

Response Form
for the
Consultation Paper of the
CFA Institute Code of Ethics and Standards of Professional Conduct

The Standards of Practice Council (SPC) is considering recommending to the CFA Institute Board of Governors a number of changes to the CFA Institute Code of Ethics and Standards of Professional Conduct (Code and Standards). These potential changes, and the committee's rationale for why these changes may be necessary, are set out in a Consultation Paper. The SPC is seeking public comment on the potential revisions. Your input will help the SPC shape its final recommendations to the Board of Governors on revisions to the CFA Institute Code and Standards.

Providing Feedback

Comments should be provided in this designated response form and submitted to standards@cfainstitute.org. This Consultation Paper and the designated response form are available [here](#) on the CFA Institute website.

The deadline for providing feedback is 8 July 2022. **Comments received after 8 July 2022 will not be considered.**

A summary of the comments will be made publicly available at the conclusion of the comment period. Identifying information or attribution of the specific comments made by those responding to the Consultation Paper will NOT be made public.

Guidelines for submission

Comments are most useful when they:

- directly address a specific issue or question,
- provide a rationale and support for the opinions expressed, and
- suggest alternative solutions in the event of disagreement.

Positive comments in support of a proposal are equally as helpful as those that provide constructive suggestions for improvement.

Requirements for submission

For comments to be considered, please adhere to the following requirements:

- Insert responses to numbered questions in the designated areas of the response form.
- Assign a unique file name to your response form before submitting.
- Provide all comments in English.
- Submit the response form as a Microsoft Word document.
- Submit the response form to standards@cfainstitute.org by 5:00 PM E.S.T. on 8 July 2022.

General Information (required)

Respondent: <i>(Please enter your full name if you are submitting as an individual or the name of the organization if you are submitting on behalf of an organization.)</i>	CFA UK
Stakeholder Group: <i>(Please select the stakeholder group with which you most closely identify.)</i>	CFA Institute Member/Charterholder
Region: <i>(If you are submitting as an individual, please select the region in which you live. If you are submitting on behalf of an organization and the organization has a significant presence in multiple regions, please select "Global". Otherwise, please select the region in which the organization has its main office.)</i>	Europe
Country: <i>(If you are submitting as an individual, please enter the country in which you live. If you are submitting on behalf of an organization, please enter the country in which the organization has its main office.)</i>	United Kingdom

QUESTIONS FOR EACH PROPOSED CHANGE

1) Adding a General Transparency Standard

1. Is the new standard too onerous or does it set a bar that is too high for professional conduct? Or, does the new standard not go far enough in requiring the expected ethical conduct of investment professionals?

No, we do not believe that too high a bar is being set.

We note that: Standard VI(A) already calls “for full and fair disclosure of all matters that could reasonably be expected to impair their independence & objectivity or interfere with respective duties to their clients, prospective clients, and employer”. And that “Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively”.

We do not see why such conduct should not also be expected in dealings with regulators, colleagues, service providers and indeed competitors provided that the client or prospective client’s interests is being prioritized at all times.

2. Should investment professionals be expected to be transparent with parties other than their clients?

Absolutely - provided it does not compromise firstly, client and, secondly, employer interests.

3. Is the new standard too vague or aspirational in nature, making it difficult to comply with or enforce?

Well-written accompanying examples and guidance will go a long way towards illustrating what good and poor transparency looks like within certain defined parameters, however, it will be impractical / impossible to design general guidance that serves for all eventualities. Within defined parameters, examples and guidance would provide useful clarity around definitions and practice enabling the standard to be tested and sanctions to be applied.

4. Is the conduct addressed by the new standard primarily undertaken by investment professionals in an individual capacity or does the new standard more directly apply to firm-level conduct? Can individual members be expected to influence the employers on these matters?

Very definitely individual. If a CFA member or candidate feels that a firmwide communication is insufficiently transparent then CFA members and candidates should fill in the gaps in their side communications (verbal or covering letters/emails) certainly with clients and in most cases with other parties providing this is not disloyal to their employer. Hence our answer to question 2 above.

5. Is the potential language of the new standard clear in establishing the conduct that is required?

Yes. We would include the word “relevant” alongside the other descriptors.

6. What other comments do you have for this new standard?

We are unclear as to whether it is being intended as a new “eighth standard” or whether for example it should sit under Standard I Professionalism as a new limb (E). We prefer the latter.

2) Revising the Conflict of Interest Standard to Address Avoiding Conflicts of Interest

1. Is the revised standard too onerous or does it set a bar that is too high for professional conduct? Or, does the revised standard not go far enough in requiring the expected ethical conduct of investment professionals?

No, we do not believe that too high a bar is being set. We regard this really as the minimum requirement and one which reflects existing requirements already in place for many other professions. Sadly, we believe our profession is often poor at acknowledging, or even recognising, conflicts. Conflicts will always exist and acknowledging them is the first step to managing them. Any ethical standard, such as the CFAI one, needs to encourage people to look beyond just what is proscribed in regulation and actually apply professional judgement to where conflicts may and do arise.

The wording “when feasible” presents the risk that CFA candidates or members can always with hindsight claim that it was not feasible to avoid the conflict. We would prefer the wording “unless it is evidently not feasible” and “take all necessary steps to”. This combination is stronger and puts the burden of proof on the CFA member or candidate to justify why it was not feasible to avoid the conflict.

2. Is the revised standard too vague or aspirational in nature, making it difficult to comply with or enforce?

The words “when feasible” will need to be supported by well-written guidance and examples.

The revision will be challenging for CFA members and candidates to comply with in some instances as it will require them often to decline doing something for a supervisor or a client and potentially in circumstances where a full explanation cannot be given as that would involve a breach of confidentiality.

To evidence that it was feasible to avoid a conflict may be challenging and so enforcement of the standard as proposed also may prove difficult. Adding the “all necessary steps” language raises the bar for the evidence that would need to be forthcoming from the CFA member or candidate if they were to prove that they could not avoid the conflict.

3. Is the potential language of the revised standard clear in establishing the conduct that is required?

As stated above, the words “when feasible” leave a lot of room for subjectivity and interpretation.

4. Is the phrase “when feasible” straight-forward or is there better terminology for this concept?

Please see our response to questions 1&2.

5. Is the conduct addressed by the revised standard primarily undertaken by investment professionals in an individual capacity or does the revised standard more directly apply to firm-level conduct? Can individual members be expected to influence the employers on these matters?

It can occur in an individual capacity where a given activity conflicts with an individual's interests outside of work. Equally, it can apply to cases where an employer asks a CFA member or candidate to perform a certain task which conflicts with the interests of either another employee or a client.

Where an employee is:

- *able to be fully transparent with their employer about the reasons as to why there is a conflict then it is reasonable for employers to give these reasons a fair hearing and accept them or suggest a compromise route which protects the CFA member or candidate's integrity.*
- *unable to adequately explain the conflict, it may not be reasonable to expect the employer to fully understand it, especially if the employer does not have appropriate procedures in place for handling these situations.*
- *Able to be fully transparent with their employer about the reasons as to why there is a conflict but the employer is unsympathetic and tells them to 'get on with it anyway', the CFA member or candidate needs effective guidance about what they should do in that circumstance.*

6. What other comments do you have for this revised standard?

We presume the proposal is to amend Standard VI(A)

3) Adding a Standard Requiring Disclosures Relating to Nature of Services and Fees, Costs, or Compensation

1. Is the new standard too onerous or does it set a bar that is too high for professional conduct? Or, does the new standard not go far enough in requiring the expected ethical conduct of investment professionals?

No, we do not believe that too high a bar is being set. Whether it goes far enough depends on the definition and understanding of the term "effective disclosures". The standard will therefore need to be supported by well-written guidance and examples.

2. Is the new standard too vague or aspirational in nature, making it difficult to comply with or enforce?

Provided the guidance is well-written and includes examples, this proposed new standard should not be difficult to comply with.

Where fee agreements are concluded in writing this proposed new standard also should not be difficult to enforce. Difficulties may well emerge where agreements are made verbally. We believe it should be made clear that for a verbal communication to become an "effective disclosure" it should always be followed up in writing as soon as possible.

3. Is the potential language of the new standard clear in establishing the conduct that is required?

As stated in our responses to questions 1 and 2 above, "effective disclosures" leaves quite a lot to interpretation unless the associated guidance is clear and exhaustive. We note there are many potential fee structures and arguably there needs to be an example to illustrate each one. This is about fee structures as well as quantum. The guidance should also illustrate the level of transparency

required in order that clients can determine how different services, when bundled, can drive fees and charges.

4. Is the conduct addressed by the new standard primarily undertaken by investment professionals in an individual capacity or does the new standard more directly apply to firm-level conduct? Can individual members be expected to influence the employers on these matters?

This comes up generally in conducting firm and not individual business. However, depending on a firm's governance arrangements fee structures might be proscribed by firm procedures or left for individuals to determine either completely or within certain parameters. Ultimately a CFA member or candidate may be unable to influence a fee structure of the disclosure around a given fee structure, but they should be able to raise questions relating to it and evidence that they did so retrospectively if needed.

5. What other comments do you have for this revised standard?

We would like to reference CFA UK's report, published in 2019, on 'Innovations in Retail Fund Fees' (<https://www.cfauk.org/professionalism/research-and-position-papers/innovations-in-retail-fund-fees#gsc.tab=0>)

4) Supplementing the Supervisory Standard to Require Senior Leaders to Promote Ethical Culture

1. Does the revised standard fill a gap in the current Code and Standards or is the change redundant to existing standards?

For culture setting – yes; for culture exemplification (see below) it could possibly be considered to duplicate I(D) Misconduct.

2. Is the concept of “a culture of ethical conduct” straightforward or is it too vague or aspirational in nature, making it difficult to comply with or enforce?

We believe that this concept is widely recognised in the UK financial services industry. However, despite the SM&CR regime being in place and all the lessons that have had to be learned following the Global Financial Crisis we are not convinced that this concept is universally well understood. Within global finance, we would be less confident of a universal good understanding of what this means, especially beyond CFA members and candidates.

3. Is the concept of “senior leader” straight forward or is it too vague?

As written, we consider it too vague. We would distinguish between “culture setters” and “culture exemplifiers”.

In the UK, the FCA has introduced the Senior Managers & Certification Regime which places a similar culture setting responsibility on specific roles and only the most senior individuals within a firm.

A ‘supervisor’ could have just one supervisee. In that example, the supervisor should be exemplifying (cascading and living out) a culture set by other more senior individuals. They are not setting culture themselves (and it could be counter-productive and confusing if they tried to).

“Middle leaders” supervising larger teams can set ‘sub-cultures’ within their teams. We would expect that these ‘sub-cultures’ have a large degree of overlap with that set by the senior leaders of their organization.

4. Would this change be too onerous, or does it set a bar that is too high for professional conduct?

We do not consider this too onerous; indeed, the GFC showed that it is vital.

We do not believe it sets the bar too high, provided it is clear which leaders are considered responsible for setting culture and which for cascading and living by it. Failure to do the first could be considered a breach of the proposed new standard; failure to do the second might be considered a breach of I(D) Misconduct.

5. Is establishing an ethical culture primarily undertaken by investment professionals in an individual capacity or does the revised standard more directly apply to firm-level conduct?

It applies to both in our view; but is primarily individual. We believe senior leaders have a duty to promote a culture of ethical conduct and integrity beyond their firm into the financial sector as a whole. It is not very definitely not tied to the firm in our opinion.

6. What other comments do you have for this revised standard?

Measuring culture is an inherently difficult and ultimately qualitative exercise. However, proving that senior leaders are making reasonable efforts to establish and promote a culture of ethical conduct and integrity within their firm” should not be. Nor should it be difficult to prove cases where ‘middle-leaders’ have failed to promote a culture of ethical conduct and integrity through their own actions though we suspect these will look like matters of I(D) Misconduct.

We believe that the standard is very valid for the real senior leaders of firms who unfortunately are very often not directly involved in the setting of policies and procedures, but nearly always directly involved in determining compensation, risk and strategy. We believe that should be considered in the guidance.

We would like to reference CFA UK’s report, published in 2020 with input from CFA Institute, on ‘Codes, Standards & Regulations’ (<https://www.cfauk.org/professionalism/research-and-position-papers/codes-standards-and-regulations#gsc.tab=0>)

We believe aspects of the [CFA Institute’s DEI Code](#) could be referenced in the guidance.

5) Establishing an Exception to the Confidentiality Standard to Protect Impaired Clients

1. Is adding this exception to the confidentiality standard appropriate?

Yes and it reflects leading industry practice.

2. Is the potential language of the revised standard clear in establishing the conduct that is required?

Yes.

3. Is the concept of “diminished mental or cognitive capacity” straightforward or is it too vague?

The concept is straight-forward. However, it is a matter often requiring expert medical input to determine and it should not be expected that CFA members and candidates are able to determine this routinely. It is reasonable to expect CFA members and candidates to raise doubts or have suspicions and to act on these appropriately by encouraging that the expert medical input is sought in the right way. We suggest that the standard always requires CFA members or candidates to refer to their supervisor before breaching confidentiality obligations and in the vast majority of cases follow their supervisor's directions as to whether to breach confidentiality or not. In certain cases it may be advisable to wait for further evidence of "diminished mental or cognitive capacity" before doing so.

4. Is the revised standard too onerous or does it set a bar that is too high for professional conduct? Can investment professionals be expected to evaluate the mental and cognitive capacity of their clients?

It does assume that the CFA member or candidate works within a firm that has effective procedures for handling impaired clients and permits a breach of confidentiality in these circumstances. For example, that clients are required to regularly (annually) update their contact and next-of-kin details etc.

5. What other comments do you have for this revised standard?

The guidance should recognise that relatives very often are the channel through which medical expertise for a potentially impaired client can be accessed but that these relatives also may have a conflict of interest in taking control of that impaired client's finances and therefore should not be passed on that information even in the case of evident impairment.

We wish to reference you to a fairly recently Finalised Guidance note FG21/1 from the FCA (<https://mail.aol.com/webmail-std/en-qb/suite>) which sets out our regulator's expectations of firms with regard to handling and treatment of impaired clients. Section 3, in particular, provides useful guidance as to the expected conduct of UK finance professionals in identifying clients with impairments and responding to any consequent needs.

6) New Standard Specifically Requiring Competency

1. Does the new standard fill a gap in the current Code and Standards or is the change redundant to existing requirements of the Code and Standards?

No. It is already covered in the Code; it could be emphasized by being added to the Standards, but we foresee complications with this (see below). We also note an overlap with I(A) Knowledge of the Law.

2. Is the concept of "competency" straightforward? Or would a competency standard be too vague or aspirational in nature?

No, we do not consider it straight-forward. We believe 'Professional Development' would be clearer though it too will be difficult to measure effectively.

Whilst incompetency is mostly easy to identify, competency can be far less straight-forward. It is unclear from the proposed wording where the first stops and the other begins, in other words, where 'the Baseline' sought actually is. Well-written guidance could help but we foresee this could prove to be divisive and controversial to document.

A CFA member or candidate's competency to 'fulfil their role' will usually grow the longer they perform that role.

- **Would the guidance allow for less competency for CFA members and candidates which have recently moved to new roles or positions?**
- **Would the guidance allow for how effective or not a CFA member or candidate's supervisor(s) was/were?**

We consider the mere attendance of X hours of 'class-room' tuition, participation in industry panels, writing, researching and reviewing academic papers or even the successful passing of certain exams as no guarantee on their own or evidence of competency 'to fulfil a role' within a firm. Whilst we regard all the above examples as positive personal development activities, and we would encourage them, competency to 'fulfil a role' can really only be judged by the CFA member or candidate's supervisor and firm.

3. Is the potential language of the new standard clear in establishing the conduct that is required?

Please see our response to question 2 above.

4. What other comments do you have for this new standard?

If introduced, we presume this would be as a new limb under Standard I Professionalism?

CFA UK would support a requirement for members and candidates to commit to ongoing professional development and a commitment to maintain competence – which are also requirements of most professional bodies. However, we can see that the measurement and enforcement of this could be challenging.

7) Consolidating and combining certain Standards

1. Should the requirements of the performance presentation standard be subsumed in another standard or remain as a separate standard?

The proposal to subsume III(D) within I(C) and/or a new I(E) Transparency standard makes sense.

GIPS and the separate CFA Institute Publication, "Principles of Investment Performance Reporting" are of course the golden source in this area and should be clearly referenced in the guidance.

2. Should the requirements of the additional compensation standard be subsumed in another standard or remain as a separate standard?

Additional compensation is a leading example of a conflict of interest; as such, we would not object to it being retained as a separate VI Conflicts of Interest standard to underline its relevance.

3. Should the requirements of the disclosure of referral fees standard be subsumed in another standard or remain as a separate standard?

Referral fees / introducer fees are another leading example of a conflict of interest; as such, we would not object to it being retained as a separate VI Conflicts of Interest standard to underline its relevance.

4. What other comments do you have for these potential changes?

No further comments.

OVERALL / SUMMARY COMMENTS

Are there other ways in which the Code and Standards should be revised that are not reflected in these potential changes?

Whilst a firm will have its own recruitment procedures, we think the Standards could include a new standard, for supervisors under IV Duties to Employer, to run fair recruitment processes. We believe there are broad-based principles relating to recruitment which could be helpfully codified for CFA members and candidates. CFA Institute's DEI Code might also be referenced.

CFA UK is currently developing a prototype 'Handbook for Sustainable Investment' which seeks to provide CFA members and candidates with guidance on the conduct of Sustainable Investment practice as distinct to general investment practice. We are keen to share this work with CFA Institute and other member societies.

Overall / summary comments on the Consultation Paper:

The paper is well written and the questions in the form have been helpful for us to organise our thoughts around the different well-reasoned proposals.

In general, we would encourage efforts to provide support and guidance to CFA members and candidates in adhering to the standards and making the right decisions, as well as sanctions when they don't. It can be very challenging, especially in the early stages of a career, to navigate conflicts between what these standards require, and what may be asked by supervisors or their firms. Commercial interests can sometimes appear to conflict with these standards – so suggestions about practical ways of navigating these issues would be welcome. This could involve initiatives including:

- ***Encouraging firms to sign up to the C&S and making this information available to members and candidates within those firms, so that those members and candidates can demonstrate that the conflict is at the firm level rather than feeling like a troublemaker or isolated in responsibility.***
- ***Providing example wording for how to raise an apparent breach or conflict of the C&S in a way that seeks to reconcile and problem-solve.***
- ***Encouraging senior members and candidates in firms to make themselves available to junior members and candidates for informal 'coffee' type meetings as a sounding board for whether they are having issues upholding the C&S and/ or guidance about navigating internal issues or politics that may be proving problematic.***

The above suggestions represent some high-level ideas that would need further discussion and development but recognize the realities of the obstacles and challenges to upholding these standards in every day working life. This support for members and candidates in adhering to them would be welcome and we would be happy to discuss this further if of interest.