

## **ADVOCIS/INSTITUTE DISCIPLINARY PROCEDURES**

### **Basis for Discipline**

The Code of Professional Conduct (CPC) sets out principles that a Member is expected to abide by in his or her professional conduct. Disciplinary sanctions may be imposed against a Member for any conduct that is found to breach the CPC.

### **Rules and Procedures**

#### **RULE 1: INITIATING THE DISCIPLINARY PROCESS**

- 1.01 A Disciplinary Procedure may be initiated for the purpose of determining if the conduct of a Member has breached the CPC.
- 1.02 Any person (“the complainant”) may request the initiation of the Disciplinary Procedure by filing a Request for Investigation (RFI) with The Institute at its National Office.
- 1.03 An RFI may be either
  - a. a standard form submission that The Institute shall make available to any person; or
  - b. any written submission providing a sufficient description of a dispute or conflict that has arisen related to a Member’s professional conduct.
- 1.04 Staff of The Institute (herein referred to as “Staff” or “staff”) shall conduct an investigation after a written RFI has been filed.

#### **RULE 2: INVESTIGATION BY STAFF**

- 2.01 Staff shall investigate every filed RFI in order to consider:
  - a. whether the conduct alleged in the RFI might constitute a breach of the CPC by the Member who is the subject of the RFI (“the Named Member”); and
  - b. whether the RFI is frivolous or vexatious.
- 2.02 If staff conclude that
  - a. the conduct alleged in the RFI does not constitute a breach of the CPC by a Member,
  - b. the RFI is frivolous or vexatious, or

- c. the Member's alleged conduct is under the jurisdiction of that Member's professional body,

then the complainant and the Named Member shall be notified of such conclusion and no further steps shall be taken in the Disciplinary Procedure.

2.03 If staff conclude that

- a. the conduct alleged in the RFI might constitute a breach of the CPC by the Named Member,
- b. the RFI is not frivolous or vexatious, and
- c. the Member's alleged conduct is not under the jurisdiction of that Member's professional body,

then the staff shall forward the matter for dispute resolution, subject to Rule 2.04.

2.04 Instead of forwarding the matter for dispute resolution pursuant to Rule 2.03, staff may make a written recommendation, with supporting reasons, to the Ethics Committee:

- a. that the Ethics Committee should deal with the matter as a "minor matter" in accordance with Rule 2.05, or
- b. that the Ethics Committee should forward the matter directly to a hearing in accordance with Rule 4.

In arriving at any such recommendation, staff shall consider the nature of the allegations, the seriousness of the conduct alleged, the importance of the matter, the resources required to pursue the matter, and any other factors that staff deem to be relevant.

2.05 The Ethics Committee shall review any such recommendation and:

- a. if it accepts the recommendation that an RFI be treated as a "minor matter", it may advise the Named Member in writing of any concerns the Ethics Committee may have about the Named Member's conduct and may order that the Named Member complete educational requirements as a condition of continuing membership, but no other sanctions may be imposed and the Disciplinary Procedure will be terminated without any finding that the conduct of the Named Member has breached the CPC,
- b. if it accepts the recommendation that the matter be forwarded directly to a hearing, it shall order such hearing to occur, and
- c. if it does not accept the recommendation of staff, the Ethics Committee shall refer the matter for dispute resolution or directly to a hearing, as it sees fit.

- 2.06 When investigating an RFI, staff shall follow the procedures outlined below:
- a. Internally document receipt of the RFI;
  - b. Provide written acknowledgment of receipt to the complainant, within ten (10) days of such receipt;
  - c. Deliver a copy of the RFI to the Named Member and request a written response from the Named Member within fourteen (14) days of such delivery; and
  - d. After such fourteen (14) days have expired, prepare a written report regarding the matters set out in Rule 2.01.

### **RULE 3: DISPUTE RESOLUTION**

- 3.01 If staff determines under Rule 2.03 that the RFI should be forwarded for dispute resolution, or if the Ethics Committee refers the matter for dispute resolution under Rule 2.05(c), staff shall notify in writing the Professional Conduct Chair of the Chapter to which the Named Member belongs of such determination. The Chair shall appoint a Facilitator to assist in the dispute resolution process between the complainant and the Named Member to occur within thirty (30) days from the date that staff notified the Chair of the matter. The process for such dispute resolution shall be as determined by the Facilitator.
- 3.02 The Facilitator shall, following consultation with the parties, fix the time of a dispute resolution meeting. All meetings will be held at a location convenient for the parties and the Facilitator, as determined by the Facilitator.
- 3.03 The Facilitator will attempt to help the parties to reach a satisfactory resolution of their dispute but has no authority to impose a settlement on the parties. The Facilitator is authorized to conduct joint and separate meetings with the parties and to make recommendations for settlement.
- 3.04 The dispute resolution meeting will be held in private. Persons other than the parties, their representatives and the Facilitator may attend only with the consent of all of the parties and the Facilitator.
- 3.05 The Facilitator shall keep confidential any information disclosed in the course of the dispute resolution meeting including all written material provided to him or her.
- 3.06 The dispute resolution meeting is intended to promote settlement negotiations and information disclosed as part of the dispute resolution session is inadmissible in any further steps in the Disciplinary Procedure or in litigation or arbitration to the extent permitted by law. The parties agree not to subpoena or otherwise require the Facilitator to testify or produce records or notes in any future proceedings. No transcripts will be kept of the proceedings.

- 3.07 The following matters shall not be introduced as evidence in any further steps in the Disciplinary Procedure or in any subsequent proceedings:
- a. any views expressed, or suggestions made, by the parties in respect of the possible settlement of the dispute;
  - b. any admissions made by a party in the course of dispute resolution;
  - c. the fact that a party had indicated a willingness to accept a proposal or recommendation for settlement made by the Facilitator; or
  - d. proposals made or views expressed by the Facilitator.
- 3.08 The Dispute Resolution process shall be terminated:
- a. by the execution of a settlement agreement by the complainant and the Named Member;
  - b. by a written declaration of one or more parties that the dispute resolution process is terminated; and
  - c. by a written declaration by the Facilitator that further efforts in the dispute resolution process would not be helpful.
- 3.09 If the dispute resolution process results in the National Office of The Institute being notified within the thirty (30) day period, in writing, that an executed settlement agreement was made, then no further steps shall be taken in the Disciplinary Procedure. If no such notice is received by the National Office within the thirty (30) day period, then staff shall forward the matter for a hearing before a Hearing Panel.

## **RULE 4: HEARINGS**

- 4.01 The Hearing Panel shall conduct a hearing to consider the merits of the RFI. If the Hearing Panel decides that the conduct of the Named Member has breached the CPC, the Hearing Panel shall also determine the appropriate sanctions to be imposed on the Named Member.
- 4.02 A Hearing Panel shall be composed of a minimum of three (3) individuals, all of whom shall be Members in good standing, one of whom shall be a member of the National Board of Trustees of The Institute or a member of the National Board of Directors of The Financial Advisors Association of Canada (“TFAAC”), and at least one of whom shall be a member of the Chapter to which the Named Member belongs (preferably, but not mandatorily, the Professional Conduct Chair of such Chapter). The National Board of Trustees of The Institute, or any two (2) of the Chair, Vice Chair and Past Chair, shall appoint the remaining members of a Hearing Panel from a roster of willing and qualified Members.
- 4.03 A Hearing Panel shall be convened in the geographical area of the Chapter to which the Named Member belongs. The National Board of Trustees of The Institute, or two (2) of the Chair, Vice Chair or Past Chair, may approve an application to relocate a Hearing Panel, on the recommendation of staff or Chapter officials or at the request of the complainant or the Named Member.
- 4.04 A date for the hearing shall be set by the Hearing Panel. The complainant and the Named Member shall be given at least fourteen (14) days notice of such date. If the complainant or the Named Member seek to adjourn such date, that person must submit a request for adjournment in writing to the Hearing Panel, including the reasons for the request. The Hearing Panel will decide if a hearing date shall be adjourned or continue as scheduled. The decision of the Hearing Panel shall be final and conclusive.
- 4.05
- a. **Appearances at Hearing:** The complainant and the Named Member are entitled to appear at the hearing in person, and to be represented by counsel (at such person’s own expense). Any other individual who wishes to attend a hearing must obtain permission from the Hearing Panel. Such individuals must sign a confidentiality agreement in the form maintained at the National Office of The Institute.
  - b. **Appointment and Authority of Chair:** One person on the Hearing Panel shall serve as Chair of the panel. The Chair of the Hearing Panel shall be responsible for determining the procedure to be followed at the hearing and shall rule on any question or dispute as to procedure.
  - c. **Admissibility of Evidence:** The Hearing Panel is not a judicial body nor is it a hearing by a court of law. The Hearing Panel may admit such evidence as it sees fits.
  - d. **Procedures at Hearing:**

- i. Staff shall present the RFI to the Hearing Panel and any information obtained by staff pertaining to it;
  - ii. The complainant, the Named Member and staff are entitled to present written or oral evidence, including the calling of witnesses;
  - iii. All witnesses are subject to cross-examination by any person other than the person calling them;
  - iv. The Hearing Panel members may pose questions to the complainant, to the Named Member, to staff, and to any witness;
  - v. The proceedings before the Hearing Panel shall be recorded; and
  - vi. At the close of the hearing, the Hearing Panel shall deliberate in private.
- e. **Decision of Hearing Panel:** The Hearing Panel shall decide if the conduct of the Named Member has breached the CPC and, if so, what sanctions are to be imposed. The Hearing Panel shall issue a written report of its decision and shall file it with the National Office of The Institute. The complainant and the Named Member shall be provided a copy of the decision.

## **RULE 5: SANCTIONS**

5.01 One or more of the following sanctions may be imposed:

- a. **Private Written Censure:** Private censure shall consist of a written statement from the Board of Trustees of The Institute to the Named Member whose conduct has been found to breach the CPC. Notice of these sanctions may be announced publicly but any such announcement shall exclude the Named Member's name;
- b. **Public Censure:** Public censure shall consist of a public announcement that a disciplinary hearing was held and shall include the results of such hearing;
- c. **Education Requirement:** This sanction requires a Member to complete an education program as stipulated by the Hearing Panel within a time frame specified in its decision. If a Member fails to complete the educational requirement within that time, the Member's membership privileges shall be suspended until the required educational program is completed. Notice of these sanctions may be announced publicly, as determined by the Hearing Panel;
- d. **Suspension of membership** in The Institute and/or TFAAC and suspension of the right to use TFAAC and/or The Institute designations and trademarks for a specified period of time, not to exceed five (5) years: A Member who is suspended shall forfeit all privileges of membership for a specified period of time, as determined by the Hearing Panel, but shall remain liable for the

payment of membership dues during that time. Notice of these sanctions shall be announced publicly;

- e. **Expulsion from membership** in The Institute and/or TFAAC and permanent revocation of the right to use TFAAC and/or The Institute designations and trademarks. The right to use any title or designation granted by TFAAC and/or The Institute will be permanently withdrawn. Notice of these sanctions shall be announced publicly;
  - f. **Report to Regulatory Authorities:** A decision of a Hearing Panel may be forwarded to a competent regulatory authority in the provincial jurisdiction having a connection to the subject matter and/or the complainant or the Named Member. Notice of these sanctions may be announced publicly, as determined by the Hearing Panel;
  - g. **Hearing Costs:** The costs of a hearing may be assessed against a Named Member as a disciplinary sanction. The Board of Trustees of The Institute shall establish annually an amount to be assessed for such hearing costs and the time in which such costs must be paid. A Member who is in default of payment of such costs shall be suspended from membership privileges until the costs are paid, but shall remain liable for the payment of membership dues during that time. TFAAC may also take such legal proceedings as may be necessary to collect the amount owing.
  - h. **Additional monetary fine:** An additional monetary fine in an amount to be determined by the Hearing Panel may be assessed against a Named Member as a disciplinary sanction. A Member who is in default of payment of such additional monetary fine shall be suspended from membership privileges until the fine is paid, but shall remain liable for the payment of membership dues during that time. Notice of these sanctions may be announced publicly, as determined by the Hearing Panel.
  - i. **Report to other people:** A decision of a Hearing Panel may be forwarded to such people as may be determined by the Hearing Panel, including the Member's employer, MGA Owner, Regional Director or Branch Manager, or other person in an analogous role. Notice of the sanction may be announced publicly, as determined by the Hearing Panel.
- 5.02 **Public Announcement of Sanctions:** Public announcement of sanctions may be made in any one or more of the following ways:
- a. an announcement in TFAAC FORUM or any other TFAAC and/or Institute publication, including a summary of the disciplinary matter;
  - b. delivery of the decision of the Hearing Panel to the provincial regulator(s) having jurisdiction over the Named Member;
  - c. announcement to the TFAAC Chapter to which the Named Member belongs;

- d. delivery to any company with whom the Named Member has a contract, where the company's products have been involved in the conduct constituting a breach of the CPC by the Named Member;
  - e. delivery of the decision of the Hearing Panel to any other professional body or association with jurisdiction over the Named Member; and
  - f. the release of a national and/or local press release to news media, including newspaper periodicals.
- 5.03 Sanctions shall only be applied after an appeal period has expired. In the event that an Appeal is filed, sanctions shall only be applied following the decision of the Board of Appeal, as determined by it.

#### **RULE 6: APPEAL**

- 6.01 The complainant and the Named Member have the right to appeal the decision of a Hearing Panel. Such appeal may be from the decision as to whether the conduct of the Named Member has breached the CPC, or the sanctions imposed by the Hearing Panel, or both.
- 6.02 A notice of appeal must be made in writing and must be filed at the National Office of The Institute no later than fifteen (15) days after the date on which the Hearing Panel's decision has been delivered to the person filing the appeal.
- 6.03 The appellant must pay to TFAAC a filing fee in an amount as determined from time to time by The Institute.
- 6.04 The appellant must order the transcript of the hearing and pay all costs for it.
- 6.05 Staff shall deliver a copy of the transcript to the appellant and the respondent.
- 6.06 The appellant shall file with the National Office of The Institute, within thirty (30) days of receiving the transcript, a written argument setting forth the basis of the appeal and including such references to the transcript and the decision of the Hearing Panel as the appellant sees fit.
- 6.07 The Institute shall forthwith deliver to the respondent a copy of the appellant's argument. Staff and the respondent shall each have thirty (30) days thereafter to file with the National Office a written argument setting forth the position of staff or the respondent, as the case may be, and including such references to the transcript and the decision of the Hearing Panel as they see fit;
- 6.08 The Institute shall forthwith deliver to the appellant a copy of the written argument from the respondent and the staff, if any. The appellant shall have ten (10) days

- thereafter to file with the National Office a written reply to any matters raised in such written argument.
- 6.09 The Institute shall forthwith deliver to the respondent a copy of such reply.
- 6.10 A Board of Appeal shall be struck and shall meet to consider the appeal no later than thirty (30) days from the date when any reply was due from the appellant.
- 6.11 A Board of Appeal shall be composed of a minimum of three (3) Members who may be Directors, past-Directors or other Members in good standing and willing to serve. The Board of Trustees of The Institute, or any two (2) of the Chair, Vice Chair and Past Chair shall appoint the members of a Board of Appeal.
- 6.12 No member of a Board of Appeal shall have sat on, or participated before, the Hearing Panel in the matter.
- 6.13 Wherever practical, members of a Board of Appeal should reside outside the Chapter to which the Named Member belongs.
- 6.14 The Board of Appeal shall convene and appoint a Chair. The Chair shall be responsible for determining the procedure to be followed by the Board of Appeal, and shall rule on any question or dispute as to procedure. At the option of the Board of Appeal, it may convene in person or via teleconference.
- 6.15 When considering the appeal, the Board of Appeal shall not hear oral arguments, but shall consider:
- i. the transcript from the hearing;
  - ii. any documentary evidence filed (including the RFI) at the hearing; and
  - iii. the written submissions of the appellant, the respondent and staff.
- 6.16 The Board of Appeal shall not overturn any findings of fact made by the Hearing Panel unless it determines that the findings were clearly unsupported by the evidence.
- 6.17 The Board of Appeal shall have the power to:
- i. uphold, amend or overturn a decision of a Hearing Panel as to whether the conduct of the Named Member breached the CPC; and
  - ii. uphold, amend (including imposing different sanctions) or overturn the sanctions imposed by the Hearing Panel.
- 6.18 The decision of the Board of Appeal shall be set forth in writing and shall be final and binding. There shall be no recourse to the courts.

- 6.19. The written decision of the Board of Appeal shall be delivered by staff to the complainant and the Named Member.

#### **RULE 7: RECORDS**

- 7.01 Records of every Disciplinary Procedure and the disposition of every disciplinary matter shall be prepared and kept by the National Office of The Institute for a period of six (6) years.
- 7.02 Staff shall determine how records shall be kept. Staff will be held accountable to the Board of Trustees to prepare and provide a report as requested on such records.

#### **RULE 8: GENERAL MATTERS**

- 8.01 A Hearing Panel and a Board of Appeal, as the case may be, and the staff with respect to the time frame in Rule 2.06 c., may extend or abridge any time prescribed by these rules on such terms as are just.
- 8.02 A Hearing Panel and a Board of Appeal, as the case may be, shall have sole jurisdiction and control over the procedural conduct of the Disciplinary Procedure before it.
- 8.03 Staff shall be entitled to standing at the hearing conducted by the Hearing Panel and shall be entitled to submit written submissions with respect to any appeal. The Hearing Panel or Board of Appeal, as the case may be, shall have the sole discretion as to whether any other party, apart from the complainant and the Named Member, is entitled to standing.
- 8.04 Reference to “date of delivery” in these rules shall mean the date on which actual delivery of a document is made to a person or the date on which the document in question is left at the last known address of the person, as identified in TFAAC’s records.

#### **RULE 9: CONFIDENTIALITY OF PROCEEDINGS**

- 9.01 **Confidentiality Policy:** Except as otherwise provided, all proceedings conducted pursuant to these rules shall be confidential and the records of proceedings shall remain confidential and shall not be made public.
- 9.02 **Commitment to Uphold the Confidentiality of Disciplinary Proceedings:**
- a. Every complainant initiating a Disciplinary Procedure regarding the professional conduct of a Member shall be required to enter into a written confidentiality agreement. Where a complainant fails to enter into a written confidentiality agreement, at the discretion of staff, the matter will be closed and no further investigation will occur.

- b. A Disciplinary Procedure shall proceed without regard to the decision of a Named Member to enter into a written confidentiality agreement.
- c. Any breach by a Member of confidentiality in respect of a Disciplinary Procedure shall be cause for a disciplinary proceeding against the Member.

#### **RULE 10: INDEMNIFICATION**

10.01 Indemnification of TFAAC and The Institute directors, officers, staff and others: Every person when acting in his or her capacity as a:

- a. Trustee of The Institute;
- b. member of a Hearing Panel or Board of Appeal;
- c. volunteer member of a committee of TFAAC or The Institute or a Chapter of TFAAC;
- d. Director of TFAAC ;or
- e. any other servant or agent of TFAAC

shall, out of the funds of TFAAC, be indemnified and saved harmless:

- i. from and against any liability he or she may suffer or incur arising out of the normal operation of TFAAC and The Institute, or out of any duty or responsibility under these Disciplinary Procedures, or out of any undertaking or assignment authorized by the Board of TFAAC and/or the Board of The Institute; and
- ii. for all costs, charges and expenses that he or she may suffer or incur in or about the defence of any claim, action, suit or proceeding alleging such liability

provided such liability, costs, charges and expenses are suffered or incurred in the course of an authorized undertaking and provided that the said person acted in good faith.

10.02 **No Cause of Action:** No Member or other person (including a complainant) shall have any cause for action or lawful complaint against TFAAC, The Institute, a Chapter, or any member of TFAAC, or any Officer, Director or employee of TFAAC or any Officer, Director, Trustee or employee of The Institute, or officers, directors or employees of a Chapter by reason of anything done or omitted to be done or any other matter or thing in connection with or in respect of any duty, responsibility, undertaking or assignment, or any disciplinary order or publication thereof made or done in good faith on behalf of TFAAC and/or The Institute.

## **CONFERENCE FOR ADVANCED LIFE UNDERWRITING MEMBER (CALU) DISCIPLINARY PROCEDURES**

### **Basis for Discipline**

*Disciplinary sanctions may be imposed against a CALU Member for any conduct that is found to breach the Advocis/Institute Code of Professional Conduct, the CALU Code of Professional Conduct or complaints forwarded by the CALU Market Conduct Standards Committee to The Institute.*

### **Rules and Procedures**

*The Advocis/Institute Disciplinary Procedures shall be followed in all cases with the exception of complaints filed under the CALU Code of Professional Conduct or complaints forwarded to The Institute by the CALU Market Conduct Standards Committee. In matters dealing solely with CALU complaints all Advocis/Institute Disciplinary procedures shall be followed with the exception of Rule 4: HEARINGS. In such cases Rule 4: HEARINGS will be substituted by Rule 11: CALU MEMBER HEARINGS.*

### **RULE 11: CALU MEMBER HEARINGS**

- 11.01 The Hearing Panel shall conduct a hearing to consider the merits of the RFI or complaint. If the Hearing Panel decides that the conduct of the Named CALU Member has breached the CALU Code of Professional Conduct, the Hearing Panel shall also determine the appropriate sanctions to be imposed on the Named CALU Member.*
- 11.02 A Hearing Panel shall be composed of a minimum of three (3) individuals, all of whom shall be Members in good standing with either Advocis, The Institute or CALU. At least one of the panel members shall be a member of the National Board of Trustees of The Institute or a member of the National Board of Directors of The Financial Advisors Association of Canada ("TFAAC"). At least one of the panel members shall be a member of CALU who has been selected and approved by the CALU Board of Directors. The National Board of Trustees of The Institute, or any two (2) of the Chair, Vice Chair and Past Chair of The Institute, shall appoint the remaining members of a Hearing Panel from a roster of willing and qualified Members.*
- 11.03 A Hearing Panel shall be convened in the geographical area of which the Named CALU Member is professionally located. The National Board or the Institute Trustees of The Institute, or two (2) of the Chair, Vice Chair or Past Chair, may approve an application to relocate a Hearing Panel on the recommendation of National Office staff or at the request of the complainant or the Named CALU Member.*
- 11.04 A date for the hearing shall be set by the Hearing Panel. The complainant and the Named CALU Member shall be given at least fourteen (14) days notice of such date. If the complainant or the Named CALU Member seek to adjourn such date, that person must submit a request for adjournment in writing to the Hearing Panel, including the reasons for the request. The Hearing Panel will decide if a hearing date shall be*

*adjourned or continue as scheduled. The decision of the Hearing Panel shall be final and conclusive.*

- 11.05 a. **Appearances at Hearing:** *The complainant and the Named CALU Member are entitled to appear at the hearing in person, and to be represented by counsel (at such person's own expense). Any other individual who wishes to attend a hearing must obtain permission from the Hearing Panel. Such individuals must sign a confidentiality agreement in the form maintained at the National Office of The Institute.*
- b. **Appointment and Authority of Chair:** *One person on the Hearing Panel shall serve as Chair of the panel. The Chair of the Hearing Panel shall be responsible for determining the procedure to be followed at the hearing and shall rule on any question or dispute as to procedure.*
- c. **Admissibility of Evidence:** *The Hearing Panel is not a judicial body nor is it a hearing by a court of law. The Hearing Panel may admit such evidence as it sees fits.*
- d. **Procedures at Hearing:**
- i. *Staff shall present the RFI or complaint to the Hearing Panel and any information obtained by staff pertaining to it;*
  - ii. *The complainant, the Named CALU Member and staff are entitled to present written or oral evidence, including the calling of witnesses;*
  - iii. *All witnesses are subject to cross-examination by any person other than the person calling them;*
  - iv. *The Hearing Panel members may pose questions to the complainant, to the Named CALU Member, to staff, and to any witness;*
  - v. *The proceedings before the Hearing Panel shall be recorded; and*
  - vii. *At the close of the hearing, the Hearing Panel shall deliberate in private.*
- e. **Decision of Hearing Panel:** *The Hearing Panel shall decide if the conduct of the Named CALU Member has breached the CALU Code of Professional Conduct and, if so, what sanctions are to be imposed. The Hearing Panel shall issue a written report of its decision and shall file it with the National Office of The Institute. The complainant and the Named CALU Member shall be provided a copy of the decision.*