

# NACFB

HELPING FUND UK BUSINESS

**Code of Practice**

## Part A – Members

### Section 1 Objectives of the Association

#### 1.1 Primary Objectives

##### Vision

To be the professional association of choice for all commercial finance brokers and lenders servicing the needs of business borrowers and property investors.

##### Mission

We will partner our members to foster professional expertise. We will embrace the highest industry and regulatory standards, including engagement with our stakeholders, to help your business prosper.

#### 1.2 Secondary Objectives

1.2.1 To encourage professional and social interaction between its Members.

1.2.2 To engage in discussions with lenders and their representative organisations to secure advantageous trading terms or other benefits to Members and their Clients.

1.2.3 To achieve recognition by Government, lenders, other professional bodies, the business community and the public, of the Code's objectives and of Members' professionalism.

1.2.4 To monitor any Bill, Act of Parliament, Regulation or Order as relevant to commercial lending or finance broking or related areas and to make submissions to the appropriate authorities in respect of any such material. This will include actual and prospective legislation in the United Kingdom, including secondary legislation, orders and regulations and actual and prospective rules and guidance of the FCA and any other regulatory authority within the United Kingdom.

1.2.5 To arrange for information concerning the services and professionalism of commercial finance brokers to be made available to the business community and to the general public by way of books, pamphlets, posters, letters, advertisements, the internet or through the media.

1.2.6 To engage in or support programmes for the training and education of Members or their staff.

1.2.7 To co-operate with and to establish working relationships with any kindred associations or organisations.

1.2.8 To engage in all such other activities that further the primary objectives of the Association as the Board, acting on behalf of the Association, may decide from time to time.

### **1.3 The Code of Practice**

1.3.1 The NACFB Code of Practice lays out the framework under which Members and Member firms conduct their business. The Code applies to all members of the Association.

1.3.2 This Code of Practice should be read in conjunction with the provisions of the Constitution of the Association. In the event that a conflict arises in the interpretation of the Code or the Constitution the provisions of the Code of Practice will prevail.

1.3.3 The expression “Code of Practice” shall be deemed to include reference to the contents of this document and to the complaint and disciplinary procedures and other policies, procedures and processes that underpin the Code of Practice. Details are published on the Association’s website or can be obtained from the main office of the Association.

1.3.4 A Member shall be deemed to have read, understood and accepted the Constitution, Principles of Conduct and the Conduct Guidelines at the time their application for Membership is approved.

1.3.5 The Code of Practice and Conduct Guidelines will be reviewed regularly and notice of changes will be made to Members in accordance with the procedures stipulated in the Constitution.

1.3.6 The Principles of Conduct and the Conduct Guidelines are intended to determine the standards of integrity, professionalism, conduct and practice expected of the Association’s Members and for the further protection of the consumer.

### **1.4 Confidentiality**

1.4.1 The Association will not without the consent of the Member, disclose information obtained in the course of business conducted between the Association and its Members, such as audits or complaint handling, other than that which may reasonably be required in the day to day running of and/or business of the Association.

1.4.2 The Association will inform Members in the event of specific requests for information received from external and or regulatory bodies, required by law or otherwise, and when necessary seek the appropriate permission to disclose.

## Section 2 Principles of Conduct

2.1. All member firms and their staff must conduct themselves in a professional manner and with a level of integrity that preserves their own reputation and that of the Association.

2.2 In carrying out their business, members must exercise and be able to demonstrate appropriate levels of skill, knowledge and diligence in their dealings with Clients, lenders and third parties.

2.3. Member firms must at all times adhere to all regulatory requirements appropriate to their business activities.

2.4. Member firms must organise their business so that they have, and are able to demonstrate, that they have adequate systems and controls, including record keeping, as well as appropriate levels of risk management in order to ensure that the business and its Clients' affairs are protected at all times.

2.5. Member firms must put the fair treatment of Clients at the centre of their business activities. In arranging deals and giving advice, a firm must be able to demonstrate that their recommendations are suitable and appropriate to their Clients' requirements.

2.6. Members must ensure that communications with Clients are always clear, not misleading and delivered in such a way that they can evidence the communication has been understood.

2.7. Members must deal with the association in an open and honest way and when asked, cooperate with any reasonable requests from the Association.

2.8. Members must seek to identify conflicts of interest in their business activity and undertake to act transparently keeping the interests of Clients at the centre of their considerations.

2.9. Members must adhere to the guidelines contained in Section 3 of this Code of Practice and the requirements of the Association's compliance and disciplinary processes and procedures.

## Section 3 Conduct Guidelines

Below is a set of core conduct rules that underpin each of the principles in Section 2.

### 3.1 Principle 2.1

*All member firms and their staff must conduct themselves in a professional manner and with a level of integrity that preserves their own reputation and that of the Association*

3.1.1 Members must not seek, or acquire, business using methods which are (or are likely to be reasonably perceived to be) oppressive, dishonest, deceitful, misrepresentative or in any other manner contrary to the aims or standards of the Association.

3.1.2 Members must not conduct their business in such a way as to give the Association (acting through its boards and committees) reasonable cause to believe that the Member's actions:

- i. bring, or are likely to bring, the Association and its membership into disrepute;
- ii. actually, or are likely to, unreasonably prejudice or compromise the reputation of the Association and the Membership; or
- iii. actually, or are likely to, unreasonably prejudice or compromise the integrity of the Association and its membership.

3.1.3 Members must only offer Clients terms and conditions for the provision of services that are fair and reasonable for the services delivered and ensure fees and commissions received are commensurate with industry 'standards'.

3.1.4 Members must represent Clients and all other third parties with the utmost good faith and with a standard of competence, fairness and courtesy consistent with the Member's professional status.

3.1.5 Members must at all times respect the confidentiality of information supplied to them in the course of their business including principles laid down in prevailing statutory data protection legislation.

3.1.6 Members must not seek to exploit for their own or any other person's purposes confidential information gained from the Client other than for the intention it was originally disclosed.

3.1.7 Members must at all times comply with prevailing legislation in the area of Financial Promotions and recognised advertising standards. Members also must not advertise or promote their services in such a way as to:

- i. cause, or potentially cause, offence
- ii. attract reasonable charges of poor taste; or
- iii. attract reasonable charges of misrepresentation.

3.1.8 Members must recognise and understand when and when it is not acceptable or allowable to use the NACFB logo and brand. Authorised users of the Marks of NACFB shall be Member firms of the NACFB, their registered individuals and Appointed Representatives whereby the Member firm acts as a Principal.

Registered Patrons of the Association are also entitled to use the NACFB logo.

3.1.9 Members must ensure that their staff and any Appointed Representative for which they are Principal are fully aware of the Member's responsibilities under this Code of Practice. The Member shall be deemed to be liable for any breach of these Principles and Guidelines by their staff or by such Appointed Representative and shall be accountable to the Association in this regard.

3.1.10 A Member firm shall endeavour to ensure that each of its Appointed Representatives and commercial broking fee earners are registered with the Association.

3.1.11 A Member will not become or remain Principal to an Appointed Representative if that firm, not being a Member, fails to act in line with this Code of Practice.

3.1.12 If a Member is not authorised by the FCA for carrying on the activities of credit broking nor of arranging regulated mortgage contracts, the Member must adopt the "Unregulated Member Business Practice Policy" in the form stipulated by the Association (and any amendment of it or substitutions for it).

3.1.13 A Member must appoint a member of its management to be responsible for monitoring and reporting to the Association on the firm's compliance with this Code of Practice as required from time to time.

3.1.14 Members must ensure that their firm maintains sufficient financial resources in order to secure the continuing solvency of their business.

## 3.2 Principle 2.2

***In carrying out their business, Members must demonstrate appropriate levels of skill and knowledge in order to be diligent in their dealings with Clients, lenders and third parties***

3.2.1 Members must at all times use their best endeavours to only refer commercial finance proposals to reputable lenders and funders.

3.2.2 Members must at all times use all due diligence, skill and exercise reasonable care whilst effecting their Clients' instructions.

3.2.3 Members must keep their Clients properly and regularly informed and respond promptly to all reasonable requests for information.

3.2.4 Members must keep full records of their dealings with Clients and be able to evidence that they have at all times be thorough and have exercised an appropriate level of skill and knowledge in delivering the best possible outcome for the Client.

3.1.15 Members must adopt an appropriate training and competence scheme for their business and ensure competence is maintained through the completion of an annual minimum of 35 hours continuing professional development (CPD), including completion of the Mandatory Compliance Modules available on My NACFB or equivalent.

### 3.3 Principle 2.3

***Member firms must at all times adhere to all regulatory requirements appropriate to their business activities***

3.3.1 Members, irrespective of whether they are an Authorised Person or Appointed Representative, must comply with:

- i. FSMA and all other subordinate legislation and;
- ii. the rules and guidance of the FCA; and
- iii. where appropriate, other relevant regulatory authorities.

### 3.4 Principle 2.4

***Member firms must organise their business in such a way that they can demonstrate that they have adequate controls, including record keeping and systems and appropriate levels of risk management in order to ensure that the business and its Clients' affairs are protected at all times***

3.4.1 Members must be able to evidence that they have adopted appropriate systems and controls through policies and processes in order to ensure:

- i. Clients are adequately protected;
- ii. all requirements of this Code of Practice are complied with; and
- iii. all regulatory requirements appropriate to their business activities are complied with.

3.4.2 Members must maintain proper Client and business records for the minimum statutory period(s) prescribed from time to time of all activities undertaken on behalf of a Client.

3.4.3 If a member holds Client monies or acts in any way as a custodian of assets the Member must have the appropriate authorisation so to do and at all times take steps to ensure Client assets are fully protected.

### 3.5 Principle 2.5

*Member firms must put the fair treatment of Clients at the centre of its business activities. In arranging deals and giving advice a firm must be able to demonstrate that their recommendations are suitable and appropriate to their Clients' requirements*

3.5.1 Members must from the outset of their initial dealings with Clients ensure that an appropriate level of disclosure regarding services and fees has been made to Clients and be able to evidence that this has been done and that.

3.5.2 Members must take reasonable steps to ensure that the Client understands any agreement they enter in to and all recommendations provided by the Member.

3.5.3 Members must provide Clients with information about how to make a complaint.

3.5.4 Members must collect an appropriate level of Client information and be able to evidence that this has been done.

3.5.5 Members must use their best endeavours to ensure that they have fully researched the market for the most appropriate solution for their Clients in all cases and be able to evidence the work undertaken in this respect.

3.5.6 Members must provide solutions for their Clients that are suitable for their needs.

3.5.7 Members must ensure that advice given to Clients is impartial and objective and is free from any external or adverse pressures or interest which would compromise or weaken the Member's independence or relationship with their Client.

3.5.8 Members must hold and use Client's personal data in accordance with applicable legislation and for no longer than provided for in that legislation and to dispose of time expired documents in a secure way.

3.5.9 Members must take appropriate steps to comply with anti-money laundering and the prevention of financial crime legislation.

3.5.10 Members must take steps to ensure their business and dealings with Clients is appropriately protected from threats of cybercrime.

3.5.11 Members must not give any undertaking, or other assurance, to a Client or other third party which knowingly cannot be discharged.

3.5.12 Members must avoid the charging or collection of any commission or other payment which might be perceived, or construed as being, excessive or incompatible with such prevailing terms of business as are generally applied in the industry.

### 3.6 Principle 2.6

***Members must ensure that communications with Clients are always clear, not misleading and delivered in such a way that they can evidence understanding***

3.6.1 Members must, prior to the acceptance of a Client's instructions, submit a memorandum of instructions in writing summarising the material terms on which an approach to a funding source is to be based and setting out any fee payable by the Client to the Member including how and when the fee is to be paid and in what circumstances it may be refundable.

### 3.7 Principle 2.7

***Members must deal with the Association in an open and honest way and when asked cooperate with any reasonable requests from the Association***

3.7.1 Members must respond promptly and comprehensively to requests, whether written or oral, for information requested by the Association in respect of complaints lodged against the Member or for any other purpose reasonably required by the Association or its Compliance/Complaints Committee, such as periodic compliance audits.

3.7.2 Members must ensure annual membership fees for all Member categories have been paid on or before the date from which Membership applies.

3.7.3 The Association may conduct an audit of each Member from time to time in order to monitor compliance of the Membership with this Code of Practice. The Association may engage or appoint another firm or company to carry out such audits on its behalf. Members shall provide all such information and cooperation as the Association shall reasonably require in order to carry out such audits. Audits may take the form of a visit or a desktop review of management information and documentation.

3.7.8 Accepting a request by the Association to comply with a Code of Practice audit is a mandatory requirement under this Code. Non-compliance with such requests will be subject to the disciplinary processes of the Association.

### 3.8 Principle 2.8

***Members must seek to identify conflicts of interest in their business activity and undertake to act transparently keeping the interests of Client at the centre of their considerations***

3.8.1 Members must disclose in writing to their Client any existing or known conflict of interest or any circumstances which might give rise to a conflict of interest.

### 3.9 Principle 2.9

*Members must adhere to the guidelines contained in Section 3 of this Code of Practice and the requirements of the Association's compliance and disciplinary processes and procedures published on the Association's website*

3.8.1 Members must ensure that their staff and any Appointed Representative of which they are Principal are fully aware of the Member's responsibilities under this Code of Practice. The Member shall be deemed to be liable for any breach of these Rules by their staff or by such Appointed Representative and shall be accountable to the Association in this regard.