



Rules and Regulations

National Insurance
Brokers Association

These Rules are made by the Board pursuant to clause 17 of the Constitution.

Where defined terms are used in these Rules their meaning can be found in the section titled 'Definitions' following the Rules.

RULE 1: CHARACTERISTICS OF MEMBERSHIP

1. Principal Member

- 1.1 Subject to paragraph 1.5, if a Principal Member is a corporation, at least one of the directors who is active in the Financial Services Business of the corporation must be a Qualified Practising Insurance Broker or Fellow.
- 1.2 Subject to paragraph 1.5, if a Principal Member is a member of a partnership, that member or at least one of the partners of that member must be a Qualified Practising Insurance Broker or Fellow.
- 1.3 Subject to paragraph 1.5, if a Principal Member is a trust, at least one of the trustees who is active in the Financial Services Business of the trust must be a Qualified Practising Insurance Broker or Fellow.
- 1.4 Subject to paragraph 1.5, if a Principal Member is a sole trader, that member must be a Qualified Practising Insurance Broker or Fellow.
- 1.5 Notwithstanding any provision of these Rules or the Constitution, the Board may, in its absolute discretion, exempt a Principal Member from the requirement to have a Qualified Practising Insurance Broker or Fellow active in its Financial Services Business.
- 1.6 A Principal Member must advise the Board that a corporation or trust is associated with the Principal Member within the definition of Corporate Associate, as soon as reasonably practicable after becoming aware of the association.
- 1.7 If a Principal Member is a member of a partnership or a sole trader, the member must advise the Board, as soon as is reasonably practicable, of the admission to the partnership of any new partner or any new entry of the sole trader into partnership.

2. Corporate Associates

- 2.1 Subject to paragraph 2.2, at least one of the directors of a Corporate Associate who is active in the Financial Services Business of the Corporate Associate in Australia must be a Qualified Practising Insurance Broker or Fellow.
- 2.2 Notwithstanding any provision of these Rules or the Constitution, the Board may, in its absolute discretion, exempt a Corporate Associate from the requirement to have a Qualified Practising Insurance Broker or Fellow active in its Financial Services Business.

3. Principal Members and Corporate Associates

- 3.1 Subject to this Rule the operations of all State, Territory, regional or district offices of a Principal Member or Corporate Associate must be controlled by a Qualified Practising Insurance Broker.
- 3.2 The Board may, in its absolute discretion, exempt for any period of time specified by the Board, a State, Territory, regional or district Office of a Principal Member or Corporate Associate from the requirement that the office be controlled by a Qualified Practising Insurance Broker.
- 3.3 The Board may, in its absolute discretion, revoke any exemption granted under this Rule at any time before the expiration of the specified time.
- 3.4 If a Principal Member or a Corporate Associate ceased to be eligible for membership by reason only of the death, resignation or termination of a Qualified Practising Insurance Broker or Fellow or by reason only of a Qualified Practising Insurance Broker or Fellow ceasing to be a member of the Association, the Board may, in its absolute discretion, allow the Principal Member or Corporate Associate to carry on being a member of the Association or impose such conditions on membership as the Board considers appropriate in the circumstances.
- 3.5 At the time of application for Principal Membership or Corporate Associate the applicant must provide the names of five companies carrying on a Financial Services Business, with whom it has transacted business and whose senior management will vouch for its professionalism and credit worthiness.

4. Qualified Practising Insurance Broker

- 4.1 A Qualified Practising Insurance Broker must satisfy the Board that:
- (a) he or she holds a Licence with a Broker Endorsement and:
 - (i) has a minimum of 3 years experience as a Licensee (or equivalent experience prior to the introduction of the Financial Services Reform Act 2001); or
 - (ii) has been engaged in full time employment with a Licensee or a person conducting a Financial Services Business (or equivalent prior to the introduction of the Financial Services Reform Act 2001) for a minimum of 6 years in a position providing Financial Services; and
 - (b) he or she has qualifications considered by the Board to be appropriate and practical experience in business comparable to that of a person who has conducted a Financial Services Business for 3 years; and
 - (c) he or she has participated in Continuing Professional Education as required by the Board, in the 12 month period immediately prior to the date of his or her application; and
 - (d) he or she can overcome any written objection lodged by any Member relating to his or her professionalism and business ethics; and
 - (e) his or her nomination has been proposed by a Qualified Practising Insurance Broker who, in the case of an employee applicant, is a director of the Principal Member or Corporate Associate or manager of the state, territory, regional or district office of the Principal Member or Corporate Associate in which he or she is employed.
- 4.2 A Qualified Practising Insurance Broker may use the designation QPIB after his or her name.

5. Individual Member

An Individual Member must satisfy the Board that:

- (a) he or she is an Authorised Representative and he or she:
 - (i) has a minimum of 3 years experience as an Authorised Representative or Licensee (or equivalent experience prior to the introduction of the Financial Services Reform Act 2001); or
 - (ii) has been engaged in full time employment with either or both an Authorised Representative or Licensee (or equivalent experience prior to the introduction of the Financial Services Reform Act 2001) for a minimum of 6 years in such a position providing Financial Services; and
- (b) he or she has qualifications considered by the Board to be appropriate and practical experience in business comparable to that of a person who has conducted a Financial Services Business for 3 years; and
- (c) he or she has participated in Continuing Professional Education as required by the Board, in the 12 month period immediately prior to the date of his or her application; and
- (d) he or she can overcome any written objection lodged by any Member relating to his or her professionalism and business ethics; and
- (e) his or her nomination has been proposed by a Member.

6. Underwriting Agents Category

A Member is eligible to fall within the Underwriting Agents Category for the purposes of election of Directors to the Board if the Board is satisfied that a Member is either a Licensee or an Authorised Representative with a written authorisation from a Licensee who is an insurer to:

- (a) enter into contracts that are risk products on behalf of the insurer as insurer; or
- (b) deal with and settle on behalf of the insurer, claims relating to risk insurance products against the insurer as insurer.

7. Wholesale Brokers Category

A Member is eligible to fall within the Wholesale Brokers Category for the purposes of election of Directors to the Board if the Board is satisfied that a Member is a Licensee who does not provide a financial service directly to the purchaser of a financial service or product but arranges for such a service or product to be provided to the client of another Licensee.

8. Recognised Brokers Association

The Board recognises the following international associations for the purposes of the requirements of an International Member of the Association:

- (a) Irish Insurance Brokers Association;

- (b) Institute of Insurance Brokers (UK);
- (c) British Insurance and Investment Association;
- (d) Hong Kong Confederation of Insurance Brokers;
- (e) License Insurance Brokers Association of Fiji;
- (f) Insurance Brokers Association of South Africa;
- (g) Singapore Insurance Brokers Association;
- (h) The South African Insurance Brokers Association;
- (i) Independent Insurance Brokers Association of New Zealand;
- (j) Corporation of Insurance Brokers New Zealand;
- (k) Association of Insurance Brokers and Agents Israel;
- (l) Insurance Brokers Association of Malaysia

9. International Members

9.1 An International Member must satisfy the Board that:

- (a) he or she holds a Licence with a Broker Endorsement (or the equivalent qualification in their home country, as determined in the absolute discretion of the Board) and he or she:
 - (i) has a minimum of 3 years experience as an insurance broker; or
 - (ii) has been engaged in full time employment with either or both a Recognised International Insurance Broker or a Financial Service Business for a minimum of 6 years in such a position as to have been responsible to the public for insurance advice; and
- (b) he or she has qualifications considered by the Board to be appropriate and practical experience in business comparable to that of a person who has been in the insurance industry for 3 years; and
- (c) he or she has participated in Continuing Professional Education as required by the Board or other on-going training which the Board considers appropriate, in the 12 months period immediately prior to the date of his or her application; and
- (d) he or she can overcome any written objection lodged by any Member relating to his or her professionalism and business ethics; and
- (e) his or her nomination has been proposed by a Qualified Practising Insurance Broker or an International Member.

10. Fellows

10.1 A Fellow must satisfy the Board that he or she has successfully completed the Advanced Diploma in Financial Services or equivalent qualification offered by the Association or other tertiary institution whose courses are recognised by the Association.

- 10.2 A Fellow is permitted to use the designation 'FNIBA' after their name to indicate their membership status of the Association.

11. Former Members

- 11.1 A person who has been a Member and who no longer qualify for membership by virtue of having ceased to comply with the eligibility requirements of those classes of membership may, at the absolute discretion of the Board:
- (a) receive, for a prescribed fee, communications from and invitations to functions of the Association providing that a suitable undertaking is given that the former member will not claim membership of the Association; and/or
 - (b) be permitted to use the designations "QPIB (Retired)" or "FNIBA (Retired)" or "Individ (Retired)" reflecting their former class of membership of the Association
- subject to the requirements set out in this Rule.
- 11.2 Any person permitted to use the designations set out in sub-paragraph 11.1(b) shall provide annually an undertaking that:
- (a) he or she will not hold himself or herself out to be a Member of the Association; and
 - (b) he or she is not engaged in the business of an intermediary, other than as a part-time consultant to a Member.
- 11.3 A person who:
- (a) is currently entitled to use the designations set out in sub-paragraph 11.1(b);
 - (b) has regained employment with a Principal Member or Corporate Associate; and
 - (c) satisfies the Board that he or she has participated in Continuing Professional Education required by Rule 2,
- may, at the absolute discretion of the Board, be re-submitted to such class of membership of the Association as the Board shall determine.

RULE 2: CONTINUING PROFESSIONAL EDUCATION

1. Continuing Professional Education requirements

- 1.1 Each Member (other than an Honorary Fellow) who is a natural person must comply with this Rule in order to remain eligible to be a member of the Association.
- 1.2 A Member must attend the minimum number of hours of Continuing Professional Education (**CPE**), as determined by the Board from time to time, for each year ending 30th June.
- 1.3 Members must submit to the Association a completed 'CPE Declaration' form verifying their training participation by 30th September each year. In this form the Member must show:
 - (a) whether they have met the minimum requirement for that year, and
 - (b) the amount of time claimed for each of the qualifying categories, where relevant.
- 1.4 The Association reserves the right to undertake random audits of Member's compliance with this Rule. If a Member is audited they must submit a 'Record of Participation in CPE' form. This form will require Members to provide evidence of their compliance with this Rule. Such evidence may include attendance lists, enrolment forms or confirmation advice, employer's reports, diary records, certificates, diplomas and degrees, official receipts and statutory declarations. For audit purposes, members are advised to keep records for six months following the end of the year.
- 1.5 The CPE activities that a Member may participate in for the purposes of this Rule are those activities determined by the Board from time to time to be CPE activities.

RULE 3: CODE OF CONDUCT: BROKERAGE

1. General

This Rule applies where a Member (**the new broker**) is appointed to act for a client in relation to any contract of insurance (**any existing policy**) arranged for that client by another insurance broker (**the original broker**).

2. Brokerage

The new broker will:

- (a) not claim or enforce any entitlement to brokerage in relation to any existing policy other than for the renewal or extension of such policy;
- (b) not suggest to the client that any existing policy be cancelled unless to do so is in the interest of the client (other than by reason of the new broker thereby becoming entitled to brokerage on any contract of insurance arranged by the new broker to replace any such policy); and
- (c) account to the insurer, or the original broker, for any brokerage received by the new broker in relation to any existing policy, as soon as is reasonably practicable after receipt of that brokerage.

RULE 4: CANCELLATION AND RETURN OF BROKERAGE

1. General

This Rule applies where a contract of insurance (**the policy**) arranged by a Member is cancelled.

2. Return of Brokerage

2.1 Subject to paragraph 2.2., the Member will refund to the client the 'due proportion' of any brokerage relating to the policy. The 'due proportion' is the proportion which the net return premium bears to the total net premium.

2.2 If the Member and the client entered into a written agreement before the policy was cancelled under which the client agreed either that:

- (a) no brokerage would be refunded in the event of cancellation, or
- (b) brokerage would be refunded on a basis other than in accordance with paragraph 2.1.

then the agreement prevails over paragraph 2.1.

3. Fees

3.1 No fee or penalty will be charged by a Member relating to cancellation unless express provision is made for it in a written agreement entered into between the Member and the client before the policy was cancelled.

3.2 The Member has the discretion to retain or refund part or all of any fee relating to the arrangement of the policy.

RULE 5: CODE OF CONDUCT COMMITTEE

1. Establishment of Committee

- 1.1 The Board may, from time to time, convene the Code of Conduct Committee to assist in the investigation of:
 - (a) complaints where its assistance is sought by the Board of the Registrar; and
 - (b) other matters referred to it by the Board.
- 1.2 The Code of Conduct Committee must act in accordance with the direction of the Board and with these rules as amended by the Board from time to time.
- 1.3 The Code of Conduct Committee will reports its findings and any recommendations it may make to the Board or the Registrar, as the case may be.

RULE 6: CODE OF CONDUCT TRIBUNAL

1. Function of the Tribunal

The Tribunal will conduct a hearing into any complaint or matter referred to it from the Board.

2. Members of the Tribunal

- 2.1 The Board shall have the power to select people for a panel consisting of:
- (a) industry experts;
 - (b) solicitors; and
 - (c) nominees of divisional committees who shall be selected in accordance with the rules.
- 2.2 Where a complaint or matter is referred by the Board to the Tribunal, the Registrar shall select from the panel the members to constitute the Tribunal to hear that complaint or matter.
- 2.3 The Tribunal shall comprise:
- (a) 2 industry experts
 - (b) 1 solicitor, who shall be chairman; and
 - (c) 1 nominee of the divisional committee of the division which the Registrar considers appropriate having regard to where the complaint or matter arose.
- 2.4 If any member of the Tribunal is unable whether on account of illness or absence or otherwise to perform her or his duties as a member:
- (a) the Tribunal may continue with the hearing in the member's absence; or
 - (b) the Registrar may in consultation with the existing Tribunal members select from the panel a replacement member of the Tribunal.
- 2.5 A person selected to act as a member of the Tribunal pursuant to paragraph 2.4 shall be from the same category in paragraph 2.3 as the member of the Tribunal in whose place the member acts.
- 2.6 No action shall lie against any member of the Tribunal in respect of any act, error or omission in the course of a hearing or anything done or said in relation to any complaint or matter before the Tribunal.
- 2.7 An act or finding of the Tribunal is not invalid by reason only of a defect or irregularity in the selection of a member.

3. Power of Tribunal

- 3.1 The Tribunal may refer any issue, question or matter which arises during the course of a hearing to an expert for determination or report as the Tribunal directs.

- 3.2 The Tribunal has the power, after conducting a hearing, to make such orders as it thinks fit, including orders that:
- (a) the complaint or manner be dismissed with or without a reprimand;
 - (b) the Member to whom the complaint or matter relates be reprimanded;
 - (c) a fine not exceeding \$50,000 be paid to the Association within a specified time;
 - (d) costs of the hearing be paid to the Association within a specified time;
 - (e) conditions be placed on the Member's membership;
 - (f) the Member's membership be suspended; and
 - (g) the Member's membership be cancelled.

RULE 7: NIBA INSURANCE BROKERS CODE OF PRACTICE

1. INTRODUCTION

- 1.1 These procedures have been developed by the National Insurance Brokers Association of Australia ACN 006 093 849 (**NIBA**) for the purpose of administering the NIBA Insurance Brokers' Code of Practice.
- 1.2 These procedures cover:
- (a) how a complaint for a breach of the Code may be made and resolved;
 - (b) the power of the Code Administrator to review a Member's compliance with the Code and resolve any alleged breach;
 - (c) the powers of the Code Administrator in relation to enforcement of the Code, the making of orders and imposition of sanctions for any breach of the Code.

2. DEFINITIONS

ASIC means the Australian Securities and Investment Commission or any regulatory authority which assumes its role.

Client means a client of a Member as defined in the Code that is able to make a complaint under the Code.

Code means the NIBA Insurance Brokers' Code of Practice as amended from time to time by NIBA.

Code Administrator means Insurance Brokers Disputes Limited ACN 006 093 849 or such other person appointed by NIBA from time to time to act on NIBA's behalf in administering the Code.

Complainant means the person making a complaint in relation to an alleged breach of the Code by a Member in accordance with these Code Procedures.

Complaint form means a Complaint form issued by the Code Administrator by which a person can make a complaint in relation to an alleged breach of the Code. **Compliance Manager** means the person appointed by the Code Administrator to act on its behalf as the Compliance Manager for the purpose of these Code Procedures.

External Dispute Resolution Scheme means an external complaints resolution scheme approved by ASIC for the purposes of the Corporations Act 2001 (Cth) such as the Insurance Brokers Disputes Scheme.

Member means a member of the Code as defined in the Code.

NIBA means the National Insurance Brokers Association of Australia ACN 006 093 849.

Referee means the person appointed by the Code Administrator to act on its behalf as the Referee for the purpose of these Code Procedures.

3. MONITORING AND ADMINISTRATION OF THE CODE

- 3.1 Compliance with the Code and its operation shall be monitored and administered by the Code Administrator.

4. REVIEW AND DEVELOPMENT OF THE CODE PROCEDURES

- 4.1 These Code Procedures will be updated as appropriate by NIBA and formally reviewed by NIBA as part of any review of the Code.

5. PROCEDURE FOR RESOLVING AN ALLEGED BREACH OF THE CODE

Reporting of alleged breaches of the Code

- 5.1 Only a Client may make a complaint concerning an alleged breach of the Code.
- 5.2 Enquiries concerning an alleged breach can be made to the Compliance Manager (Compliance Manager) by telephone, facsimile, mail or in person by appointment.
- 5.3 A Complaint form must be completed and provided to the Compliance Manager in order for an alleged breach of the Code to be reviewed under these Code Procedures. Where the Compliance Manager believes it is appropriate, the Compliance Manager will assist the Client in completing the form.
- 5.4 The conduct complained of by a Complainant must fall within the scope and application of the Code.
- 5.5 The Compliance Manager will endeavour to investigate and resolve the alleged breach of the Code in accordance with the Compliance Manager procedures referred to below.

Review of Code compliance by Code Administrator

- 5.6 The Compliance Manager may at any time in its discretion review Code compliance by a Member. The Member will co-operate with the Compliance Manager in its review of Code compliance. In particular, the Member must provide the Compliance Manager with access to such information and documents about the Member's Code compliance procedures and Code compliance as the Compliance Manager requests.
- 5.7 If in the review process the Compliance Manager believes that a Member has:
- (a) not provided the Compliance Manager with access to such information and documents about the Member's Code compliance procedures and Code compliance as the Compliance Manager requests; or
 - (b) breached the Code and has not or will not take reasonable steps to resolve the breach,
- the Compliance Manager will refer the alleged breach to the Referee in accordance with procedure set out under the heading "**Failure of the Compliance Manager to resolve alleged breach or review of the Code - automatic referral to the Referee by the Compliance Manager**" (See Clauses 5.21 and 5.22).

STEP 1 – RESOLVING AN ALLEGED BREACH OF THE CODE – THE Compliance Manager

Investigation and conciliation of alleged breach of the Code by the Compliance Manager

- 5.8 The Compliance Manager will, where appropriate, endeavour to resolve alleged breaches of the Code by conciliation.
- 5.9 In investigating and conciliating an alleged breach of the Code, the Compliance Manager is to act honestly and fairly having regard to what is reasonable in the circumstances, the principles and objectives of the Code, the law, relevant judicial authority and any other relevant insurance codes of practice.

Discretion of the Compliance Manager to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure

- 5.10 The Compliance Manager has a discretion to refuse to investigate, consider or continue considering an alleged breach of the Code which the Compliance Manager believes in all the circumstances to be inappropriate. For example where:
- (a) the Compliance Manager does not believe that the conduct complained of is covered by the Code;
 - (b) the alleged breach has not been referred to the Member's Internal Dispute Resolution Process as required by the Code;
 - (c) the alleged breach is also, or could be, the subject of a dispute covered by an External Dispute Resolution Scheme or any other relevant scheme or code;
 - (d) the substance of the alleged breach is, or has already been, the subject of consideration by a statutory body, a complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process;
 - (e) insufficient information has been provided by a Complainant to allow the Compliance Manager to properly consider the alleged breach;
 - (f) there are reasonable grounds to believe that the circumstances of the alleged breach may involve fraud;
 - (g) the alleged breach raises substantial issues of fact which would not be appropriate for the Compliance Manager to determine;
 - (h) the alleged breach raises significant issues of law or public policy which the Compliance Manager believes should be dealt with by legal process;
 - (i) the complaint concerning the alleged breach is frivolous or vexatious; or
 - (j) the Member's right to indemnity under a professional indemnity insurance policy may be seriously prejudiced if the matter was to proceed in the absence of consent by the relevant professional indemnity insurer and that insurer has refused or failed to provide an appropriate consent.
- 5.11 Where the Compliance Manager exercises the discretion referred to above, the Compliance Manager is required to provide written reasons for the decision to the Complainant and where appropriate, any steps which must be taken by the Complainant before the Compliance Manager will consider or continue to consider the alleged breach of the Code.

Right of appeal against exercise of discretion by the Compliance Manager to the Referee

- 5.12 If a Complainant informs the Compliance Manager that it does not agree with the Compliance Manager's decision, the Compliance Manager must provide to the Referee:
- (a) written reasons for the decision;
 - (b) such information and documents which the Referee considers will be relevant in assisting the Referee to decide whether the decision was appropriate or not; and
 - (c) such other information and documents which the Referee shall require.
- 5.13 If the Referee decides that the decision was not appropriate, the Compliance Manager must continue to consider the alleged breach of the Code subject to the relevant Complainant complying with any steps which the Referee may require them to take.
- 5.14 If the Referee decides that the decision was appropriate, the Referee will inform the relevant Complainant in writing of the reasons for the Referee's decision. The Complainant has no right of appeal in respect of the Referee's decision.

Request for information by the Compliance Manager

- 5.15 For the purpose of determining whether to investigate, consider, or continue considering any alleged breach of the Code by a Complainant, or reviewing Code Compliance, the Compliance Manager may request from a Member, the Complainant, or any third party, including any other Member or an insurer, documents or other information relevant to the alleged breach of the Code. The Member and Complainant must provide all such documents or information promptly.
- 5.16 The provision of any confidential documents or information by a Member concerning a person relevant to an alleged breach of the Code is subject to the Member receiving that person's consent to provide such documents or information.
- 5.17 Any documents identified as privileged or confidential will retain their privileged or confidential status and will not be provided to any person without prior written consent or except as required by law. A document identified as subject to a claim for privilege will not be copied or reproduced in whole or in part by the Compliance Manager, Referee, Code Administrator or NIBA.
- 5.18 Nothing revealed, offered or provided by Member or the Complainant in relation to a matter before the Compliance Manager may be used by the other party in subsequent proceedings or adjudication by a court, tribunal or other legal, complaint or dispute resolution process without the consent of the person who revealed, offered or provided it.
- 5.19 The Compliance Manager will notify the Member and the Complainant as soon as is reasonably possible if any document supplied by them to the Compliance Manager is subpoenaed by any person or entity, or is otherwise required to be produced to any person or entity.

Time for investigation or conciliation of an alleged breach of the Code

- 5.20 The investigation or conciliation of an alleged breach of the Code must be completed by the Compliance Manager within 20 working days of the date on which the Compliance Manager was notified in writing of the alleged breach of the Code, or such other time as the Compliance Manager decides is reasonable in the circumstances.

Failure of the Compliance Manager to resolve alleged breach or review of the Code - automatic referral to the Referee by the Compliance Manager

5.21

If:

- (a) an alleged breach of the Code is not resolved to the satisfaction of a Complainant or the Compliance Manager; or
- (b) a Code Review is not resolved to the satisfaction of the Compliance Manager or the Member,

the Compliance Manager will refer the alleged breach of the Code to the Referee within 20 working days of the date the relevant person confirms its dissatisfaction. The Compliance Manager does not have the power to make any decisions which bind a Member or the Complainant.

5.22

In referring an alleged breach of the Code or Code Review to the Referee, the Compliance Manager will provide the Referee with:

- (a) such information and documents which the Compliance Manager considers will assist the Referee in making a determination; and
- (b) such other information and documents, which the Referee shall require.

STEP 2 - RESOLVING AN ALLEGED BREACH OF THE CODE – THE REFEREE

Determination of an alleged breach of the Code by the Referee

The Referee will determine any alleged breach of the Code or Code Review, which has been referred to it by the Compliance Manager in accordance with procedure set out under the heading “**Failure of the Compliance Manager to resolve alleged breach or review of the Code - automatic referral to the Referee by the Compliance Manager.**” (See clauses 5.21 and 5.22 above).

5.23

In determining an alleged breach of the Code or Code Review, the Referee is to act honestly and fairly having regard to what is reasonable in the circumstances, the principles and objectives of the Code, the law, relevant judicial authority and any other relevant insurance codes of practice.

5.24

Any Complainant and a Member will have a right to present their case to the Referee. The form in which it is to be presented is at the discretion of the Referee. A Member will be informed by the Referee of any case made against them.

Discretion of the Referee to refuse to consider or continue considering an alleged breach of the Code which is inappropriate for the procedure

5.25

The Referee will have a discretion to refuse to consider or continue considering an alleged breach of the Code or Code Review which the Referee believes in all the circumstances to be inappropriate for this procedure. For example where:

- (a) the Referee does not believe that the conduct complained of is covered by the Code;
- (b) the alleged breach has not been referred to the Member’s Internal Dispute Resolution Process as required by the Code;
- (c) the alleged breach is also, or could be, the subject of a dispute covered by an External Dispute Resolution Scheme or any other scheme or code;

- (d) the substance of the alleged breach is, or has already been, the subject of consideration by a statutory body, a complaint or dispute resolution process, or adjudication by a court, tribunal or other legal process;
- (e) insufficient information has been provided by the Complainant to allow the Referee to properly consider the alleged breach;
- (f) there are reasonable grounds to believe that the circumstances of the alleged breach or Code Review may involve fraud;
- (g) the alleged breach or Code Review raises substantial issues of fact which would not be appropriate for the Referee to determine;
- (h) the complaint concerning the alleged breach is frivolous or vexatious; and
- (i) the Member's right to indemnity under a professional indemnity insurance policy may be seriously prejudiced if the matter was to proceed in the absence of consent by the relevant professional indemnity insurer and that insurer has refused or failed to provide an appropriate consent.

5.26 Where the Referee refuses to consider or continue considering an alleged breach of the Code, the Referee will inform the Complainant in writing of the reasons for the Referee's decision and where appropriate, any steps which the Complainant must take before the Referee will consider or continue to consider the alleged breach. The Complainant has no right to appeal the Referee's decision.

5.27 Where the Referee refuses to consider or continue considering a Code Review, the Referee will inform the Compliance Manager in writing of the reasons for the Referee's decision and where appropriate, any steps which the Compliance Manager must take before the Referee will consider or continue to consider the Code Review.

Request for information by the Referee

5.28 For the purpose of determining whether to consider, or continue considering any alleged breach of the Code or Code Review, the Referee may request from a Member, the Complainant, any third party, including any other Member or an insurer, documents or other information relevant to the alleged breach of the Code or Code Review. Any Complainant and the Member must provide all such documents or information promptly.

5.29 The provision of any confidential documents or information by a Member concerning another person relevant to an alleged breach of the Code or Code Review is subject to the Member receiving that person's consent to provide such documents or information.

5.30 Any documents identified as privileged or confidential will retain their privileged or confidential status and will not be provided to any person without prior written consent or except as required by law. A document identified as subject to a claim for privilege will not be copied or reproduced in whole or in part by the Referee.

5.31 Nothing revealed, offered or provided by Member or the Complainant in relation to a matter before the Referee may be used by the other party in subsequent proceedings or adjudication by a court, tribunal or other legal, complaint or dispute resolution process without the consent of the person who revealed, offered or provided it.

5.32 The Referee will notify the Member and the Complainant as soon as is reasonably possible if any document supplied by them to the Referee is subpoenaed by any person or entity, or is otherwise required to be produced to any person or entity.

Form of proceedings for determination of an alleged breach of the Code or Code Review by the Referee

- 5.33 Any proceedings will be at the absolute discretion of the Referee, it being intended that the Referee will function informally with a minimum of legal form and technicality.
- 5.34 In particular, the Referee will have absolute discretion in determining:
- (a) the time and place of meetings between the relevant parties involved;
 - (b) all evidentiary issues including any enquiries or investigations which the Referee may wish to undertake or expert advice or assistance which may be required. If expert advice is required, the expert's fees must be approved as being reasonable by the Code Administrator having regard to the nature of the alleged breach of the Code or Code Review; and
 - (c) whether the proceedings should be terminated prematurely for any reason.
- 5.35 The use of lawyers to represent parties will be discouraged but Complainants or other persons with language or other difficulties may be assisted by a third party.
- 5.36 Personal hearings will be held only if the Referee believes it is important to the fair and timely resolution of the alleged breach of the Code or Code Review.

Time for determination, orders, sanctions

- 5.37 The Referee will determine an alleged breach of the Code and Code Review and make such orders and impose such permitted sanctions as are appropriate, within a reasonable period of time. In most instances, it should be reasonable for a determination and orders to be made, and sanctions imposed, within 20 working days of the Referee having received all relevant information.
- 5.38 Determinations and orders made, and sanctions imposed, by the Referee will be given in writing along with reasons for the determination.
- 5.39 The Referee will as soon as possible inform any Complainant and the Member of the determination and orders made and sanctions imposed.
- 5.40 Subject to NIBA's prior consent, any determination made by the Referee which the IBD believes to be of importance having regard to the principles of the Code, will be made available and appropriately publicised by the IBD to Members, ASIC and such other bodies and persons determined by the IBD.

6. SANCTIONS IMPOSED BY THE REFEREE

- 6.1 The Referee has the power in respect of a breach of the Code or non compliance by a Member with a Code Review, to:
- (a) order rectification procedures;
 - (b) order a Member to comply with the provisions of the Code or a specified provision of the Code;
 - (c) order a Member to comply with the provisions of these Code Procedures or a specified provision of these Code Procedures;

- (d) order a Member to undertake through an independent and appropriately qualified person an audit of its compliance procedures;
- (e) order a Member to publish corrective advertising;
- (f) order a Member to undertake, or require their employees or agents to undertake, professional education of a specific type;
- (g) impose a timetable for compliance with the above orders by a Member;
- (h) publish details of any non compliance by a Member, subject to the approval of NIBA; and
- (i) recommend to NIBA that the Member be removed or suspended as a member of the Code or NIBA.

6.2 No monetary penalties may be imposed by the Referee.

Members are bound by the Referee's determination, orders and sanctions

6.3 Members are bound to accept any determinations of and comply with any orders made and sanctions imposed by the Referee.

Failure to comply with orders or sanctions imposed by the Referee

6.4 Where Members fail to accept a determination of, or comply with, orders made or sanctions imposed by the Referee, the Referee may make such other of the orders or impose further sanctions, as specified in clause 6.1 as are appropriate.

6.5 Before making or imposing such further orders or sanctions, the Referee will notify the Member in writing of its intention to do so. The Member will have the opportunity to make written representations to the Referee in respect of a Member's non-compliance with the orders and sanctions and the Referee will not proceed to make or impose any further orders or sanctions before the expiry of 20 working days from the date of the above notice being sent to a Member.

Acceptance of Referee's determination, orders and sanctions by Complainant

6.6 Whilst it is expected that a Complainant will accept the determination of and abide by any orders made and sanctions imposed by the Referee in relation to an alleged breach of the Code, non-acceptance will not prejudice the Complainant's right to legal action.

6.7 A Complainant has 20 working days as from the date the determination was issued in which to accept the Referee's determination and orders made, and sanctions imposed, in relation to an alleged breach of the Code. Acceptance will be in a form satisfactory to the Referee.

No right of appeal

6.8 There is no right of appeal under the Code in respect of a determination, orders made, or sanctions imposed, by the Referee.

7. REPORTING AND MONITORING BY THE COMPLIANCE MANAGER AND REFEREE

7.1 The Referee will prepare and provide quarterly reports and an annual report for the Code Administrator and NIBA on the operation of the Code.

- 7.2 The report of the Referee must address the following matters:
- (a) the number of alleged breaches under the Code dealt with by the Compliance Manager;
 - (b) the general nature of alleged breaches, including the type of activity complained of;
 - (c) the regional distribution of alleged breaches (where practicable);
 - (d) the number of complaints resolved and how they were resolved;
 - (e) the number of complaints that fell outside the Code and reasons why;
 - (f) the current caseload including age and status of current complaints;
 - (g) the time taken to resolve a complaint;
 - (h) the nature of systemic issues or serious breaches; and
 - (i) such other matters as may be required from time to time by the Code Administrator or NIBA.
 - (j) any Review of a Member's Code Compliance by the Administrator and the results of any such reviews.
- 7.3 The Referee may also address:
- (a) general observations on the operation of the Code and/or the Code Procedures.
 - (b) observations, which may be relevant to the provision of professional education to us.
 - (c) any suggestions for improvement.
- 7.4 The Compliance Manager and Referee will arrange for the development of a monitoring system to ensure the information to be reported on above can be provided by the Referee.
- 7.5 The IBD will prepare an annual report covering such matters reported on by the Referee pursuant to clauses 7.4 and 7.5 as it believes are of importance having regard to the principles of the Code and subject to NIBA's prior consent, will make this report available and appropriately publicise it to Members, ASIC and such other bodies and persons determined by the IBD.

8. LIABILITIES

- 8.1 NIBA, the Code Administrator, the Compliance Manager, the Referee and any of their representatives will not be liable to any person who is or was a Complainant or a Member, for any loss, damage or liability (including legal costs) arising directly or indirectly from or in any way connected with, performing their duties.

A breach of the Code does not give rise to any legal right or liability as between a Complainant and a Member.

DEFINITIONS

All terms defined in the Constitution and referred to in these Rules have the same meaning as is given to those terms in the Constitution. Other terms are defined as follows:

Broker Endorsement means a condition imposed on an Australian Financial Services Licence authorising the licensee to use the term 'insurance broker', 'insurance broking', 'general insurance broker' or 'life insurance broker' in the provision of Financial Services.

Constitution means the constitution of the Association adopted by the Board from time to time.

Continuing Professional Education means professional development and education requirements imposed on Members by the Board in these Rules.

Education Committee means the committee established by the Board to establish and monitor educational requirements of Members

Tribunal means the Code of Conduct Tribunal.

RULE 8 - APPLICATION OF NIBA CODE OF PRACTICE SCHEME TO PRINCIPAL MEMBERS AND CORPORATE ASSOCIATES

DEFINITIONS

Code Administration Deed means the Deed which sets out the obligations of NIBA, the Code Administrator and the Code Compliance Committee in relation to the Code as attached to this Rule.

Code Administrator means FOS or such other person appointed by NIBA from time to time to act on NIBA's behalf in administering the Code.

Code Compliance Committee means each member and alternate member of the code compliance committee established in accordance with the Code Administration Deed.

Existing NIBA Insurance Brokers Code means the NIBA Insurance Brokers Code of Practice as attached to the Board Resolution dated 6 February 2014 implementing the new Rule 8.

Existing NIBA Code Procedures means the 2014 NIBA Insurance Brokers Code of Practice Procedures as attached to the Board Resolution dated 6 February 2014 implementing the new Rule 8.

Updated NIBA Insurance Brokers Code means the updated NIBA Insurance Brokers Code of Practice as attached to this Rule.

Updated NIBA Code Procedures means the updated 2014 NIBA Insurance Brokers Code of Practice Procedures as attached to this Rule.

NIBA CODE OBLIGATIONS OF NIBA PRINCIPAL MEMBERS AND CORPORATE MEMBERS

The Board resolves that the:

- Code Administration Deed;
- Updated NIBA Insurance Brokers Code; and
- Updated NIBA Code Procedures;

will be in effect from 5 September 2014 and from that date will replace (where applicable) the:

- Existing NIBA Insurance Brokers Code; and
- Existing NIBA Code Procedures.

In all other respects Rule 8 remains unchanged.

Date Resolution made: 7th August 2014.