



## DISCIPLINARY RULES AND PROCEDURES 2020

### ARTICLE 1: INTRODUCTION

The Institute of Financial Planners of Hong Kong (IFPHK) has adopted a Code of Ethics and Professional Responsibility (Code) which establishes minimum standards of acceptable professional conduct for individuals entitled to use the CFP or AFP trademarks including CFP®, CERTIFIED FINANCIAL PLANNER®, ,  CERTIFIED FINANCIAL PLANNER®, AFP®, ASSOCIATE FINANCIAL PLANNER®,  AFP® and  ASSOCIATE FINANCIAL PLANNER® (collectively, "the Marks"). Adherence to the Code is mandatory for all CFP certificants (individuals authorized to use IFPHK's CFP trademarks), AFP certificants (individuals authorized to use AFP trademarks) and candidates. IFPHK has adopted these Disciplinary Rules and Procedures (Procedures) for the purpose of enforcing the Code.

- 1.1 For the purpose of the Code and these Disciplinary Rules and Procedures, candidates refer to candidate registered as such with IFPHK.
- 1.2 The Professional Ethics Review Committee, the Investigating Officer, the Hearing Panel or the Appeal Panel, as the case may be, may in their discretion deviate from these rules and procedures if deemed appropriate or desirable in the interest of dealing with any matter justly, efficiently and/or expeditiously, or if to follow any rule or procedure would result in a manifestly unjust outcome, or would run counter to the spirit of these rules and procedures.

### ARTICLE 2: ADMINISTRATION

- 2.1 Professional Ethics Review Committee (Committee)
  - 2.1.1 The Committee, as appointed by the IFPHK Board of Directors from time to time, is charged with overseeing the process of investigating, reviewing and taking appropriate action with respect to alleged violations and alleged non-compliance with the Code.
  - 2.1.2 Committee members shall refrain from participating in decision-making in respect of any proceedings in which they, a member of their immediate family or a member of their firm has any interest or where such participation otherwise would involve a conflict of interest whether personal or professional, or the appearance of impropriety.
  - 2.1.3 The Committee may meet and deliberate or take any decision by telephone or correspondence, and in particular by electronic correspondence.



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2.2

2.3 Investigating Officer

2.3.1 The Investigating Officer refers to the individual(s) assigned by the Committee to investigate any matters which may give rise to grounds for disciplinary actions and to conduct the disciplinary process. No member of the IFPHK Board of Directors or the Committee may serve as an Investigating Officer.

2.3.2 If the Investigating Officer resigns or is otherwise unable to continue an investigation, the Committee may designate another Investigating Officer to continue the disciplinary process.

2.4 Hearing or Appeal Panel

2.4.1 A Hearing or Appeal Panel shall be convened by the Secretary as required from time to time, by selecting available members from the Panel Membership List approved by the Committee. The quorum for a determination of the Panel is any 3 members, at least one of which shall be a member of IFPHK and at least two of which shall be CFP certificants. No member of the Hearing Panel which heard a particular matter may sit as a member of the Appeal Panel for the purposes of any appeal in relation to that matter.

2.4.2 The Chairman of the Panel shall be a member of IFPHK. The Chairman of the Panel shall monitor proceedings and shall rule on all procedural issues arising during the course of the proceedings, subject to the Chairman's discretion to refer any procedural matter to the full Panel for decision if the Chairman considers this to be desirable.

2.4.3 Any Panel may meet and deliberate or take any decision by telephone or correspondence, and in particular by electronic correspondence.

2.5

2.6 Secretary

2.6.1 The Committee shall appoint a person to act as Secretary to the Hearing Panel and the Appeal Panel. The role of the Secretary is to co-ordinate the operation of the procedures and to carry out such administrative functions as may from time to time be authorised by the Chairman or the Panel.

### ARTICLE 3: GROUNDS FOR DISCIPLINARY ACTION

3.1 Misconduct by a CFP/AFP certificant or a candidate, individually or in concert with others, including but not limited to the following acts or omissions, shall constitute grounds for



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disciplinary action, whether or not the act or omission occurred in the course of a client relationship:

- a. Any act or omission which violates the Code and/or non-compliance with the provisions of the Code;
- b. Any act or omission which is unethical or unprofessional, or which may bring the reputation of the Marks into question;
- c. Any act or omission which violates the criminal laws of Hong Kong SAR, or jurisdiction of any other country, provided however that conviction thereof in a criminal proceeding shall not be a pre-requisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not bar disciplinary action;
- d. Any act which is a proper basis for professional suspension, provided professional suspension shall not be a pre-requisite to the institution of disciplinary proceedings, and provided further, that dismissal of charges in a professional suspension proceeding shall not necessarily bar a disciplinary action. "Professional Suspension" shall include the suspension or bar as a disciplinary measure by any governmental or industry self-regulatory authority of a licence as a registered securities representative, broker/dealer, insurance or real estate salesperson or broker, insurance broker, solicitor, barrister, accountant, investment adviser or financial planner;
- e. Any false or misleading statement and/or declaration made to IFPHK;
- f. Failure to assist in an investigation by the Committee;
- g. Failure to respond to a request by the Investigating Officer, without good cause shown, or obstruction of the Investigating Officer, any panels of the Committee, the Committee, or IFPHK Staff in the performance of its or their duties hereunder;
- h. Any act or omission which violates these Procedures or non-compliance with an order of discipline issued by IFPHK; and/or
- i. The CFP/AFP certificant being the subject of a bankruptcy order under the provisions of the Bankruptcy Ordinance (Cap. 6 of the Laws of Hong Kong).

3.2 The above list of acts and omissions is not exclusive and other acts or omissions amounting to misconduct may constitute grounds for disciplinary action.



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#### ARTICLE 4: DISCIPLINARY ACTION

4.1 Following a finding of misconduct, the Hearing Panel or the Appeal Panel, as the case may be, may order any one, or a combination, of the following forms of disciplinary action:

a) Private Censure

The Hearing Panel or the Appeal Panel, as the case may be, may order private censure of a CFP/AFP certificant which shall be an unpublished written reproach sent by ordinary post by IFPHK containing a written censure on the CFP/AFP certificant.

b) Public Letter of Admonition

The Hearing Panel or the Appeal Panel, as the case may be, may order that a Letter of Admonition be issued against a CFP/AFP certificant, which shall be a public written reproach of the CFP/AFP certificant's behaviour. It shall be standard procedure to publish the Letter of Admonition in a press release or in such other form of publicity elected by the CEO of IFPHK, with identification of the CFP/AFP certificant.

c) Suspension

The Hearing Panel or the Appeal Panel, as the case may be, may order suspension of a CFP/AFP certificant's right to use the Marks for a specified period of time, not to exceed five (5) years, for those individuals it deems can be rehabilitated. It shall be standard procedure to publish Suspension in a press release or in such other form of publicity elected by the CEO of IFPHK, with identification of the CFP/AFP certificant. In some cases when the Hearing Panel or the Appeal Panel, as the case may be, determines that there are mitigating circumstances it may decide to withhold publication. CFP/AFP certifiants receiving a suspension may qualify for reinstatement to use the Marks as provided in Article 10.

d) Revocation

The Hearing Panel or the Appeal Panel, as the case may be, may order permanent revocation of a CFP/AFP certificant's right to use the Marks. It shall be standard procedure to publish the Revocation in a press release or in such other form of publicity elected by the CEO of IFPHK, with identification of the CFP/AFP certificant. In some cases when the Hearing Panel or the Appeal Panel, as the case may be, determines that there are mitigating circumstances it may decide to withhold publication. Revocation shall be permanent.



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- 4.2 In all circumstances, the Hearing Panel or the Appeal Panel, as the case may be, has the right to require CFP/AFP certificants or the candidates to complete additional continuing education or other remedial work. Such continuing education or remedial work may be ordered instead of, or in addition to, any disciplinary action listed above.
- 4.3 Required action after revocation or suspension
- After an order of revocation or suspension has been made final, the CFP/AFP certificant shall promptly terminate any use of the Marks and in particular shall not use them in any advertising, announcement, letterhead or business card.
- 4.4 Forms of Discipline Concerning Candidates
- 4.4.1 Under certain circumstances, the Hearing Panel or the Appeal Panel, as the case may be, may take action in matters involving the conduct of candidates. Action that may be taken in these cases, where grounds have been established, correspond in character and degree to the forms of discipline described in Article 4.1, and are accordingly as follows:
- a. Subject to the candidate meeting all other requirements of certification, the Committee may order certification with a private censure in the candidate's record;
  - b. Subject to the candidate meeting all other requirements of certification, the Committee may allow certification and order the issuance of a Letter of Admonition in the candidate's record and/or to be published as appropriate;
  - c. Certification, if any, suspended for a specified period, not to exceed five (5) years; or
  - d. Certification, if any, denied permanently.
- 4.4.2 In the event of either a suspension or a denial of certification, the fact of such suspension or denial shall be publishable at the discretion of the Hearing Panel or the Appeal Panel, as the case may be. A candidate who has been the subject of an order to suspend certification may seek to re-apply for certification. Such candidates shall, in addition, meet the requirements of original certification.



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## ARTICLE 5: INVESTIGATION

### 5.1 Commencement

An investigation into any matter which may give rise to grounds for disciplinary action may be initiated by an Investigating Officer upon receipt of a complaint by any person or entity, at the direction of the Committee, or upon the Investigating Officer's own initiative.

### 5.2 Investigation

5.2.1 The Investigating Officer may make such inquiry with the Complainant (if any) or such other persons, organisations or authorities (including any employer) as he/she deems appropriate. The CFP/AFP certificant or the candidate (collectively, the "Respondent"), as the case may be, has an obligation to cooperate fully, to answer any questions fully and frankly, and shall make available to the Investigating Officer upon request any relevant documents and records in his/her possession. Failure to do so is itself a ground for disciplinary action pursuant to Article 3. The Investigating Officer shall provide the Respondent with an opportunity to make representations and/or explain any fact or other matter in such manner and form and within such time as he/she considers appropriate.

5.2.2 The Investigating Officer shall have regard to all documents and information obtained in the course of his/her investigation. If the Investigating Officer is of the opinion that misconduct may have taken place, he/she may refer the matter for determination by a Hearing Panel.

5.2.3 The Investigating Officer shall compile relevant documents and materials in a report (Disciplinary Report) and submit it to the Secretary together with a request that a Hearing Panel be convened. A copy of the Disciplinary Report shall be delivered to the Respondent as soon as is reasonably practicable.

## ARTICLE 6: SETTLEMENT PROCEDURE

6.1 A Respondent against whom proceedings are pending pursuant to these Procedures may, at any time, tender an Offer of Settlement in exchange for a stipulated form of disciplinary action. The Hearing Panel shall have an absolute discretion to accept or reject an Offer of Settlement.



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## ARTICLE 7: DECISION OF THE HEARING PANEL

### 7.1 Procedure and Proof

- 7.1.1 Upon receipt of the Disciplinary Report, the Hearing Panel will invite the Respondent to make any further representations in such manner and form and within such time as the Chairman or the Hearing Panel considers appropriate.
- 7.1.2 The Investigating Officer may submit a Reply addressing any new matters arising from the Respondent's further representations within 14 working days, or such other time as the Chairman or the Hearing Panel may direct.
- 7.1.3 In the event the Investigating Officer submits a Reply, the Respondent may make final representations addressing any new matters arising from that Reply within 14 working days, or such other time as the Chairman or the Hearing Panel may direct.
- 7.1.4 Unless either the Respondent in his representations or the Investigating Officer makes a request that an oral hearing be held, the Hearing Panel will then proceed to make a determination on the papers in accordance with Article 7.3. If the Respondent fails to make any representations within the time prescribed, he shall be deemed not to require an oral hearing.
- 7.1.5 The Secretary shall be the point of contact for the parties. All enquiries on procedural matters shall be directed to the Secretary, who shall refer such enquiries to the Chairman for decision. All submissions and correspondence submitted by the parties shall be addressed to the Secretary, who shall circulate such submissions/correspondence to the Panel members and the other party.
- 7.1.6 Where a third party (including a complainant) wishes to make representations to the Hearing Panel, the Hearing Panel may in its absolute discretion allow that party to make representations either orally or in writing as it deems appropriate.
- 7.1.7 The rules of evidence applicable in a court of law do not apply and the Hearing Panel may receive any material (whether orally or in writing), and attach such weight to that material, as the Hearing Panel considers appropriate.
- 7.1.8 Proof of a ground for disciplinary action shall be established on balance of probabilities, adjusted where relevant to take into consideration the gravity of the charges (the "relevant standard of proof").



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## 7.2 Disciplinary Hearings

- 7.2.1 If an oral hearing is requested, the Secretary shall arrange a date, time and venue for the disciplinary hearing. At least 14 working days before the hearing, the parties shall provide the Secretary with a list of the persons who will be attending the hearing with that party, and the respective capacity in which such persons will be acting. The Secretary will provide the parties with a list of the persons who will be attending the hearing once the necessary information has been received by the Secretary.
- 7.2.2 The hearing will be conducted in English or Cantonese as the Hearing Panel may in its discretion direct and any party may, if he/she wishes, be accompanied by a person acting as an interpreter. In any case where a party wishes to be accompanied by an interpreter, that party shall inform the Secretary as soon as possible and in any event at least 5 working days before the hearing. It is the responsibility of the party requiring an interpreter to arrange for an interpreter to be present at the hearing.
- 7.2.3 A party may be accompanied by his/her legal adviser. Whilst a party may confer with his/her legal adviser, unless the Chairman or the Panel otherwise directs, all submissions must be made by the parties themselves and all questions addressed to a party by the Panel must be answered by the party directly and not through his or her legal adviser.
- 7.2.4 It is the responsibility of any party requiring the attendance of witness(es) to procure their attendance at the hearing. The Hearing Panel may decline to hear a witness if the Panel considers his or her evidence to be unnecessary or that the hearing of that witness would impede the disciplinary process.
- 7.2.5 If a Respondent fails to attend on the scheduled hearing date and time, the hearing may be conducted in his/her absence.

## 7.3 Decision of the Hearing Panel

- 7.3.1 The Hearing Panel shall determine either:
- that the allegations are not proved to the relevant standard of proof, or that the facts as established do not warrant the imposition of disciplinary action and recommend the allegations be dismissed, either as without merit or with caution; or
  - that the allegations are proved to the relevant standard of proof and that disciplinary action is warranted and impose an appropriate sanction.



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- 7.3.2 The Hearing Panel shall make a decision by simple majority of members representing a quorum.
- 7.3.3 The Chairman of the Hearing Panel shall record its reasons for decision and determinations (Order) and shall send the Order of the Hearing Panel to the Investigating Officer, the Respondent and the Committee. The Secretary and/or any legal advisers appointed by the Panel may assist the Chairman in preparing the decision.
- 7.3.4 Unless the Order otherwise specifies, a decision by the Hearing Panel shall not take effect until the expiration of the prescribed time for a Request for Appeal to be lodged, or if a Request for Appeal has been lodged, the Appeal Panel has determined the matter.
- 7.4 Failure to comply with directions of the Chairman or Hearing Panel
- 7.4.1 Any failure on the part of a party to comply with the directions of the Chairman or Hearing Panel at any stage of the proceedings shall itself constitute grounds for disciplinary action under Article 3.

## **ARTICLE 8: APPEALS AND APPEAL HEARINGS**

- 8.1 The Investigating Officer or the Respondent may appeal an Order of the Hearing Panel.
- 8.2 A Request for Appeal, together with the relevant fee as required under Article 11, shall be submitted to the Secretary within fifteen (15) working days after the Order of the Hearing Panel is sent to the parties. The appellant shall, no later than fifteen (15) working days after submission of the Request for Appeal, file a written submission setting out the grounds for appeal, the relief sought, and whether an oral hearing is requested. The submission must be accompanied by a copy of the Order of the Hearing Panel.
- 8.3 Unless the Hearing Panel has otherwise specified in the Order, upon a Request for Appeal being filed by an appellant, all disciplinary penalties shall be suspended pending the determination of the appeal.
- 8.4 Upon receipt of a Request of Appeal, the Secretary shall convene an Appeal Panel. The procedure outlined in Article 7 will be followed by the Appeal Panel, with the Appellant's written submission being treated as if it were the Disciplinary Report for the purposes of the timetable and process.



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- 8.5 The Appeal Panel may vary any penalty ordered by the Hearing Panel or make such other orders as it sees fit. The decision of the Appeal Panel is final and there is no further right of appeal. A written copy of the final decision and the Order of the Appeal Panel will be provided to the parties and the Committee.

#### **ARTICLE 9: INTERIM SUSPENSION**

- 9.1 Interim suspension is the temporary suspension by IFPHK of a CFP/AFP certificant's right to use the Marks for a definite or indefinite period of time, while disciplinary proceedings are pending or ongoing. Imposition of an interim suspension shall not preclude the imposition of any other form of disciplinary action by the Hearing Panel or the Appeal Panel upon final disposal of the disciplinary proceedings.
- 9.2 On the application of the Investigating Officer or on its own initiative, a Hearing Panel may in its absolute discretion order the interim suspension of a CFP/AFP certificant's right to use the Marks during the pendency of a disciplinary investigation or disciplinary proceedings. Where the Investigating Officer makes an application for the imposition of an interim suspension but no disciplinary proceedings have yet been commenced and/or no Hearing Panel has yet been convened, the Secretary shall convene a Hearing Panel for the purposes of determining the application for the imposition of an interim suspension.
- 9.3 Following an imposition of an interim suspension of a CFP/AFP certificant's right to use the Marks, the CFP/AFP certificant may apply to the Committee to request that the interim suspension be lifted. Any such application shall be in writing and supported by reasons. The Committee may decide in its discretion whether or not to lift the interim suspension, having regard to all the circumstances of the case

#### **ARTICLE 10: REINSTATEMENT AFTER DISCIPLINARY ACTION**

- 10.1 After Revocation  
Revocation shall be permanent, and there shall be no opportunity for reinstatement.
- 10.2 Reinstatement After Suspension



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Unless otherwise provided by the Hearing Panel or the Appeal Panel, a CFP/AFP certificant who has been suspended must make an application to the IFPHK for reinstatement after the expiration of the period of his/her suspension. The CFP/AFP certificant must meet all administrative requirements for re-certification and prove by clear and convincing evidence that the CFP/AFP certificant has been rehabilitated, has complied with all applicable disciplinary orders and provisions of these Disciplinary Rules and Procedures, and that the CFP/AFP certificant is fit to use the Marks. The Committee may investigate any application for reinstatement and/or examine the CFP/AFP certificant at an oral hearing if the Committee considers it appropriate.

#### **ARTICLE 11: COSTS**

- 11.1 The Respondent shall bear his own costs relating to the investigation and, where applicable, the oral hearing.
- 11.2 A Respondent who petitions for appeal shall pay a non-refundable fee of HK\$5,000.

#### **ARTICLE 12: NOTICE AND SERVICE**

- 12.1 Except as may otherwise be provided in these Procedures, notice shall be in writing and the giving of such notice and the service thereof shall be sufficient when sent by ordinary post to the last known address, or by fax to the fax number, of the CFP/AFP certificant or the candidate according to the records maintained by IFPHK. It shall be the duty of the CFP/AFP certificant or the candidate to update the IFPHK in the event of changes to his or her postal address and/or fax number.
- 12.2 Service shall be deemed effective:
- on the date of delivery by hand or by fax;
  - on the fourth working day after sending by ordinary post to an address in Hong Kong;
  - on the tenth working day after sending by ordinary post to an address in Macau or the mainland of the People's Republic of China; and
  - on the tenth working day after sending by airmail (or an equivalent mode of delivery) to an address outside of Hong Kong, Macau or the mainland of the People's Republic of China.



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- 12.3 All submissions, enquiries or correspondence for the Secretary shall be sent to the address of IFPHK marked for the attention of the Secretary to the Hearing Panel or the Secretary to the Appeal Panel, as the case may be.



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