee of an institution in the business of lending money and the money lent is that of the institution, not the member.

Disclosure

30. A member shall disclose all relevant facts where the disclosure is necessary under law and regulations and to avoid misleading clients or any other parties.
31. A member shall comply with all disclosure requirements required under the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
32. On an ongoing basis, and as required by law and regulations, the member shall make timely disclosure to the client of any material changes to the above information.

Client information

33. A member 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 member's employer, partners or FAP; to defend against charges of wrongdoing; in connection with a civil dispute; or as needed to perform professional services on behalf of the client. Client's private information should be collected, used, stored and disclosed only in-line with the Privacy Act 2020.
34. A member 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 member'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 if that disclosure is allowed by law.
35. On receiving instructions from a client, and having confirmed that a proposed new adviser is willing to accept the client, a member 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.

Agreement for service

36. If the services provided or to be provided by the member, include financial advice or material elements of the financial advice process, prior to entering into an agreement, the member 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. Terms under which the member will utilise proprietary products;
 - c. Terms under which the member will use other entities/professionals to meet any of the agreement's obligations; and
 - d. The process for terminating the relationship; ~~and~~.

37. The member and the client shall mutually agree upon the services to be provided either by the member directly, or by the member on behalf of that member's FAP.
38. If the services include financial advice or material elements of the financial advice process, the member or the member on behalf of that member's FAP 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.

Obligations to Financial Advice NZ

39. Only members who have achieved the CFP^{CM} mark may refer to themselves as a "Financial Planner".
40. A member 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.
41. A member will not give the impression that they are 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.
42. A member 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.
43. A member shall notify Financial Advice New Zealand in writing of any conviction of a crime (as defined by the Disciplinary Bylaws), any new Reliability Event (as defined in s3(1) of the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020), or any professional suspension or revocation within 10 business days of the date of on which the member is notified or becomes aware of the conviction, reliability event, suspension or revocation.
44. A member shall notify Financial Advice New Zealand of changes to contact information, including e-mail address, telephone number(s), physical address, business trading name and related FAP name, within one month of the change.

Other

45. A member shall provide reasonable and prudent professional supervision of or direction to, any subordinate or third party to whom the member 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.

46. A member 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.
47. A member who is engaged by a FAP shall perform professional services with dedication to the lawful objectives of the FAP and in accordance with Financial Advice New Zealand's Code of Ethics.

Violations

48. 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.
49. 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.
50. 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.
51. A member who has reason to suspect illegal conduct within the member's organisation and/or FAP 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/or FAP 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.