



INSTITUTE OF FINANCIAL ADVISERS INC.

DISCIPLINARY BY-LAWS

1 JUNE 2009

1. GENERAL

1.1. Constitution

The Constitution of the Institute requires the following disciplinary bodies:

- (a) Professional Conduct Committee;
- (b) Disciplinary Tribunal.

The disciplinary bodies are established under clauses 30 and 31 of the Constitution.

1.2. Commencement

- (a) These bylaws take effect from 1 June 2009 and apply in respect of matters of professional conduct of Members on and after that date.
- (b) Matters of professional conduct of Members taking place before 1 June 2009 will be governed by the bylaws that applied at the time.

1.3. Purpose and Objective of Disciplinary Process

- (a) The purpose of the disciplinary process is to:
 - (i) ensure the delivery of accepted high standards by Members of the Institute;
 - (ii) provide protection to the members of the public seeking advice from Members of the Institute;
 - (iii) deter other Members from committing breaches of the bylaws of the Institute, in particular, its Code of Ethics, its Practice Standards and its Rules of Conduct;
 - (iv) enable those Members who are disciplined, but who remain a Member of the Institute, to improve and to deliver the accepted standards expected from them;
 - (v) enhance and promote the standing of the Institute in the investment community.
- (b) The objective of the disciplinary process is to ensure that any complaint about the conduct of a Member is fully and fairly heard and, if the complaint is upheld, appropriate disciplinary action is promptly taken.

1.4. Status of Complainant and Institute

A complainant is not a party to, or prosecutor of, disciplinary action under these bylaws. The status of a complainant is that of deponent or witness, or potential deponent or witness.

1.5. Conflict of Interest

Where any member of the Professional Conduct Committee or the Disciplinary Tribunal has any interest in a matter being considered by one of those bodies that could be seen or perceived as conflicting, or having the potential to conflict, with the proper performance of that person's responsibilities in relation to the matter, the person shall:

- (a) disclose the nature of the interest to the Chairman of the disciplinary body; and
- (b) not participate in the matter, unless the Chairman is satisfied that it is appropriate for the person to continue.

A vacancy arising as a result of a conflict of interest will immediately be filled by another eligible member, appointed by the Chairman or an acting Chairman.

2. COMPLAINTS

2.1. Compliance Manager

The Institute will appoint a person (who may be an employee of the Institute) to act as Compliance Manager to assist the disciplinary bodies with all matters relating to the processing, investigation and prosecution of complaints, and the maintenance of professional standards.

2.2. Making a Complaint

Any person may make a complaint with the Institute about a Member. Every complaint must be:

- (a) in writing and addressed to the Compliance Manager;
- (b) state clearly and in sufficient detail the basis of the complaint;
- (c) be accompanied by any additional information or sworn statement that may be required by the Professional Conduct Committee.

2.3. Institute can Initiate Action

The Institute itself may initiate a complaint, or take over a complaint, against a Member if it considers that the Member's conduct warrants investigation, further investigation or other action.

2.4. Recording of Complaints

The Compliance Manager will maintain a complaints register and record details of all complaints received. The Compliance Manager will acknowledge receipt of complaints in writing within five working days.

2.5. Notification

The Compliance Manager will, within seven days of the receipt of a complaint, notify the Member concerned about the complaint with any supporting material.

3. DISMISSAL OF COMPLAINT AT PRELIMINARY STAGE

3.1. Grounds

The Compliance Manager will be entitled to dismiss a complaint if the Compliance Manager considers it is frivolous, vexatious or trivial.

3.2. Approval of Dismissal and Notification

Any action taken under bylaw 3.1 will be subject to the prior approval of the Chairman of the Professional Conduct Committee. The Member and the complainant will be informed accordingly with reasons. The Professional Conduct Committee will similarly be kept informed of action taken under bylaw 3.1.

4. INVESTIGATION

4.1. Forms of Investigative Action

Subject to bylaw 3, the Professional Conduct Committee (with the assistance of the Compliance Manager or any other person authorised by the Chairman of the Professional Conduct Committee) will conduct a full investigation of the complaint and may take such action as appropriate, including (but not confined to):

- (a) making, or employing any other person authorised by the Chairman of the Professional Conduct Committee to make, such preliminary inquiries as is considered necessary;
- (b) seeking further information from the complainant or other witnesses, together with information in the form of a sworn statement;
- (c) requesting the complainant to attend at a time and place specified to confer regarding the complaint (subject to the giving of reasonable notice);
- (d) requiring the Member:
 - (i) to respond in writing to the matters raised by the complaint or any other matters required by the Professional Conduct Committee;
 - (ii) to provide documents or information;
 - (iii) to attend (at the Member's own cost) at a time and place specified to confer regarding the complaint;
 - (iv) for these purposes, to meet any reasonable timeframes that may be set by the Professional Conduct Committee;
- (e) taking and retaining copies of any documents or other information produced or made available in the course of the investigation;
- (f) obtaining any other reports or undertaking any other investigation considered to be necessary.

5. ROLE OF PROFESSIONAL CONDUCT COMMITTEE

5.1. Determination following Investigation

On completion of the investigation (such to be conducted as expeditiously as possible), the Professional Conduct Committee may:

- (a) dismiss the complaint if it considers that the evidence does not support the making of a charge or charges against the Member (with or without an order for costs);
- (b) decide that the evidence is sufficient to warrant the making of a charge or charges against the Member for a hearing before the Professional Conduct Committee;
- (c) decide that the evidence is sufficiently serious to warrant the making of a charge or charges against the Member for a hearing before the Disciplinary Tribunal;

In the event of action taken under bylaw 5.1(b) or (c), the Compliance Manager will prepare a Notice of Charge(s) for service on the Member and thereafter will ensure prosecution of the action through to final determination.

5.2. Hearing and Decision

The Professional Conduct Committee will hold a hearing in order to decide whether a charge or charges before it has or have been substantiated. It will determine how the hearing should be conducted, and any procedures around it, having due regard to the rules of natural justice. After completion of the hearing, the Professional Conduct Committee shall exercise one or more of the following courses of action:

- (a) dismiss or find the charge or charges proven without further action;
- (b) find the charge or charges proven and:
 - (i) require the Member to provide a written apology to the complainant;
 - (ii) censure the Member;
 - (iii) require the Member to complete professional development or other remedial training at the cost of the Member;
 - (iv) order the Member to take advice in relation to the management of the Member's practice at the cost of the Member;
 - (v) require the Member to make reports on the Member's practice in such manner and at such times as specified;
 - (vi) require the Member to provide an undertaking relating to the conduct of the Member's practice in such form as the Professional Conduct Committee considers appropriate;
 - (vii) make such order for costs as the Professional Conduct Committee considers appropriate;

- (viii) order publication of its findings in conformity with bylaw 11.1;
- (ix) refer the matter to the Disciplinary Tribunal for adjudication.

5.3. Appeal

- (a) A Member may appeal to the Disciplinary Tribunal against all or any part of a decision of the Professional Conduct Committee under bylaw 5.2 (save for a decision under bylaw 5.2(b)(ix)). The appeal must be in writing and lodged with the Institute within 15 working days of the decision of the Professional Conduct Committee.
- (b) The decision of the Professional Conduct Committee will not take effect until:
 - (i) the expiry of the 15 working days; or
 - (ii) if the right of appeal has been exercised, the appeal has been determined by the Disciplinary Tribunal.

5.4. Other Referrals to Disciplinary Tribunal

The Professional Conduct Committee may at any time refer a complaint or a matter to the Disciplinary Tribunal if:

- (a) a Member:
 - (i) fails to respond in writing to matters raised;
 - (ii) fails to provide documents or information;
 - (iii) fails to attend as required (whether under bylaw 4.1(d)(iii) or as otherwise required by the Professional Conduct Committee);
 - (iv) is otherwise uncooperative or obstructive;
- (b) it considers that:
 - (i) interim suspension of membership is urgently required in terms of bylaw 6.2(a);
 - (ii) matters have emerged or are discovered which justify the consideration of more serious disciplinary action under bylaw 7.1(a)-(f).

There will be no right of appeal to the Disciplinary Tribunal in respect of decisions of the Professional Conduct Committee under bylaw 5.4.

6. ROLE OF DISCIPLINARY TRIBUNAL

6.1. Referrals from Professional Conduct Committee

The Disciplinary Tribunal will adjudicate on referrals to it by the Professional Conduct Committee. Subject to bylaw 6.2, the Disciplinary Tribunal will hold a hearing in order to decide whether a charge or charges or matter before it has or have been substantiated. It will

determine how the hearing, and any procedures around it, should be conducted having due regard to the rules of natural justice. After completion of the hearing, the Disciplinary Tribunal shall exercise one or more of the following courses of action:

- (a) dismiss or find the charge or charges or matter proven without further action;
- (b) find the charge or charges or matter proven; and:
 - (i) terminate the membership (or any class of membership) of the Member;
 - (ii) suspend the membership of the Member for a period up to five years;
 - (iii) impose a monetary penalty on the Member, not exceeding \$20,000;
 - (iv) order publication of its findings in conformity with bylaw 11.2;
 - (v) impose any of the sanctions that can be imposed by the Professional Conduct Committee under bylaw 5.2(b)(i)-(vi);
 - (vi) make such order for costs as the Disciplinary Tribunal considers appropriate.

6.2. Interim Suspension

- (a) Where the Disciplinary Tribunal is called on by the Professional Conduct Committee to deal with a complaint or matter where the Disciplinary Tribunal considers it necessary or desirable to act promptly in the interests of the public, or the financial interest of any person, it may (without a hearing and without notice to the Member) make an order:
 - (i) suspending the membership of the Member until further order of the Disciplinary Tribunal; and
 - (ii) directing that after five working days has elapsed, notice of the suspension be published as contemplated under bylaw 11.3.
- (b) A Member who is suspended under bylaw 6.2(a) shall be immediately notified of the decision by the Compliance Manager and the Member may, within five working days of the date of receipt of such notification, apply in writing to the Disciplinary Tribunal for revocation of the suspension order and the order directing publication.
- (c) On receipt of an application for revocation, the Disciplinary Tribunal will convene a hearing and will provide an opportunity for the Member to be heard.
- (d) Where a Member makes an application for revocation under bylaw 6.2(b), publication shall be delayed until the application has been determined by the Disciplinary Tribunal.

6.3. Appeal

Save for a decision under bylaw 5.2(b)(ix):

- (a) the Disciplinary Tribunal will be responsible for determining any appeal by a Member against all or any part of a decision of the Professional Conduct Committee made under bylaw 5.2, whether by way of re-hearing or in such other manner as it may decide.

- (b) the Disciplinary Tribunal may affirm, reverse or vary any decision, or any part of a decision, of the Professional Conduct Committee.

7. GROUNDS FOR DISCIPLINARY ACTION

7.1. Grounds for Complaint

Disciplinary action under these bylaws may be exercised on one or more of the following grounds where a Member has:

- (a) been convicted of an offence punishable by imprisonment or a fine and the conviction reflects on the Member's fitness to practice as a financial adviser and/or tends to bring the profession into disrepute;
- (b) been guilty of misconduct in a professional capacity;
- (c) been guilty of unsatisfactory conduct;
- (d) been guilty of conduct prejudicial to the interests of the Institute;
- (e) been guilty of negligence or incompetence in a professional capacity, and this has been of such a degree or so frequent as to reflect on the Member's fitness to practise as a financial adviser or tends to bring the profession into disrepute;
- (f) been adjudicated bankrupt or made a composition with creditors;
- (g) failed to comply with the Constitution and any bylaws made under the Constitution (including the Code of Ethics, the Practice Standards and the Rules of Conduct);
- (h) failed to comply with a written undertaking, or any of its terms;
- (i) failed to notify the Institute of the occurrence of a notifiable event within ten working days of the occurrence of the event;
- (j) at any time supplied any information to the Institute, or to the disciplinary bodies, which is false or misleading;
- (k) failed to cooperate with the Institute, or the disciplinary bodies, without good cause or has obstructed the performance or furtherance of their work;
- (l) failed to pay any sum due to the Institute other than subscriptions for membership;
- (m) failed to comply with any order made by the disciplinary bodies.

Charges laid pursuant to bylaw 7.1(a)-(f) shall be referred to the Disciplinary Tribunal for hearing by that body.

8. NOTICE OF CHARGE(S)

8.1. Particulars

A Notice of Charge(s) to a Member (as required under bylaw 5.1) should:

- (a) contain details of the charge or charges and the grounds relied on;
- (b) make reference to the determination (of the Professional Conduct Committee) and advise whether the charge or charges will be heard before the Professional Conduct Committee or the Disciplinary Tribunal;
- (c) give (where practical) the proposed date, time and place of the hearing;
- (d) state that the Member may make written representations in advance of the hearing;
- (e) state that the Member has the right to attend and be heard at the hearing (either in person or through a representative), such matters to be notified to the Compliance Manager at least ten working days before the hearing;
- (f) state that the Member has the right to call witnesses or produce other evidence, such matters to be notified to the Compliance Manager at least ten working days before the hearing;
- (g) state that the hearing of the Professional Conduct Committee or Disciplinary Tribunal can take place on the papers, if the Member does not make an appearance;
- (h) state that (in the event of the upholding of the complaint) sanctions can be imposed under the disciplinary bylaws and the more grave the offence the greater the likelihood of a more severe sanction;
- (i) mention that an order for costs may be made against a Member.
- (j) state that, in the case of proceedings before the Disciplinary Tribunal, these will be heard in public unless decided otherwise and as such the Member should make an application for a privacy order if that is required (to be done not less than 10 working days before the hearing).

At least 20 working days notice shall be given to a Member about a hearing.

9. NOTIFIABLE EVENTS

9.1. Obligation to Notify Certain Events

Every Member shall be under a duty to inform the Institute of the occurrence of any of the following events:

- (a) where the Member has been convicted of an offence punishable by imprisonment or a fine and the conviction reflects on the Member's fitness to practise as a financial adviser and/or tends to bring the profession into disrepute;

- (b) where the Member has been refused membership of any other professional body;
- (c) where the Member has been found guilty in respect of disciplinary action by any other professional body;
- (d) where the Member is the subject of a successful claim in relation to professional indemnity insurance;
- (e) where the Member has been adjudicated bankrupt or made a composition with creditors.

9.2. Time for Making Notification

The preceding events (known as notifiable events) must be notified in writing to the Institute within ten working days of the occurrence of the event.

10. PUBLIC ACCESS TO HEARINGS

10.1. Hearings

- (a) Proceedings before the Professional Conduct Committee will be closed to the public.
- (b) Unless the Disciplinary Tribunal orders otherwise, every hearing of the Disciplinary Tribunal shall be held in public and public notice shall be given in such form and in such manner as determined by the Disciplinary Tribunal.

If the Disciplinary Tribunal considers that it is appropriate to do so, having regard to its powers under bylaw 11.2 and the interests of any person, it may:

- (i) hold a hearing, or any part of a hearing, in private;
- (ii) make an order prohibiting the publication of one or more of the following:
 - a report of any proceedings before it or any part of those proceedings;
 - any document, or a part of a document, produced at a hearing;
 - the name of, or any matter that may identify, the person to whom any hearing relates or any other person.
- (iii) make an order lifting any order made under bylaw 10.1(c)(ii).

11. PUBLICATION OF FINDINGS

11.1. Findings of the Professional Conduct Committee

- (a) The Professional Conduct Committee may direct the publication of its decision (whether a charge is dismissed or proven) provided the identity of the complainant and that of the Member is not disclosed and cannot be established from the information published.

- (b) No publication should take place until:
 - (i) the expiry of the appeal period of 15 working days; or
 - (ii) if the right of appeal has been exercised, the appeal has been determined by the Disciplinary Tribunal.

11.2. Findings of Disciplinary Tribunal

- (a) Where any charge is dismissed, the Disciplinary Tribunal may direct the publication of its decision provided the identity of the complainant and that of the Member is not disclosed and cannot be established from the information published.
- (b) Subject to bylaw 11.2(c), where any charge is proven, the Disciplinary Tribunal may direct publication of its decision in any manner the Disciplinary Tribunal considers appropriate including the Member's name, address, the particulars of the charge and a summary of the reasons for the decision and any sanction or penalty imposed.
- (c) The Disciplinary Tribunal shall direct publication of the information mentioned in bylaw 11.2(b) if it considers that it is necessary in the interests of, or for the protection of, the public.
- (d) Publication of the name of the complainant will be a discretionary matter for the Disciplinary Tribunal under bylaw 11.2(b) and (c).

11.3. Manner of publication

Unless decided otherwise by the disciplinary bodies, the decisions of the Professional Conduct Committee and the Disciplinary Tribunal shall be published:

- (a) on the Institute's website in a manner that is accessible to the public for a period of not less than six months;
- (b) in a newsletter to Members or other official publication of the Institute; and
- (c) in such other form of media as the disciplinary body considers appropriate.

12. RULES OF EVIDENCE AND PROCEEDINGS GENERALLY

12.1. Admissibility

The Professional Conduct Committee and the Disciplinary Tribunal may receive in evidence, whether admissible in a court of law or not, any statement, document, information or matter that in their opinion will assist them in dealing with any matter under consideration. The disciplinary body will give such weight to the evidence as it considers appropriate.

12.2. Nature and Conduct of Proceedings

The Professional Conduct Committee and the Disciplinary Tribunal will:

- (a) conduct proceedings expeditiously and without undue formality;

- (b) not unduly delay determining any sanction or penalty and, if at all possible, deliver these determinations (with or without reasons) at the conclusion of proceedings including any order as to costs;
- (c) have due regard to the entitlement of the parties to the rules of natural justice.

12.3. Standard of Proof

Decisions of the Professional Conduct Committee and the Disciplinary Tribunal will be made on the evidence and submissions before them applying the standard of proof of balance of probabilities.

12.4. Legal Assessor

The Professional Conduct Committee and the Disciplinary Tribunal may appoint legal assessors who may advise them at any time on matters of law, procedure and evidence, and may be present at any hearing or meeting of the disciplinary bodies.

12.5. Recording of Hearings

- (a) Unless the parties agree otherwise, hearings of the Professional Conduct Committee and the Disciplinary Tribunal (save for hearings on the papers) shall be recorded in writing or electronically. An electronic record does not need to be transcribed unless required by the disciplinary body or a party.
- (b) Records of hearings shall be retained for a period of three months from the date of the decision of the disciplinary body unless the parties agree otherwise.

12.6. Confirmation of Decision and Reasons

- (a) Every decision of the Professional Conduct Committee and the Disciplinary Tribunal shall be delivered or confirmed in writing to the Member within 15 working days of the conclusion of proceedings, accompanied by reasons for the decision and (in the case of decisions of the Professional Conduct Committee under bylaw 5.2, except bylaw 5.2(b)(ix)) drawing attention to the right of appeal. The Chairman of the disciplinary body may extend the 15 day period if required.
- (b) The complainant should be informed of the outcome of the complaint and, in the case of decisions of the Professional Conduct Committee under bylaw 5.2 (except bylaw 5.2(b)(ix), this should occur after the appeal period if there is no appeal, or after any appeal has been determined.

12.7. Procedural Defect

Any procedural defect on the part of the Institute, the Compliance Manager, the Professional Conduct Committee or the Disciplinary Tribunal will not of itself render the disciplinary proceedings invalid.

13. CRIMINAL CONVICTIONS/OTHER DISCIPLINARY ACTION

13.1. Proof

- (a) A certificate from, or on behalf of, a Registrar of any court of criminal jurisdiction (indicating that a Member has been convicted of a crime) shall conclusively establish the existence of the conviction, and shall be conclusive proof of that crime. A certificate will always be subject to the outcome of any appeal lodged by the Member against a conviction.
- (b) A letter or any other document from a government or regulatory agency, or any other professional body (to the effect that a Member has been found guilty in respect of disciplinary action) shall conclusively establish the existence of the disciplinary action, and shall be conclusive proof of that action.

14. REINSTATEMENT OF MEMBERSHIP

14.1. After Suspension

- (a) Any Member who has had their membership suspended for a period of 12 months or less shall have their membership automatically reinstated on the expiry of the suspension period.
- (b) Any Member who has had their membership suspended for a period longer than 12 months shall not have automatic reinstatement. Such a Member will be required to satisfy the Institute's Certification Committee that he or she is able to meet the usual requirements pertaining to ongoing membership. Unless the Certification Committee decides otherwise, such a Member will also be required to provide an affidavit to the Institute that the Member:
 - (i) has fully complied with the suspension provisions (if any);
 - (ii) fully understands the Code of Ethics, the Practice Standards and the Rules of Conduct; and
 - (iii) will fully comply with all their provisions upon being reinstated to membership of the Institute.

The Member will then be required to make an application for reinstatement to the Disciplinary Tribunal and the Disciplinary Tribunal will decide whether or not to grant the application, in particular, based on its assessment of the fitness and properness of the person to be re-admitted as a Member of the Institute.

15. REGULATORY COOPERATION

15.1. Referral to Other Agencies

The Institute, the Compliance Manager, the Professional Conduct Committee and the Disciplinary Tribunal may at any time convey any information arising from a complaint or investigation to the Securities Commission, the Commerce Commission, the Serious Fraud Office, the Police, any other regulatory or enforcement agency, or any other professional body, where the information is likely to assist that other agency or body with its work.

15.2. Obtaining Information from Other Agencies

The Institute, the Compliance Manager, the Professional Conduct Committee and the Disciplinary Tribunal may at any time seek information from the other agencies or bodies mentioned in bylaw 15.1 where that information might have relevance to a complaint against a Member, any investigation of a Member or to the taking of disciplinary action against that Member.

16. OTHER

16.1. Confidentiality

- (a) No person involved in the disciplinary process (whether sitting on the disciplinary bodies or working for or on behalf of the Institute) shall disclose any information acquired by virtue of their work unless it is:
 - (i) ordered to be disclosed by the disciplinary body or is otherwise required by legal process;
 - (ii) done in performance or furtherance of work responsibilities or duties (whether related to disciplinary matters or more generally);
 - (iii) otherwise authorised by the Institute (whether by the Council or by the Board).
- (b) A complainant will be entitled to know the ongoing status of the complaint, but the complainant must be given this information on a confidential basis, unless advised otherwise.

16.2. Liability

No liability shall attach to any person sitting on the disciplinary bodies, or any person acting for or on behalf of the Institute in the disciplinary process, for anything done or omitted to be done in the course of their work, unless it is shown that the person acted in bad faith.

16.3. Recovery of Penalty and Costs

Where an order is made for the payment of any fine or costs such shall be a debt immediately due and payable by the Member to the Institute. A certificate signed by the Chairman of the disciplinary body shall be sufficient evidence of the sum due by the Member to the Institute for the purposes of recovery of that sum.