



**Stockbrokers  
And Financial Advisers**  

---

**Association Limited**

**STOCKBROKERS AND FINANCIAL ADVISERS ASSOCIATION LIMITED  
ACN 089 767 706**

**CONDUCT REVIEW AND DISCIPLINARY SYSTEM**

**INTRODUCTION**

1. These Rules comprising the Conduct Review and Disciplinary System (CRDS) have been made by the Board under Clause 24C and Clause 78 of the Constitution of the Stockbrokers And Financial Advisers Association Limited (“SAFAA”).
2. All words and expressions defined in the Constitution (as may be amended from time to time) will have the same meaning in this CRDS unless a contrary intention is expressed.
3. The amendment of the CRDS shall be at the absolute discretion of the Board.
4. From time to time, the Board may authorise the issue of policies, guidance or procedural material to facilitate the operation of the CRDS. Any such materials
  - 4.1 are not incorporated into and do not form part of the CRDS;
  - 4.2 may be varied by SAFAA from time to time; and
  - 4.3 the express terms of the CRDS will prevail to the extent of any inconsistency.

**PART 1 – SCOPE OF THE CRDS**

5. The conduct of Members of SAFAA is subject to review under a number of statutory schemes, including the following:
  - Australian Financial Service License (AFSL) requirements;

- Corporations Act and Regulations;
  - Exchange Rules, including Rules of ASX Limited and Chi-X Limited;
  - AUSTRAC legislation;
  - External dispute resolution scheme rules, such as the Financial Ombudsman Service (FOS), if applicable.
6. Under the statutory schemes referred to paragraph 5, the conduct of a Member can be the subject of investigation, complaint and enforcement, and a range of potential sanctions including disciplinary decisions and/or financial sanctions.
7. The CRDS is intended to apply as a framework for ensuring appropriate standards of professional conduct by Members of the Stockbrokers and Financial Advisers Association separate to and independent of the statutory schemes referred to in paragraph 5 above. Where appropriate, the CRDS may be applied in a manner which endeavours to avoid unnecessary duplication or interference with the statutory schemes referred to above.

Subject to any requirement under law to the contrary, it is the general policy that the investigation, hearing and/or determination of a matter under the CRDS will be suspended in the event that SAFAA becomes aware that the matter is the subject of separate consideration by a court, tribunal, regulator, statutory authority or scheme, or another deliberative body, until such time as the outcome of that other consideration is known, any relevant appeal period has expired and any consequent disciplinary or other legal action has been concluded.

8. Member firms of SAFAA must take reasonable steps to inform their clients they are entitled to make a complaint to SAFAA in respect of the firm or in respect of an employee or representative of the firm who is a Member of SAFAA. A Member of SAFAA who is not employed by or a representative of a Member firm of SAFAA must notify their clients that the client is entitled to make a complaint to SAFAA in respect of the Member.

Without limitation, “reasonable steps” include:

- (a) Notification on the home page of the Member’s web page;
- (b) employees and representatives being made aware of this information and able to direct enquiries to this information;

- (c) providing the information (or links to the information) when complaints are made to the Member or to the Member's firm.

## **PART 2 – MATTERS THAT CAN BE DEALT WITH UNDER THE CRDS**

- 9. Any person may make a complaint in respect of the conduct of a Member under the CRDS, whether or not they are a client of the Member or of the Member's firm.
- 10. The CRDS deals with following types of complaints or misconduct:
  - 10.1 A breach of the SAFAA Code of Ethical Conduct;
  - 10.2 A breach of the SAFAA Constitution or SAFAA Rules;
  - 10.3 Failure to comply with educational standards, including continuing professional development requirements;
  - 10.4 (Deleted)
  - 10.5 Unsatisfactory professional conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of professional competence and diligence;
  - 10.6 Conduct that is illustrative that the individual member is not a fit and proper person to be a member of SAFAA;
  - 10.7 being disqualified, banned or censured by a statutory regulator or co-regulator or external complaints body approved by ASIC;
  - 10.8 (Deleted)
  - 10.9 Conduct in connection with a criminal offence;
  - 10.10 Conduct in connection with a taxation offence;
  - 10.11 Dishonesty in respect of the services provided by the Member to a client;
  - 10.12 Insolvency;

- 10.13 Breach of a notice or order issued under the CRDS;
- 10.14 Failure to comply with professional indemnity requirements;
- 10.15 refusal to provide a document or information requested for the purposes of administering the CRDS without legal basis for withholding such document or information;
- 10.16 misleading conduct in relation to a complaint, investigation, Professional Conduct Tribunal hearing or Appeal;
- 10.17 making a complaint under the CRDS that the Professional Conduct Tribunal determines is vexatious or wholly without foundation;
- 10.18 any other complaint or misconduct that in the opinion of the Board of SAFAA may bring the Association into disrepute

### **PART 3 – HOW TO MAKE A COMPLAINT**

11. The Complaint must be made in writing addressed to:

**Chief Executive,  
Stockbrokers and Financial Advisers Association  
Level 6, 56 Pitt Street  
Sydney NSW 2000**

Or via the website:

**[www.stockbrokers.org.au](http://www.stockbrokers.org.au)**

Or by email:

**[complaints@stockbrokers.org.au](mailto:complaints@stockbrokers.org.au)**

12. The Complaint should identify:

- the Member against whom the complaint is made;
- a description of the complaint that sets out sufficient detail to enable the complaint to be properly investigated;

- the name and contact details of the complainant;
- whether the complainant is aware that the subject matter of the complaint is the subject of enquiry or investigation by any other body or the subject of any legal proceedings.

## **PART 4 – HOW A COMPLAINT IS DEALT WITH**

13. SAFAA will appoint an appropriately qualified or experienced person as the Investigating Officer to handle the complaint. The Investigating Officer (as defined in paragraph 26) may be another member of SAFAA, a staff member or officer of SAFAA, or an external consultant engaged by SAFAA to provide complaint handling or code monitoring services. SAFAA must obtain confirmation from the Investigating Officer that he or she does not have a conflict of interest in relation to the matter. The Investigation Officer may be provided with such other assistance as may be necessary to deal with the complaint.
14. As a preliminary matter, the Investigating Officer will carry out the following steps:
  - 14.1 verification that the complaint relates to a Member;
  - 14.2 verification that the complaint falls within the jurisdiction of the CRDS (as stated in paragraph 7 and Part 2);
  - 14.3 confirmation that sufficient information has been provided to enable the complaint to be properly investigated; and
  - 14.4 enquiries to establish whether the subject matter of the complaint is the subject of enquiry or investigation by any other body or the subject of any legal proceedings.
15. Within five (5) business days of the completion of the steps referred to in clause 14 above, the Investigating Officer shall notify the Member in writing of the subject matter of the complaint and that a determination will be made as to whether there has been a failure by the member to comply with either the Code of Ethics or other relevant requirement, as the case may.
16. The Investigating Officer shall request a written response from the Member, which response shall be provided by the Member within 14 days of the date of the request or such other agreed date.
17. The Investigating Officer will investigate the complaint and any contravention of any matter that is within the scope of the CRDS and prepare a Report of the Investigating Officer’s findings to the Chair of the Professional Conduct Tribunal. The Report must be prepared as expeditiously as possible and in any case within 45 days of the receipt of the complaint, or, subject to clause 7, such other period of time as is mutually agreed.

18. The provisions of Part 6 below apply with respect to the investigation of a complaint.
19. All complainants must be treated with courtesy by SAFAA at all times and kept informed of the progress of their complaint. SAFAA shall acknowledge receipt of the complaint in writing within 7 days, and shall advise the complainant of the process to be followed.
20. Upon the receipt of the Report, the Chair of the Professional Conduct Tribunal must consider the Report and determine whether to or not to;
  - 20.1 dismiss the complaint, after taking into account the Report by the Investigating Officer, if the complaint is considered trivial, frivolous, vexatious, so old that the member is prejudiced in having to respond or investigation is no longer practicable or desirable, or the substance of the complaint has not been made out; or
  - 20.2 Refer the matter to the Professional Conduct Tribunal
21. A complaint must not be dismissed by SAFAA unless a Report has been provided to and considered by the Chair of the Professional Conduct Tribunal. If a complaint is dismissed, SAFAA shall notify the complainant and the Member within 14 days of the decision to dismiss the complaint and the reasons for the decision.

## **PART 5 – PROFESSIONAL CONDUCT REVIEWS**

22. In this CRDS, the term Professional Conduct Review shall be taken to mean any review carried out for the purpose of either paragraph 23 or 24 of the CRDS.
23. SAFAA may carry out such compliance reviews as it considers appropriate for the purposes of ensuring compliance by Members with appropriate standards of professional conduct, including (but not limited to):
  - the Code of Ethics
  - educational standards, including continuing professional education
24. Where information comes to the attention of SAFAA which results in SAFAA forming a suspicion that a Member may have contravened any of the matters in paragraph 10 above, then SAFAA may commence a Professional Conduct Review into the matter.

25. A Professional Conduct Review shall be carried out by an appropriately qualified or experienced officer appointed by SAFAA. The officer may be an officer or employee of SAFAA or may be an external consultant engaged to provide such services to SAFAA.
26. The term Investigating Officer shall refer to an officer investigating a complaint under Part 4 and to an officer conducting a Professional Conduct Review under Part 5, as the case may be.
27. An Investigating Officer shall prepare a report to the Chair of the Professional Conduct Tribunal in respect of each investigation.

## **PART 6 – CONDUCT OF AN INVESTIGATION**

28. The provisions of this Part 6 apply to the Investigation of a complaint under Part 4 above and to a Professional Conduct Review under Part 5 above.
29. The Investigating Officer shall conduct such enquiries and gather such information as is necessary to properly investigate any matter.
30. When a Professional Conduct Review is commenced, the Investigating Officer shall notify the Member of the matters being investigated, and any relevant information upon which SAFAA formed its suspicion. Where the Member is an employee of a licensee, SAFAA may notify the licensee. The Investigating Officer shall invite the Member to provide a response within 14 days or such other period as may be agreed.
31. The Investigating Officer shall request a Member to provide such documents or explanations, whether orally or in writing, as may be reasonable in order to investigate a relevant matter. Pursuant to the Constitution, a Member agrees to the provision of such documents and information as may be reasonably required by SAFAA subject to any legal basis for withholding such documents and information. A refusal to provide a document or information requested for the purposes of an investigation without such legal basis will constitute misconduct for the purposes of the CRDS.

## **PART 7 – PROFESSIONAL CONDUCT TRIBUNAL**

32. Without limitation to the provisions of the Constitution, the Board delegates the function of conducting disciplinary procedures under the CRDS to the Professional Conduct Tribunal.
33. The Board shall appoint a member of SAFAA to be the Chair of the Professional Conduct Tribunal. The Board shall appoint a panel of persons from whom the members of the Professional Conduct Tribunal appointed to deal with a particular matter shall be drawn.

34. The Professional Conduct Tribunal appointed to deal with a particular matter shall consist of three persons nominated by the Chair of the Professional Conduct Tribunal, at least two of whom shall be Members of SAFAA. The Chair of the Professional Conduct Tribunal may nominate himself or herself as one of the members of the Professional Conduct Tribunal in relation to any matter.
35. If the Chair of the Professional Conduct Tribunal determines that a matter is to be determined by the Professional Conduct Tribunal, SAFAA shall serve a show cause notice to the Member setting out the alleged breaches. The Member has 14 days to respond in writing to the show cause notice.
36. In the case where the Member is an employee or representative of a firm which is a Member firm of the SAFAA, a copy of the show cause notice shall be provided to the firm.
37. Within 21 days of the date of the show cause notice, the Chair of the Professional Conduct Tribunal shall to appoint a date for hearing of the matter by the Professional Conduct Tribunal.
38. The Chair of the Professional Conduct Tribunal shall vary any dates relating to the conduct of the disciplinary procedures if he or she deems it necessary.

#### **Procedure**

39. Professional Conduct Tribunal hearings must be conducted in private with as little formality and technicality as the Chair of the Professional Conduct Tribunal considers appropriate for the proper determination of the matters before it.
40. The Professional Conduct Tribunal is not bound by the rules of evidence and may inform itself in any way it sees fit. The Professional Conduct Tribunal is bound by the laws relating to legal privilege.
41. All material provided to the Tribunal must be available to all parties and can be given in writing or orally at the discretion of the Professional Conduct Tribunal.
42. Both parties are entitled to one representative. Where a Member elects to be represented by a legal practitioner pursuant to clause 48, the Member shall not be entitled to an additional representative.

#### **Attendance by SAFAA personnel**

43. In the case of a complaint against a Member, the Chair of the Professional Conduct Tribunal may approve the SAFAA Chief Executive and/or the SAFAA Investigating Officer

to attend the hearing to answer questions or as an observer. The Chair must state the attendance capacity of these persons. If the attendance is approved as an observer then that individual cannot participate in the proceedings.

44. In the case of a matters arising other than as a result of a complaint, SAFAA shall be entitled to attend the disciplinary hearing for the purpose of presenting evidence and assisting the Professional Conduct Tribunal.

### **Procedural fairness**

45. All hearings must be conducted without bias and in fairness to all parties and must observe the rules of procedural fairness.
46. Members of the Professional Conduct Tribunal must not participate in any matter in respect of which they have a conflict of interest or in respect of which a conflict may reasonably be perceived, and shall disqualify themselves as soon as the conflict is identified.

### **Obtaining legal advice**

47. Legal advice may be obtained at the expense of SAFAA if the Professional Conduct Tribunal considers it necessary or appropriate.
48. A Member may be represented at a hearing at their own expense by a legal practitioner.

### **Participation in proceedings**

49. All proceedings shall be conducted at the SAFAA Sydney office or such other place as the Chief Executive of SAFAA nominates.
50. A Professional Conduct Tribunal member is not required to be physically present at the place of hearing provided that they are able to participate in the proceedings, including by way of teleconferencing, video conference facilities or any other telecommunications system.
51. All relevant documents (including submissions from parties) relating to a disciplinary hearing must be provided to the Tribunal members and the Member, seven (7) days prior to the date of the hearing, unless the Chair determines that a shorter period is appropriate in the circumstances.

52. The Member that is subject to the proceedings must notify the Chair of the Professional Conduct Tribunal of their attendance at the hearing and whether they will be represented at the hearing not less than five (5) business days prior to the date of the hearing.
53. In the event that the Professional Conduct Tribunal is satisfied that the Member has had adequate notice of the hearing but has not attended or provided submissions in accordance with paragraph 51, then the Professional Conduct Tribunal may proceed to determine the matter in the absence of the Member including the making of an adverse finding against the Member.
54. If a Member seeks to resign as a member of SAFAA prior to the determination of a complaint in respect of the Member under Part 4 or a Professional Conduct Review under Part 5, then subject to the provisions of any applicable legislation, SAFAA shall refuse to accept the resignation of the Member pending the determination of the complaint or Review, as the case may be, and shall proceed to determine the complaint or Review as if the Member remained a member of SAFAA.

#### **Determination of the Matter**

55. Except as permitted by Clause 7, the Professional Conduct Tribunal must conclude its hearing and deliberations and make a determination of the matter as expeditiously as the circumstances permit, and in any event, within a reasonable period from the date upon which SAFAA received the complaint, or became aware of the circumstances giving rise to the matter, as the case may be, or within such other period of time as may be expressly required in specific circumstances by any provision of law.
56. Any determination is to be made by simple majority of the members of the Professional Conduct Tribunal.
57. The Professional Conduct Tribunal may in its absolute decision make any of the following determinations:
  - dismiss the matter;
  - uphold a complaint in part or in full;
  - a determination that a breach has occurred.
58. If the Professional Conduct Tribunal upholds a complaint in part or in full or makes a determination that a breach has occurred, then the Tribunal may in its discretion impose one or more of the following sanctions or may decline to impose a sanction;
  - reprimand a Member;
  - issue a written warning to the Member;
  - require that a Member receive counselling in respect of the issue relevant to the complaint by a SAFAA senior member designated by SAFAA;

- require correctional steps to be undertaken or undertakings to be given, whether or not subject to conditions, including a requirement that the Member be subject to supervision for a specified period;
  - require compulsory conciliation of a complaint if it is still unresolved;
  - suspend the Member's membership of SAFAA for a specified period;
  - impose a fine on the Member in the amount of \$5000 for a minor breach or \$20,000 in respect of any other breach;
  - expel the Member from SAFAA; or
  - issue a public statement in respect of the issue relevant to the complaint;
59. The Professional Conduct Tribunal must deliver its decisions in writing and must provide written reasons for the decision to both SAFAA and to the Member that is the subject of the proceedings.
60. Any decision to impose a sanction upon a Member shall be communicated in writing within ten (10) business days of the decision. The Member shall have a period of 5 business days in which to appeal the decision.

## **PART 8 – APPEALS**

61. A Member may appeal to the Appeal Committee against any decision made by the Professional Conduct Tribunal, by notice in writing to SAFAA by email or to the SAFAA postal address within ten (10) business days of the notification of the decision of the Professional Conduct Tribunal, provided that such right of appeal is limited to the following grounds:
- 61.1 Procedural error;
  - 61.2 Error of law or fact; and/or
  - 61.3 Severity of the sanction or penalty.
- The notice in writing must set out clearly the grounds on which the appeal is being made.
- 61A. An appeal must be accompanied by the payment of such appeal fee as may be specified from time to time by the Board of SAFAA. The Association shall not be required to take any action with respect to the appeal until such time as the fee is paid.
62. In the case of an appeal, the imposition of any sanction shall be deferred until the determination of the appeal except where in the opinion of the Professional Conduct Tribunal there is a public interest that the sanction remain in effect pending the determination of the appeal.

63. The Appeal Committee shall consist of the Chair of the Professional Conduct Tribunal, or in the case where the Chair of the Professional Conduct Tribunal was a member of the Tribunal which made the decision that is the subject of the appeal, an independent Chair appointed by the Board, and two members drawn from the Professional Conduct Tribunal panel members.
64. The Appeal Committee shall not re-hear the original matter and shall determine the appeal based on written submissions filed by the parties. The Appeal Committee may only:
- 64.1 dismiss the appeal;
  - 64.2 allow the appeal in whole or in part;
  - 64.3 vary the sanction or penalty; and/or
  - 64.4 remit the matter back to the Professional Conduct Tribunal.
- Any decision of the Appeal Committee is final and is not capable of being subject to any further review or appeal.
65. The same rules and procedures that govern the conduct of the Professional Conduct Tribunal set out in Part 7 above shall apply to the proceedings of the Appeal Committee, with such adaptations and modification as are necessary and appropriate.

## **PART 9 – RECORDS**

66. SAFAA shall keep records in relation to the CRDS.

### **Complaints**

67. SAFAA shall maintain records in relation to complaints. All complaints will be allocated a reference number which will be used in all documents in relation to the complaint. SAFAA will maintain a complaints register which shall include the following information
- a. Sequential Complaint Reference Number;
  - b. Date complaint received;

- c. Complainant's name and address;
- d. Name of the Member who is the subject of the complaint;
- e. Brief description of complaint;
- f. Date SAFAA acknowledged the complaint;
- g. Investigating officers assessment of complaint;
- h. Investigating officers report on complaint;
- i. Decision of Chair of PCT;
- j. Advice to complainant of decision;
- k. Date complaint closed/referred;
- l. Action taken as a result of the decision.

### **Disciplinary Proceedings**

68. SAFAA shall maintain records in relation to Disciplinary proceedings. Data relating to disciplinary proceedings shall be kept in a Disciplinary Register, which shall include the following information:

- a. Number of hearings during period;
- b. Types of hearings;
- c. Members involved in hearings;
- d. Decisions made;

- e. Action taken;
- f. Number of appeals;
- g. Appeals allowed/dismissed.

## **Publication**

- 69. SAFAA may publish information relating to the CRDS in such manner as the Board of Directors deems fit, including in the SAFAA website, Member circular, newsletter or other such publication, or to a regulator. SAFAA shall disclose information relating to the CRDS where required to do so by law.
- 70. The information published in relation to the CRDS may be anonymous or may include details of a disciplinary matter including the identification of a Member or the Member's firm and the determination of a matter by the Professional Conduct Tribunal and/or the Appeal Committee.
- 71. Pursuant to the Constitution, Members have consented to publication of information relating to the CRDS.
- 72. SAFAA shall not publish information in relation to a determination of the Professional Conduct Tribunal until the expiry of the period, if any, for lodgement of an appeal under the provisions of the CRDS. This shall not apply to the disclosure of any information required by law.

## **PART 10 – COSTS**

- 73. The Member shall bear their own costs in connection with:
  - 73.1 any matter heard by the Professional Conduct Review Tribunal relating to the Member; and
  - 73.2 any Appeal by the Member.
- 74. If the Professional Conduct Tribunal upholds a complaint in part or in full or makes a determination that a breach has occurred, then the Tribunal may in its discretion order that the Member pay the costs and expenses of the Association in the investigation of the matter and/or the disciplinary hearing.

75. If an appeal brought by a Member to the Appeal Committee against any decision made by the Professional Conduct Tribunal is not upheld, the Appeal Committee may in its discretion order that the Member pay the costs and expenses of the Association in connection with the appeal. In the event that an appeal is upheld in part but not upheld for the balance, the Appeal Committee may make an order for costs against the Member in respect of that part of the appeal that was not upheld.

## **PART 11 – REVIEW OF CRDS**

76. SAFAA shall carry out a review of the operation of the CRDS every two years for the purpose of:
- Assessing the effectiveness of the CRDS;
  - Determining whether any amendments to the CRDS are appropriate; and
  - Determining whether any patterns or issues emerge from the matters dealt with under the CRDS such that any changes are required to the professional standards framework administered by SAFAA.