

CODES, STANDARDS AND REGULATIONS

and their respective

ROLES IN PROVIDING
A FRAMEWORK FOR
EXPECTED CONDUCT AND BEHAVIOUR IN
GLOBAL FINANCIAL MARKETS

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Foreword from The Chief Executive

This project was inspired by a lively debate that members of our Professionalism Steering Committee had over the Financial Conduct Authority's (FCA) consultation Paper CP17/3. This had proposed (i) a framework for regulatory recognition of voluntary codes and (ii) the extension into unregulated markets of Principle 5 of the FCA's Principles for Businesses (that a firm must observe proper standards of "market conduct"). The different and complementary roles of codes on the one hand and regulations on the other are at the heart of this debate.

Both of the FCA's proposals had their origins in the need to prevent a repeat of the LIBOR-market and FX-market rate and price-fixing conduct scandals uncovered in the banking sector during 2012 and 2013 respectively. Both proposals therefore were directly concerned with unregulated markets – i.e. those markets beyond the perimeter of the FCA's regulatory rule book – yet within which many FCA regulated firms have significant activities. The regulator has an awkward position here being responsible for regulating the conduct of firms within markets which themselves are unregulated.

As an initial step, the FCA published PS18/18² in which it explained how it was minded not to extend Principle 5 to unregulated markets and would keep under review whether together the code recognition scheme and further extension of SM&CR were effective on their own.

Then, a few months later via CP18/39³ the FCA announced its recognition of the FX Global Code and the UK Money Markets Code on the code recognition pages of its website.

With the Senior Managers and Certification Regime (SMCR) now bedding down in the banking sector and being rolled out into the asset management sector, this paper asks what are the respective roles of codes, standards and regulations? How are they exactly defined and how can they complement each other? Most critical of all, how should today's newly appointed senior managers use codes and standards to help them meet their legal responsibilities under SMCR?

This paper, the product of a working group led by Samuel Betha, CFA, addresses all these questions. We look forward to your considered feedback on its conclusions.

Will Goodhart
Chief Executive, CFA UK

Executive Summary

Codes, standards and regulations respectively each have a role to play in steering best practice and conduct in the financial services profession. Indeed, they serve complementary functions in achieving this important goal.

The importance of this goal cannot be underplayed – the successful provision of financial services is built on trust. A provider of a financial service requires their end-customer to entrust the custody and management of their wealth and personal data to them (and potentially other third parties). In the case of investment management, this is in many cases a long-term commitment. Poor conduct can only lead to a withdrawal of this trust - and then the whole system breaks down.

The Global Financial Crisis of 2008 (the "GFC") was characterised by a series of institutional failings in the financial system which evidenced this system was at risk of break-down. Poor conduct was at the root of many, if not all, of these and, during the following years, policy-makers searched for the causes and then for the tools and structures to improve conduct and raise consumer trust in the sector. Ten years on from the GFC, these tools and structures are still being implemented.

In the UK, the Senior Manager & Certification Regime ("SMCR") is being extended from the banking sector into investment management and more broadly across UK financial services. This is a critical piece of new regulatory infrastructure - it makes senior managers fully accountable for activity and conduct in their areas of responsibility. In turn, senior managers can no longer claim ignorance of malpractice and so need to design their own tools and organisational structures to ensure that conduct in their firms is as good as it can be. Senior Managers can use codes and standards in their organisations to go beyond the rules of regulation and drive a customer-focused culture which aspires to deliver (and be seen to be trying to deliver) client objectives first.

Now the FCA is combining the introduction of the SM&CR regime with the act of officially recognising the industry codes to bring some necessary teeth to what in the past may have been dead-and-dusty documents left forgotten on shelves and at the bottom of office drawers.

Codes and standards are no different from roses in our gardens: they need water, feed, pruning and potentially pest protection - in summary: continual attention. Left alone and untended, they may run wild or become overrun with weeds (become ineffective or obsolete). Standards, in particular, should evolve with market developments. Market practitioners need to be fully involved in their periodic review. Senior Managers should find creative ways to raise employee awareness of applicable standards, engage and involve them in their evolution and in so doing promote a successful conduct culture and effective controls in their firms. Codes, in their nature more static and enduring than standards, nevertheless also need to be kept alive in the work-force's consciousness. Apart from controls for adherence, a rigorous process to handle breaches (alleged and real) and the dissemination of lessons learned (internally and across the profession) are important in preventing future malpractice.

CFA UK conducted a survey of its members on their level of understanding of codes, standards and regulations. Over half of the respondents had over 21 years of industry experience. A majority agree that codes and standards have an important role to play in shaping good conduct and agree further that leaders and practitioners need to be involved in their drafting. However, the majority of respondents had never themselves been personally involved in drawing up standards or codes. There is also a degree of confusion about the respective definitions of a code and a standard. If the CFA UK survey is symptomatic of wider industry opinion this would indicate that senior managers still need to make wider use of codes and standards as effective and necessary tools to build the right culture in their firms and to support them in their responsibilities under SMCR.

Introduction

Regulators and firms in financial markets across the world have been striving to improve and optimise the framework describing expected conduct and behaviour of individuals and groups.

Documents created to establish such frameworks are known by different terms (e.g. 'principles', 'codes', 'standards', 'guidelines', 'good' or 'best practices', 'rules' and 'regulations') with varying meanings and often overlapping expectations.

Among these, codes, standards and regulations are the three most significant categories of documents written to cover different aspects of these expectations and their usage varies. For example, there can be uncertainty as to the relative standing of these documents, the need to comply with their requirements, enforceability, and evidential value of defensible behaviour; and there are disparate approaches to standard setting, in particular.

Within this context, the central purpose and activity of this working group⁴ was to set out a paper that:

- Defines and explains the different respective roles of, and interactions between, codes, standards, and regulations (CS&R). This includes:

- Providing a clear and workable definition of CS&R;
- Explaining the different respective roles of CS&R;
- Exploring how CS&R are constructed, maintained, governed and enforced;
- Explains why CS&R are all needed in financial markets. This includes:
 - Exploring and describing how CS&R should interact and be used together to best promote good conduct in financial services globally.

The working group decided to support this work with a survey of CFA UK members, focusing on senior managers and compliance/legal professionals. The survey's main findings are detailed in section 4 and are generally consistent with the main conclusions of this paper.

Scope

This paper draws on thinking from a UK perspective, while retaining considerations where relevant for the global nature of financial markets (including related issues such as cross jurisdictional application) and the associated variations in expectations.

While conduct and behaviour is core to the intended outcomes, the discussion of the roles and usage of codes, standards and regulations, where relevant, considers a broader context of general work related activities before focusing on items more closely associated with ethics or values.

Definitions

The genesis of this paper was the evident disagreement, widespread alternative uses and different interpretations of, in particular, the two terms: code and standard.

As a starting point, it is therefore helpful and instructive to establish our understanding of the terms code, standard and regulation, and set out clear definitions before turning to their wider roles, application and interaction in financial services, today and into the future.

CFA Institute's "Code of Ethics & Standards of Professional Conduct"

The CFA Institute Code of Ethics and Standards of Professional Conduct (CFA Institute Code and Standards) are fundamental to the values of CFA Institute⁴. They are essential to achieving the CFA Institute mission of leading the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. The CFA Institute Code and Standards may be regarded as two-documents-in-one with distinct roles and purposes:

The Code of Ethics maintains that a member must:

- Place the integrity of the profession and the interests of clients above your own interests
- Act with integrity, competence, and respect
- Maintain and develop your professional competence

The Standards of Professional Conduct cover a member's:

- Professionalism and integrity of the capital markets
- Duties to clients and employers

- Investment analysis and recommendations
- Conflicts of interest and responsibilities

Code – our definition

Informed by the CFA Institute Code and Standards, and assuming a code is owned by a given organisation or group of organisations to which members belong, we define a code as:

"A description of a member's responsibilities based on a set of principles or values."

Standard – our definition

Informed by the CFA Institute Code and Standards, and assuming a standard is owned by an organisation or group of organisations to which members belong, we define a standard as:

"A description of a member's conduct or behaviour that is intended to specify the appropriate course to be followed and standard of care to be observed in specified circumstances."

Regulation – our definition

Within the sphere of financial services, regulations are drawn up with the coercive power of law and are designed to control, direct or manage a particular activity or system. We define a regulation as:

"A set of rules based on and meant to carry out a specific piece of legislation. They are enforced usually by a regulatory agency formed or mandated to carry out the purpose or provisions of a legislation".

Roles & Interactions

The roles that codes, standards and regulations are each intended to play and the nature of objectives they seek to achieve can vary, leading to the lack of a clear and commonly held understanding regarding their usage, adequacy and effectiveness.

We consider the following when approaching this, both in this section and the rest of this paper:

- 1. Characteristics:** It is important to understand the underlying characteristics of codes, standards and regulations in order to understand them better. Sometimes, perspectives may be anchored (e.g. only regulations are legally enforceable, so breaches mean more regulation is needed) and examining each characteristic separately (e.g. design, adherence, oversight, enforcement, etc.) can help identify any biases or associations assumed.
- 2. Interactions:** Furthermore, it is important to note that codes, standards and regulations do not exist in isolation, and hence the interaction between different codes, standards and regulations or between codes and standards, standards and regulations or regulations and codes is to be considered. For example, globally applicable codes and local regulation may stipulate requirements that do not necessarily align.
- 3. Ideal interactions / design considerations:** Finally, the ideal interaction between codes, standards and regulations draws on a fundamental understanding of their interaction and the resulting behaviours. For example, a regulation is usually legally enforceable, which can lead to a preference for or default to a behaviour achieving a minimum level of compliance to avoid penalties. Separately, standards related to the same topic may promote incremental improvement that enhances the underlying conduct or behaviour. However, if these standards are subsequently drafted into regulation, then industry may gravitate towards viewing them as regulation and representing a 'new' minimum level of compliance.

Objectives

The objective (of all of these documents, be it codes, standards or regulations) is to raise standards of conduct and behaviour to at least meet minimum expectations, be it by setting the bar or boundaries (prescribing what is to be done or forbidding what must not be done), promoting values or choices (by describing what is aspired to i.e. what 'good' or 'best in class' looks like) or permitting progressive improvement (by allowing room for choices that vary in quality).

Usually, boundaries (prescriptive and proscriptive behaviour) may be included in codes, standards or regulations, while aspirational (value-oriented) elements are usually seen in codes and standards.

Traditionally, standards have been used to describe details of the bars or boundaries set, to complement (implicitly or by reference) i) codes that usually may have a wider scope but a briefer and more value-driven content, and ii) regulations that usually may have a narrower scope and a briefer content. Members' actions or behaviours can be measured against the applicable standards.

Finally, codes, standards and regulations may all be used to drive conduct and behaviour at both firm and individual levels. For example, the CFA Institute Code and Standards mandatorily apply to individual members, while the CFA Institute Asset Manager Code⁵, the Global Investment Performance Standards ("GIPS") standards⁶ or the UN Principles for Responsible Investment (UNPRI)⁷ are voluntarily adhered to by firms.

Nature & Content

The content of these documents may be of various types such as principles, detailed specifications, rules, interactions with others (internally, externally and market activity) and oversight.

Principles and rules are usually found in all three types of documents (codes, standards or regulations). While codes and regulations are seen as tools to drive individual behaviour, standards describe expectations regarding external interactions.

While it is not hard and fast as to which content is covered where, traditionally:

- Regulations usually cover WHAT is required, with principles followed by rules for enforcement;
- Codes usually cover WHY we act (values, higher level principles of conduct and why the actions or conduct is important), and can apply to firms or individuals; and
- Standards usually address HOW a firm or individual is to comply, say for example with codes and regulations (including how to choose among valid alternatives).

Codes, standards and regulations are all used to influence and control exposures to reputational risk, legal risk or regulator recognised issues. However, regulations may be used to control market access and standards used to set down how to do business with counterparties, which are signatories to the same standards.

In practice, however, there is widespread variation in how documents are named and the type of content they contain. For example, (not an exhaustive list):

- In the US, the Securities and Exchange Commission (the SEC) has issued a rule that requires asset management firms to have a Code of Conduct that sets out, amongst other items, minimum standards of conduct for supervised persons⁸;
- The Hong Kong Securities and Futures Commission (SFC) has published a Fund Manager code of conduct⁹, which specifies minimum standards of conduct and is effectively "subsidiary regulation". In other words, firms are expected to comply and breach may lead to action by the regulator. There are also other codes¹⁰ and guidelines¹¹, of which any codes of conduct are enforceable;
- The Financial Adviser Standards and Ethics Authority (FASEA) in Australia issues standards, which include a code of ethics¹² that sets out principles (called "standards") in relation to ethical behaviour, client care, quality process and professional commitment.

Interaction & Overlap

Interaction of expectations across documents (regulations, codes or standards) or across requirements driven by one or more applicable documents, or even overlap can occur. For example:

- **Regulator recognised codes of conduct:** The FCA issued Policy Statement 18/18¹³ to explain its process for recognising industry codes of conduct in unregulated financial markets and activities, and as a means to determine "proper standards of market conduct" in the context of different and distinct markets for adhering to the Senior Managers & Certification Regime.
- **Different requirements:** The GIPS standards are widely seen as the standard for calculating and presenting performance, specifically for prospective clients and were developed by non-regulators to facilitate meaningful comparisons of accurate investment performance data when this topic had limited coverage in regulations globally. However, it may have a slightly different perspective as compared with SEC rules under the Advisers Act of 1940 applicable to investment managers in the US¹⁴. It is also worth mentioning that the GIPS standards accommodate potential conflict by first requiring that - "the firm must comply with all applicable laws and regulations regarding the calculation and presentation of performance" (The GIPS standards for firms 2020, Provision 1.A.6.a) and, secondly, that if "the GIPS composite report conforms with laws and/or regulations that conflict with the requirements of the GIPS standards, the firm has to disclose this fact and disclose the manner in which the laws and/or regulations conflict with the GIPS standards". Hence, the laws/regulation takes precedence over the voluntary standard, but the conflict must be disclosed for the firm to remain compliant with the (voluntary) standard.
- **Different levels of requirements:** In relation to limiting the spread of material non-public information, the CFA Institute Code and Standards may exceed regulatory requirements in some jurisdictions as it prohibits, for example, acting on material non-public information regardless of whether there is financial gain for the tipper. On the other hand, the EU's Market Abuse Regulation 2014 specifically rules out trading on the basis of mosaic theory which the CFA Codes and Standards permits.
- **Different types and applicability of requirements:** The CFA Institute Code and Standards outline principles that must be followed by individuals in relation to disclosing personal trading (under Standard VI (A) Disclosure of Conflicts) while a separate CFA Institute Research Objectivity Standards¹⁵ specifies standards that may be voluntarily adopted by investment management firms and complement the CFA Institute Code and Standards.
- **Different approaches:** In relation to soft dollars, the CFA Institute Code and Standards discuss principles under Standard III (A) Loyalty, Prudence and Care as a matter of Loyalty to the client, and the CFA Institute Soft Dollar Standards¹⁶ establishes standards that a firm may voluntarily apply, but research unbundling requirements introduced in 2018 under MiFID II mandate specific and different rules to be followed.

Given the different geographical remits of codes, standards and regulations, it is possible to have situations where global codes and standards are applicable alongside local codes, standards or regulations. In some instances, such interactions are managed by cross referencing. For example, the recently released Internal Audit Code of Practice of the Chartered Institute of Internal Auditors, a UK body, is aligned with and references the Code of Ethics incorporated within the mandatory guidance of the International Professional practices framework in turn issued by The Institute of Internal Auditors Inc, the global professional body for the internal audit profession. This ensures that by applying the local code, members are also applying the global code¹⁷.

In certain instances, overlaps can lead to collaborative efforts to strengthen the standards. For example, further to joint work on investment performance standards, the CFA Institute and IC Select responded jointly to the regulator regarding a standardised methodology and template for reporting past performance of fiduciary management services¹⁸ and as a result of the CMA review into fiduciary management these standards look like they will now be adopted by the regulator.

In instances of overlap causing conflict, especially driven by extra-territorial requirements, the bodies issuing the documents would have to work together to arrive at a solution that can be practically implemented by members. One example of an extra-territorial requirement is the applicability of MiFID II inducements obligations down the delegation chain in relation to portfolio management¹⁹ where the FCA issued a clarification about obligations in circumstances involving outsourcing. Separately, in another case, the SEC issued relief in the form of no-action letters (i.e. no-action in case of non-compliance) to US broker dealers and investment companies who would not be able to comply with specific US securities markets requirements, in relation to the parts of their business that required their compliance with research unbundling under European MiFID II regulations²⁰.

Usually, detailed specifications are best suited to standards, high-level principles to codes (applicable globally or across a wide remit) and must-do requirements to regulation. From this perspective:

- Codes provide insights behind WHY regulations serve the clients
- Standards provide specificity as to HOW regulations can be met
- GLOBAL codes and standards bring in ideas from beyond the local market
- GLOBAL codes and standards may exceed regulations in some areas and be silent or behind in others.

Adherence

Now we come to major differences between codes, standards and regulations. Regulations are usually legally enforceable, while codes and standards are usually voluntary in nature.

However, some firms may voluntarily choose to follow codes and their adherence may become legally binding where this choice is documented in a separate legal agreement such as a Statement of Commitment. For example, agreements that refer to a firm's code of conduct may in turn drive enforceability of that code of conduct.

Separately, standards and codes may become enforceable through their association with or their reference within regulations.

For example, the contents of "Regulatory Technical Standards" and "Implementation Standards" in relation to MiFID II or other European Directives becomes legally enforceable via incorporation into Delegated Regulations or National Law by the respective national regulators of financial markets in EEA countries.

While standards and codes included within regulation become legally enforceable and applicable by default, the FCA has been conscious to avoid a situation where being a signatory to a code does not mean parties are more likely to be held accountable if they do not follow that code²¹.

Equally, individuals and firms may take comfort that conduct in unregulated market activities that is in line with an FCA recognised code is likely to indicate compliance with applicable FCA rules that reference 'proper standards of market conduct'. For such cases (in unregulated market activities), the FCA will usually not take action against a person for behaviour that it considers to be in line with the relevant FCA-recognised industry code²². However, note there is no explicit safe harbour.

Oversight

Oversight is another area of key differences, as regulators are usually tasked with overseeing regulations while codes and standards are overseen by bodies based on the remit of that respective code or standard (industry bodies oversee standards, while firm or industry bodies may oversee codes).

The layering or interaction effects may at first glance seem to provide additional protection to drive expected conduct and behaviours. However, they also add to the complexity of control frameworks required by firms, especially when multiple standards and codes (internal and external) are adhered to alongside applicable (and potentially overlapping) regulatory regimes. For example, firms setting thresholds for compliance with the MiFID II Inducements regime had to consider alongside the effects of their internal thresholds documented in their own codes and standards, in relation to Gifts and Anti-Bribery.

Enforcement & Effect of Breach

Private actions can be sanctioned against firms and individuals in relation to breaches. However, regulatory enforcement can lead to both stronger and public punitive sanctions (such as revocation of license, financial penalty, public censure, or limitation to market access).

In cases of a breach to codes and/or standards, the responsible firm could suffer from resulting reputational damage and/or any market access limitations imposed by the other counterpart(y/ies) to the contract.

Recent perspectives

In 2014, the British Standards Institution (BSI), along with the Chartered Institute for Securities and Investments (CISI) and Long Finance, issued two reports that look at how the investment and insurance industries could benefit from standards²³.

They concluded that the investment industry should consider opportunities to set up standards in relation to products, information, and processes²⁴, with recommendations for 1) harmonising and strengthening standards in relation to responsible investment (both classification of assets and governance), 2) disclosure of charges, and 3) standards for data exchange.

The BSI is currently working to put in place a set of standards for Sustainable and Responsible Investing via the Sustainable Finance Standardisation programme²⁵. This programme, designed and delivered with UK Government (BEIS) and UK industry (City of London's GFI) support, is a 5-year long initiative focused on the development of globally relevant, consensus-based standards on the subject of sustainable finance and an integral part of the July 2019 UK Green Finance Strategy. It aims to encourage the wider uptake of sustainable finance practices, behaviours, thinking, products and services (i.e. mainstreaming sustainable finance), while helping organizations from the financial sector align themselves with the global SDGs. More specifically, the aims of BSI's Sustainable Finance Standardization Programme are to:

- Promote better understanding of sustainable finance, and the economic, environmental and social benefits associated with adoption of related practices;
- Provide greater consistency and reliability in how sustainability (and ESG) considerations are integrated into investment decision-making;
- Improve transparency and investor confidence, providing a means for organizations (e.g. fund managers or advisors) to demonstrate practices are sustainable, responsible and meet globally-agreed standards;
- Mobilize green finance to accelerate growth of sustainable products, services, projects;
- Build broad consensus on common use of definitions, methodologies and reporting measures;
- Complement existing standards, codes and initiatives, avoiding duplication, and scaling-up their impact;
- Enable innovation using outcomes-based approaches where possible.

These proposed standards are currently out for consultation by the BSI under PAS7341.

The investment industry has seen principles in relation to responsible investing²⁶. The UK stewardship code sets out principles in relation to the effective stewardship of assets²⁷, the Financial Reporting Council (FRC) also publishes its annual review of corporate governance, stewardship and reporting, which reports on the development of industry practices²⁸. Various national regulations exist²⁹, service providers have set up metrics³⁰, and standards in relation to reporting³¹ by signatories³² are set out. However, harmonising requirements across regulatory jurisdictions remains a challenging task.

In relation to product governance, regulations such as MiFID II have set up requirements³³ (including regulatory technical standards) to govern the overall landscape, but do not necessarily deal specifically with areas such as, for example, new technologies or cryptocurrency (although the FCA has issued clarifications regarding crypto-related activities which fall under the existing financial regulations for derivatives³⁴ and published the results of its consultation in relation to distributed ledger technology³⁵, more commonly known in relation to one of its examples or use cases, Blockchain).

Standards in relation to costs and charges have been a major focus with MiFID costs and charges requirements attracting significant industry attention (with firms and industry bodies supporting firms to adopt a standardised approach where possible³⁶), and the regulator balancing its approach to enforcing compliance with the magnitude of change. For example, a review by a digital wealth manager identified inconsistencies in reporting³⁷ that was responded to by the FCA, stating, amongst other items, that "the FCA will act proportionately and not take a strict liability approach in relation to enforcement of MiFID II, given the size, complexity, and magnitude of the changes that are required to be in place in firms".

Other updates in relation to costs and charges include regulatory disclosures in relation to Packaged Retail Investment and Insurance based Products (PRIIPs)³⁸, regulatory requirements based off the FCA's Asset Management Study³⁹, disclosures for workplace pensions⁴⁰ and templates issued by the Cost Transparency Initiative⁴¹.

Standards for data exchange in investment management have been set up in some areas (including the above-mentioned items) through templates, such as the European MiFID template (EMT)⁴², the European PRIIPs template (EPT)⁴³, and standardised templates in relation to defined contribution workplace pensions⁴⁴.

In summary, the existing interaction of codes, standards and regulations for the investment management industry is receiving significant attention, and there are areas for further work to clarify expectations in relation to conduct and behaviour through the use of codes, standards and regulations.

Codes: Construction, Maintenance, Governance & Enforcement

Definition:

"A description of a member's responsibilities based on a set of principles or values."
(Section 1 of this Paper)

Applicability

Codes come in various forms. In their simplest form they are set by an organisation to apply to its members. The CFA Institute Code of Ethics, to start with a familiar example, is set by CFA Institute and applies directly to all individuals who are either members of CFA Institute and its fellow societies throughout the world, or candidates enrolled in its exam courses.

Note though that the above qualification 'directly' is an important one. CFA members will know that it is a requirement of the CFA Institute's Code of Ethics that all members who supervise others in their place of work must also ensure that those people they supervise comply with it too. Thus, indirectly the CFA Institute's Code of Ethics extends beyond the CFA Institute immediate membership.

Codes may also be set by an organisation to apply to a group of organisations either coming together for a common purpose or in recognition of their pursuit of a common activity. For example, the Chartered Banker Code of Professional Conduct⁴⁵, is set by the Chartered Banker Institute, but is subscribed to by all of its member firms. Employees of these member firms are then in turn all expected to align their personal conduct with this code. Employees of other banks that are not member firms are also encouraged to become individual members of the Chartered Banker Institute and sit their professional examinations.

Codes do not always apply to individuals. Take the example of the FRC's Corporate Governance Code⁴⁶. This requires (under the Listing Rules) all companies with a Premium Listing of equity shares in the UK to report in their annual report and accounts on how they have applied this code. This code is structured as a set of 18 principles and 41 more detailed provisions, together with 20 pages of guidance on how these principles are to be followed. The requirements are on the reporting corporate entities and not on their employees; the 'members' are deemed to be those UK companies with a Premium Listing of equity shares in the UK.

Whilst codes may be subscribed to by companies and firms, as in the example of the FRC's Corporate Governance and Stewardship Codes, in most cases they apply to individual conduct and behaviour. A survey of codes within 50 financial services organisations conducted by The Transparency Task Force during 2018 revealed that 80% applied purely to individuals and suggested that of the remaining 20% which applied to firms, half (10%) applied to only firms and the other half (10%) to both.

Scope

The scope of codes is universal and not bound by restrictions either by geography or by time. Where a code's onus of responsibility is on the individual, since individuals often travel across different regulatory jurisdictions in pursuit of their business, so too must their obligations under any code applying to them.

This creates a helpful dynamic (in combination with that of any applicable standards) by bridging any gaps or arbitrages between any different applicable regulations.

This does introduce an interesting debate around situations when a code might come into conflict with a local regulation. For example, a CFA Institute member or candidate is required to adhere to the stricter law, rule or regulation in case of conflict between the CFA Institute Code and Standards and any local regulation⁴⁸.

Equally, standards and regulations may proscribe certain conduct or behaviour in specific cases (for example, between certain hours of a given market opening) whereas a code will apply "at all times". In most instances, for example the FX Global Code⁴⁹, a code specifically applies beyond the work-place and extends to an individual's personal financial dealings and managing any associated conflicts of interest. It is not confined to the place of work.

Design

All codes have in common the espousal of value or principles to which the organisation expects its members to adhere. That's the case of the three codes discussed so far.

Codes vary greatly in design, however. Many, like the Chartered Banker Code of Professional Conduct, run to no more than a single page and set down typically between 5-7 high-level principles to which the organisation's members are expected to adhere. Towards the other end of the spectrum, the FX Global Code (including annexes) runs to 78 pages; the document still works around (in this case) six leading principles but expands to several pages of detailed guidance on each of them. The guidance given is sufficiently detailed that it could be regarded as 'standards'.

Authorship

A good code should bring to life an organisation's vision for its members' best conduct and behaviour. This applies to a code for member organisations and probably even more for firm codes where the expectations of a code can be wrapped into an employment contract which is at the heart of that member's livelihood.

That tone comes from the top is a widely-used mantra in response to questions about how an organisation's culture can be shaped and led and like an organisation's slogan, its code of conduct needs to be shaped, reviewed and signed-off by the board and distributed with the signature usually of the Chair on the board's behalf. With the Senior Managers and Certification Regime ("SMCR"), it is expected that the board is now held accountable along with the rest of the organisation. In this context, if used effectively, a code is an additional tool in the armoury of an organisation's leaders to help frame and set their organisation's culture in the way they wish.

Adherence

Codes can be mandatory, or they can be voluntary. The CFA Institute Code of Ethics is an example of a mandatory code – it applies without exception to all members. On the other hand, Codes may be voluntary at two different levels:

- On one level, a firm or individual may choose either to sign or not to sign up to the code at all. Not signing up may limit that firm or individual's responsibilities, but it will also limit its standing within the code-setting market or organisation. The FX Global Code states that it applies to all FX market participants and goes on to describe who/what a market participant might be. It therefore seeks to gain universal acceptance. However, in introducing the "Statement of Commitment" form, it explains: "The Statement, like the Code, is voluntary and Market Participants may make use of it in different ways to support the objectives of the Code, enhancing transparency, efficiency, and functioning in the FX Market."
- At a second level, some codes allow members to adhere or not adhere to specific expectations within them. The FRC's Code of Corporate Governance, for example applies the widely-established principle of "comply or explain": in other words, corporates may either comply with the provisions in the code or explain why they departed from them.

One advantage of codes is that they can be more aspirational and create a dynamic of continual improvement since in some cases a potential member is not required to comply with every expectation, but are tasked to move to improved compliance. The FRC Corporate Governance Code has developed in this way in recent years encouraging companies towards more effective application over time new more stretching best practice provisions. A mandatory code on the other hand may set a lower bar, but it brings with it a stronger threat of sanction for breaches and so in cases where membership is automatic (like a bank's employees, for instance), then a mandatory code serves to act as a set of rules. The best-known example of this is probably the FCA/PRA's Individual Conduct Rules⁴⁹ which read like a code of 5 principles (with guidance), but which are actually rules from the FCA Handbook.

The UK Money Market Code is also worth a mention here⁵⁰. Like the FX Global Code, the UK Money Market Code is voluntary. It recognises that ultimately market participants can only be encouraged and not mandated to sign-up. Under Section 4.1, this Code argues that every market participant should be adhering to it, but that adherence should be 'proportionate' i.e. a firm should comply with the code's requirements proportionate with the scale of its own operations: a large UK bank would be expected to comply with it all, but for example a charity that occasionally rolls over a money-market deposit would not be expected to comply with the entire 32-pages plus annexes.

Monitoring

The UK Money Market Code (section 4.2) also sets out expectations with regard to a member firm's processes to monitor that its practices are in compliance with the Code and under the Code, firms are expected to attest this is the case by being prepared to submit a written boiler-plate statement (Annexe 1) to that effect upon request from another market participant. To view a similar code in a global context, the FX Global Code requires an institution signing up to their Code to submit a "Statement of Commitment" to other market participants upon request. This statement in turn requires that firm to attest that it has in place adequate processes and procedures to monitor its employees' conduct and their firm's compliance with the Code. Institutions should not submit this "Statement of Commitment" if they are not in a position to do this. In this case, submission cannot be to a specific body as the FX Global Code was created in an ad hoc project managed by a partnership between leading Central Banks and private market participants, which was and is still not owned by any one single organisation. Signatories are instead invited to post their "Statement of Commitment" on their web-site, send it to their clients and counterparties and submit it when seeking membership of local market committees.

Reviewing & Updating

Just as a member's behaviour and conduct in compliance of a code needs monitoring, so too does the code itself need to be kept under review and periodically updated. Short codes such as the Chartered Banker Code of Professional Conduct will not require regular amendment, but the longer market-based codes such as the FX Global Code and the UK Money-Market Code, which in some respects look more like standards in some of the detail contained in them, will need continual review to reflect technical, technological and product developments in their respective market-places.

Provision should be made to review and update a code on a regular (e.g. annual) basis. There should also be the ability to accommodate a review and changes on an ad hoc basis as a consequence of events that might make a change in the code necessary. A review should be carried out ideally by a sufficiently diverse team. For a firm code, this would mean involving the leadership of the organisation, staff from the front-office as well as staff from the legal and compliance functions.

For member organisation codes, best practice would be for stakeholders to be consulted. The FRC's Corporate Governance Code has gone through a total of eleven consultation reviews and updates since it was first launched to steer best boardroom practice with the eponymous Cadbury Report in 1992. The last review received over 200 responses from investments firms, corporates, trade bodies, professional bodies as well as individuals. As a result, UK corporate governance is viewed by many as the best in the world.

Reviewers should consider how the code fits in with the infrastructure of other codes, standards and regulation that sit around it and ideally aim to achieve an effective working relationship between these documents. They should also consider any recent new or un-envisaged situations which revealed an unhelpful ambiguity or gap in the code.

Embedding in Culture

As discussed above, codes should come from the top and should be used as a vehicle and a tool by senior managers to spread the right culture and the right values through an organisation or through its membership.

To be effective, codes need to be kept alive. Members need to know that their compliance is monitored; they need to be reminded regularly of their obligations in an active way; they need to be kept abreast of updates and involved and consulted when they are reviewed. This applies equally to codes from (trade) member associations as much as (employee) firm codes.

In relation to member associations, processes to renew membership could include a review and reconfirmation of compliance by the member (including any related disclosures) such as the annual disclosures by CFA Institute members and candidates in relation to the CFA Institute Code and Standards. In relation to firms, employees may be required to attest to compliance with their code of conduct periodically.

A key aspect of embedding a code in culture is to keep it to concise, clear and widely communicated principles and values and to make it authentically actionable. Enron's infamous Code of Ethics, signed off by Chairman and Chief Executive, Kenneth Lay on 1 July, 2000 is perhaps the best-known example possible of a well-drafted code that was utterly ineffectual, because it was a fig-leaf and its espoused principles and values completely absent from the company's actual cultural DNA.⁵¹

Recognition by the regulator

With the publication in July 2018 of PS18-18⁵² (following publication of consultation 17-37⁵³ in December 2017), the FCA started to put in place a process whereby it will progressively seek to recognise 'industry codes'. Indicating that it would take its time and work in gradual stages to complete this objective, the FCA stated its intention to adopt a consistent approach and avoid setting any unhelpful precedents early on.

To that end, the FCA launched a consultation on the Global FX Code and the UK Money Market Code at the end of 2018⁵⁴ and has subsequently recognised them both.

To further support and encourage the development and use of good quality industry codes of conduct, the FCA has established a framework to formally recognise industry codes for unregulated market activities. More recently the FCA has recognised the Lending Standards Board's Standards of Lending Practice for business customers. Rather confusingly this document is called "standards" but recognised as a code⁵⁵.

The intention behind this development is to ensure that the FCA can evidence what expectations are (at a given time) as to what constitutes good conduct in different unregulated markets. In this way, the Code of Conduct ("COCON") principles⁵⁶ can be applied with greater context in markets beyond the regulatory perimeter. Furthermore, an industry code may provide the contextual evidence and the means by which an industry practitioner accused of malpractice may in fact either (i) be found to have conducted themselves in line with 'proper standards of market conduct' or (ii) be enforced against by the FCA.

In general, recognition by the regulator may increase the extent of adoption of a code across firms but may also lead to the code being treated as indirect or subsidiary regulation if the regulator does not clarify the legal enforceability (or lack thereof) of the code.

Another aspect of recognition by the regulator pertains to addressing breaches and enforcement. Where the body overseeing a code is required to report breaches to the regulator, this might lead to greater compliance (providing "teeth" to the code). For example, as a matter of process, the CFA Institute refers a breach of the CFA Institute Code and Standards by a member to the local regulator, although in practice the local regulator is usually already aware (in most cases due to related issues with other regulatory requirements).

Standards: Construction, Maintenance, Governance & Enforcement

Definition:

*"A description of a member's conduct or behaviour that is intended to specify the appropriate course to be followed and standard of care to be observed in specified circumstances."
(Section 1 of this Paper)*

Applicability

Standards apply to firms or individuals who choose to apply them, based on their membership or relationship with the body setting the standard or the activities to which the standard pertains. For example, standards may be set by a firm for its employees, by an industry association for its members (firms and individuals), by a professional body for its members (individuals and firms), and so on.

Most bodies governing professional qualifications require their members to adhere to expected conduct and behaviours. They establish these expectations using codes, standards, and requirements for membership, or a combination of these. As an example, the CFA Institute Standards of Professional Conduct are applicable to all CFA charterholders and candidates and may hold them to a higher degree of conduct and behaviour than that which may be required otherwise by applicable regulations, other prevailing standards or codes.

Scope

Standards cover specific details in relation to expectations that may be described at a high-level elsewhere in other documents. As such, standards are a versatile tool to bridge gaps in frameworks left by regulations and codes, where additional regulation may not necessarily be desirable.

Standards need not necessarily be limited by geography and some standards are international in scope, such as accounting standards like International Financial Reporting Standards⁵⁷ or valuation standards like International Valuation Standards⁵⁸.

Regulations can include "standards", and "codes" within standards. For example, the FCA handbook sets out Business Standards, which includes Conduct of Business rules⁵⁹ and Market Conduct⁶⁰. It also set out up-front, high-level standards which includes a code of conduct⁶¹.

Some codes include either standard-like form and language (such as the text explaining the principles in the FX Global Code, or the standards specific to different markets as per the UK Money Market Code).

Design

Standards come in various forms but are usually several pages long and quite specific and detailed in language, as the objective remains to remove ambiguity and provide a clear explanation of the expectations. For example, the GIPS standards are about 65 pages long, and include detailed provisions by sub-sectors within the investment management industry⁶².

An effective set of standards clearly articulates specific details where needed, such as clear definitions of terms; different levels of expectations (minimum standards or industry practices or best practices) and interaction with existing standards, codes and regulations. They will also seek to reduce ambiguity or call-out those areas where it may not have been possible to establish clear expectations up-front and then set out principles (or recommended approaches and governance) to address those areas.

Standards may vary in the type of appropriate courses they describe, such as:

- minimum requirements (or MUST dos) for members, or
- industry standards (or SHOULD dos) if a member claims adherence to, or
- gold standard, or best practices or GOOD TO dos for members

There are several approaches to setting standards – they may prescribe practices, be it industry practices, minimum accepted standards, or best practices; or proscribe practices, i.e. set out what must NOT be done, or what does not constitute accepted practices. These are usually described as what members "require to", "must" or "should" do or not do.

In some instances, standards may include aspirational items described as what members are "recommended" or "encouraged" to do. There are some variations here, for example, the GIPS standards use "should" for aspirational recommended elements⁶³. Usually a combination of approaches is observed, with the objective being to provide as clear a description of expectations as would enable firms to apply a consistent approach. In terms of design the GIPS standards separate the REQUIRED (must) from the RECOMMENDED (should) and emphasise the difference by assigning each to their own numbered section. (1.A is Fundamentals: must, 1.B is Fundamentals: should. 8.E is Limited distribution funds: must; 8.F is Limited distribution funds: should etc.).

Authorship

Formal standard setting bodies (which are part of an established WTO-related standards infrastructure), could be regional and international organisations such as the International Organisation for Standardization (ISO), the International Electrotechnical Commission (IEC), the European Committee for Standardization (CEN), the European Committee for Electrical Standardization (CENELEC), the European Telecommunications Standards Institute (ETSI) and national standards bodies, such as the BSI. Informal standards-setting bodies include: industry consortia, bodies responsible for regulatory or governance frameworks such as the FRC; bodies granting professional qualifications such as CFA Institute, accountancy bodies, regulatory bodies that specify standards in relation to regulations; or an organisation for its employees.

Standard setting methodology (the framework or approach to develop and maintain standards in whatever form/content deemed appropriate for the relevant context or circumstances) usually involves identifying specific needs for standardisation (such as areas with significant variation in industry practices or areas of ambiguity / "grey areas"). The methodology will establish clear objectives about the type of standards required, set up a drafting working group, obtain inputs from the industry or feedback on an "exposure draft" through consultation, incorporate feedback into a final draft, and establish a governance framework to review and update the standards.

Standards are usually drafted by working groups with relevant representation and comprising professionals with deep technical and industry expertise. Consultations with separate sub-groups, industry or trade bodies, or the body or members are a key tool to ensure the standards published are clear, appropriate, adequate, practicable, and achievable. This also enables the document to be subject to scrutiny and challenge by other professionals. This is considered by the FCA as a key to the process of setting codes (which in turn set standards)⁶⁴.

Direct involvement of the regulator in drafting standards (other than those directly related to regulatory requirements) could lead to the contents of the standard being more "legal" in nature than technical⁶⁵. This might, potentially affecting their practicability, and so instead drafting of standards by practitioners, combined with consultation with regulators, should result in output that is more readily understood and implementable by practitioners.

Adherence

Adherence to standards is usually voluntary, with signatories sometimes listed publicly⁶⁶ or firms listing the standards to which they adhere to.⁶⁷ Members may evidence their meeting of the standards through their internal governance, external verification, and/or through relevant publications or disclosures.

For example:

- firms complying with the GIPS standards or the UK Stewardship Code are encouraged to obtain independent verification⁶⁸. They may be asked by clients or prospective clients to provide further information in relation to the results presented. GIPS standards firms are recommended (in provision I.B.3 of 2020) 'to be verified' and advised that 'verification is considered to be the best practice'.
- firms seeking to comply with the GIPS standards can elect to be either listed publicly or not. Most (over 85%) choose to be listed publicly. Those firms which choose not publicly list, do so as they typically prefer to solicit business through word of mouth and/or don't wish to be contacted by potential clients.

Some standards (such as CFA Institute's Standards of Professional Conduct) might be applicable by default to members, while others may require members to voluntarily apply it.

In the case of standards related to professional qualifications, standards, and requirements are followed as professionals need a licence to practice (or work typically in their role), which is linked to maintaining the professional qualification. This is clearly the case in relation to professional practices such as medicine or accountancy, but in the case of investments or financial services, there is not necessarily one standard qualification in each jurisdiction. For example, in the UK, the Retail Distribution Review ("RDR") informed Training and Competence requirements established by the FCA in relation to regulated activities and serving retail clients⁶⁹.

Recently, MiFID II knowledge and competence requirements have driven some standardisation across the European Economic Area. However, the means to comply involve a variety of qualifications that may be governed by different training or examination administrators. What is missing is governance by a single body that links the required professional qualification to the license to operate (as is the case, for example, for medical professionals). On the other hand, the current state of affairs in the investments or financial services industry provides talent with greater mobility and quicker access to opportunities globally, and the CFA Charter is known to be an industry standard in most areas, but not a pre-requisite for any.

Monitoring

In the case of standards requiring voluntary adherence, the monitoring of adherence to them would be governed by firms or members applying the standards. This might in turn be reported to/ by the standard-setter⁷⁰.

Standards that are required for regulatory compliance may be monitored by the regulator through reports filed by regulated firms. For example, investment advisers complying with Retail Distribution Rules in the UK are required to report their compliance by completing the Professional Standards Data template⁷¹.

Reviewing & Updating

Given the level of detail typically embedded in standards, standards need to be reviewed periodically (and updated if required) to keep them relevant and up-to-date. This is usually performed by the standard-setter, with a standards review body. For example, the GIPS standards currently in effect are the 2010 version, while a 2020 version is currently being introduced following extensive industry consultation⁷².

Like standards, documents establishing guidelines and industry practices also need to be reviewed and updated from time to time. For example, the International Private Equity and Venture Capital Valuation Guidelines have been updated twice since they were first published in 2012 and seem to follow a refresh cycle once every three years⁷³.

Embedding in Culture

Standards are embedded in cultural approaches to drive agreement. For example, standards in relation to measures (e.g. weight, distance, or time), drive agreement in such measurements across the world. Similarly, standards in relation to conduct and behaviour are embedded in culture through widespread acceptance of these standards. For example, the CFA Program is widely recognised as a standard qualification in the investment industry globally, which leads to a culture of considering and adhering to the CFA Institute Code and Standards, even if local regulatory requirements are less demanding.

Industry bodies also promote the adoption of standards. For example, the Investment Association (IA) publishes a Statement of Recommended Practice (SORP) in relation to accounting standards for members to promote high quality corporate governance and reporting⁷⁴. The SORP is an extension of the FRC's accounting standards and the IA acts as the FRC's designated SORP-making body.

The extent to which standards are embedded in culture is sometimes assessed by industry bodies through reviews and surveys, which provide inputs to the standard-setter, the industry in general, and the regulator. For example, the Banking Standards Board conducts an annual assessment of banking firms' culture using a structured framework, which provides insights into the quality of conduct and behaviour expectations across the firms that participate.⁷⁵

Recognition by regulator(s)

Standards are recognised by regulators in different ways. Some are considered mandates, in effect making them subsidiary regulation, while others are clearly not liable to enforcement by the regulator. For example, codes of conduct are considered enforceable by the SFC in Hong Kong, while other codes and guidelines are not enforceable⁷⁶.

In some cases, standards may be set up for voluntary adoption. Over time they can become considered as core expectations, leading to their incorporation in regulatory requirements or publications, either by reference (leading to their becoming the de-facto regulatory minimums for compliance) or by their substance (being used as the base for new regulatory requirements). One example of the latter approach is the assessment of suitability, which is a part of the Standards of Professional Conduct of CFA Institute⁷⁷, and has become a key regulatory requirement in relation to investor protection under the MiFID II provisions⁷⁸.

Regulation: Construction, Maintenance, Governance & Enforcement

Definition:

*"A set of rules based on and meant to carry out a specific piece of legislation. They are enforced usually by a regulatory agency formed or mandated to carry out the purpose or provisions of a legislation".
(Section 1 of this paper)*

Regulators & Regulations

Regulators provide an important function overseeing the operations of the global financial markets. These enforcers of legislation⁷⁹ may differ in size and breadth of responsibilities, but each entity serves a role in protecting the efficiency (and integrity) of the markets. Their market regulations aim to provide a trusted, consistent framework that is essential for both the clients and providers of financial services.

Regulators must balance their oversight practices and requirements. This balancing act is on full display for capital market regulators with oversight of publicly traded companies seeking investor capital, the financial service firms facilitating engagement with investors and the investors themselves⁸⁰. To meet this balance and promote public trust, regulators need to be thorough, and to the extent that it does not undermine market integrity, they also should be transparent in their activities to develop draft regulation (such as by, for example, transposing EU directives into draft national regulation) or establish rules and guidance in relation to regulations established by legislation; and in their monitoring and enforcement practices.

For example, in the UK, section 348 of the Financial Services and Markets Act, 2000, requires the regulator to respect the confidentiality of data or intelligence it receives from regulated firms pursuant to their reporting duties. This is a check and balance that was tested recently in relation to the RBS 'GRG' investigations in February 2018⁸¹.

Scope of Regulations

At their core, regulations establish the requirements for participation within the investment industry. Regulations mandate conduct and disclosure requirements that support applicable laws⁸². These requirements are as diversified as the many business sectors of the global financial markets. Regulations can take the form of either principle-based concepts of acceptable conduct or rules-based specifications or a combination of the two; and can be both proscriptive and prescriptive. Either basis of regulation establishes minimal baselines for firms and individuals to undertake their specific roles and responsibilities.

There are, however, examples where regulation aims to go beyond setting the baseline, to include aspirational elements. The FCA, for example, frames its approach in terms of taking a proactive, judgement-led approach to assessing firms' achieving 'good outcomes' for clients. It does so by asking or clarifying: "What does 'good' look like? It may be legal but is it right?" It is likely true to say that a firm which complies with the letter of the regulation

but an outlier to its peers in relation to certain of its activities could consider itself to be running 'regulatory risk' in relation to such activities. However, such cases are the exception and the FCA is quite advanced as a regulator. Regulations and/or regulators in other parts of the world with shallower or less well-developed financial markets may not be as nuanced in their approach.

A first line of investor protection centres on regulations for entry of a person, firm or product into the financial markets. Regulations establish registration, license, or exam requirements needed by individuals to engage in the industry. Firms' registration informs the regulator of the participants under their jurisdiction. The services provided by individuals and firms will dictate the requirements that must be fulfilled to gain regulatory approval.

Financial products⁸³ require regulatory approval based upon many qualities of the product. The regulations for a firm to initially issue stocks and bonds focus on attributes of the firm, as the investment products conform to expected norms. When the products become more complex or differentiated from traditional products, the regulatory approvals shift to focus on the specific attributes of offering. As the product migrates from the traditional to the 'exotic' or complex, the issuers and those advising or arranging on its distribution rely to a greater extent on market-based statements of good practices – of varying degrees of acceptance, oversight and enforcement.

Once a product, person, or firm enters the financial market, regulations address ongoing operations. It is here where we find specific disclosure requirements that keep both regulators and investors informed. The disclosure requirements reflect the different roles and responsibilities of those in the industry. As such, those responsible for advising clients have different obligations from those involved in more transactional engagements.

Ongoing regulations cover concepts on client engagement as opposed to specifically defined activities or disclosures. One example that appears under different names is the requirement to protect the interest of the end client, the purchaser of the financial product or service. Regardless of the local nomenclature, client interests are held within regulations as paramount to ensure fairness within the global financial markets.

Upholding the interest of the end client is a particularly interesting area of law and regulation, which includes ongoing debate on the fiduciary duties of those who look after other people's money. The UK Law Commission's project on Fiduciary Duties of Investment Intermediaries and roles of Asset Holders (mostly pension funds) considered the role of regulations in relation to relationships of trust, including the subtle but very important distinction between acting in a client's interests, their best interests and as a fiduciary⁸⁴. The application of the law and regulation in relation to best interests obligations is complex, and as regards investment intermediaries remains unsettled. The ERISA fiduciary standards and the Advisors Act developments in the US come to mind.

Design

Legislation defines the purpose of regulatory agencies, but typically does not define their processes for creating and implementing specific requirements. At times, different legislation⁸⁵ may identify specific areas of industry operations that require attention from the regulator. However, the specific regulations required to meet the legislative agenda are left to the regulator itself to develop. While the processes are not specifically defined, different regulators have many similarities in their design practices.

A common regulatory structure is to have a Board or group of appointed officials that are ultimately responsible for approving all regulations.⁸⁶ This group sets the regulatory development agenda to facilitate the priorities for the agency. The task of developing new or updated regulations is delegated to the professional staff.

Staff members execute on the announced priorities. Staff teams are structured to address different aspects of the financial markets and its participants. They research the topics under discussion thoroughly, while seeking input from colleagues and the Board during the development of new or updated regulations.

Part of the research includes engaging with industry representatives. Some regulators designate standing committees to assist with both the vetting of regulation drafts and establishing agency priorities.⁸⁷ There is also the opportunity for staff to engage industry representatives on an informal basis. The input from the industry is important to ensuring an appropriate balance to new regulatory proposals.

The earlier mentioned RBS GRG example provides a useful lens through which to view the FCA's rule-making powers. A letter from the FCA to the Treasury Select Committee⁸⁸, picks up on the approach beyond firms and products to the regulation of individual conduct (and the role of industry written codes).

The approval of new or updated regulations may appear in various formats, including within a formal rule-book or as guidance to expand existing requirements. Not all released guidance establishes new regulatory requirements, as it may either provide further clarification of how an individual or firm may properly meet current expectations or set a higher, voluntary standard above the minimum requirements of rules, perhaps on a "comply or explain basis". The official status of the guidance released by the regulator will influence monitoring and enforcement activities⁸⁹.

Review

The need for balance drives regulators to conduct cost-benefit analysis of new regulations. These analyses inform the development of new disclosure initiatives and other regulations. The information gathered helps the Board understand how both clients and regulated companies might be impacted.

Regulators also conduct post implementation analysis of regulations. This permits regulatory staff to obtain factual data as to the costs of compliance. When the true costs are analysed alongside the changes to company practices or disclosures, the regulator can validate if the benefits expected are being achieved or not.

Consultation

Providing the industry with an opportunity to comment on regulations prior to implementation serves multiple purposes for the regulator⁹⁰. Public consultation periods bring broad awareness to potential regulatory changes. The release of proposed regulations furthers the analysis of the impact and potential hindrances of proposed changes by industry participants. Thus, when the final regulations are released, industry participants should be both informed and engaged.

Monitoring & Supervision

Regulations may mandate expected conduct, but without a structured supervision program their impact is minimized. To fulfil the investor protection and market efficiency elements of their statutory mission, regulators possess several techniques for ensuring compliance. Two of the more common include the analysis of required disclosures and direct firm inspections.⁹¹

In today's world of big data, regulators oversee and supervise both creators and users of information. The analysis of the required filings provides insights into the actions of both individuals and firms operating in the global financial markets. This information represents a first line of review of actions for compliance with mandates of regulations. The information also enables the regulator to adjust their firm inspection schedules, using a risk-adjusted analysis of the many different activities.

While regulators seek to inspect or audit all firms under their coverage within regular time periods, the risk-based analysis allows it to focus its limited resources on areas of greatest concern. These inspections allow for direct review of firms, including file reviews and employee interviews. Through these direct engagements and publications of findings, the regulator signals to all market participants the importance of adherence to regulations.

Enforcement

Ongoing supervision and monitoring will uncover actions that violate existing regulations. When this happens, regulatory enforcement plays the final role in promoting investor protection. The breadth of available sanctions reflects the wide scope of activities conducted in the global financial markets. Regulators are given discretion to apply sanctions that uphold market standards and confidence and protect consumers from harm.⁹²

Fines and penalties are commonly used as enforcement sanctions. Firms and individuals can be held financially accountable for failing to adhere to regulatory requirements. When the actions involve financial harm to clients, such as PPI misselling the regulators can require firms to compensate victims for financial losses they would have sustained.

As regulations create the entry process into the industry, sanctions can also include suspensions or revocations of such licenses. Through sanctions of this nature, regulators seek to remove unscrupulous individuals from market participation.

CFA UK Survey Insights

The CFA Society of the UK (CFA UK) conducted a survey to gather insights related to individual understandings of code, standards and regulations. On 31 January 2019, approximately 1,300 invitations to participate in the survey were sent to members of CFA UK. In addition, a link to the survey was included in the weekly membership newsletter. The survey closed on 3 March 2019. (See appendix 2 for the actual survey).

The number of responses varied for the four sections of the survey. This yielded the following response rates (based on the number of direct mail-outs):

Section	# of responses	Response rate %
#1 Participant information	78	6.0
#2 General questions on Codes, Standards and Regulations	63	4.8
#3 Code specific questions	53	4.1
#4 Standard specific questions	37	2.8

Scope of Participants

Survey respondents represented a cross section of industry participants both in roles within a firm and length of time in the industry. 51% of respondents worked within the industry for over 21 years, with 83% possessing more than 11 years of experience.

There was not a majority of respondents from a specific primary functional area of a firm. Top areas included Executive Management (33%); Front Office (23%); and Legal & Compliance (21%). This tenure and role diversity help to minimize potential biases that could have appeared in the results.

Industry Participation

In section 2, Question 6 asked respondents about groups that should lead the authorship of Codes, Standards, and Regulations. Respondents agreed business leader and practitioners should be responsible for authorship of Codes (53%) and Standards (73%).

However, there was significant disagreement in relation to lawyers leading the authorship of regulations. 50% of respondents either disagreed or strongly disagree, where another 31% did not agree or disagree. This reinforces the importance of regulators engaging and consulting with the industry within the development process.

Actual Engagement

In contrast to the views that industry leaders should engage in development activities, Section 3, Question 15 and Section 4 Question 21 indicate a significant portion of respondents have NEVER been involved in the drafting process. (Codes 64% and Standards 78%). There is an opportunity for individuals to become more engaged with setting the expectations for the industry. The practice of using volunteers for committees associated with developing and maintaining codes and standards and consultations to gather additional feedback is certainly not limited to CFA Institute. Proactive engagement can reduce over reactive responses to changes to codes or standards. While not asked, a similarly low level of involvement is likely in regard to the development of regulation. Individuals may

turn to membership or trade associations, such as CFA UK and CFA Institute to represent their views to any of the developing parties. Such organizations bring the views of their diverse memberships when they participate in development processes and consultations.

Engaging with Codes and Standards

Respondents were asked to identify codes and standards outside those established by CFA Institute that influence their professional activities. Just over 6 in 10 respondents identified a code to which they were engaged. Respondents identified their firm codes most often (29%) followed by FCA codes (16%). 35% of respondents cited various professional association codes include those of the Chartered Institute for Securities and Investments; the Institute and Faculty of Actuaries, and the Institute of Mechanical Engineers.

The ratio fell to below 4 in 10 for standards. Firm-specific requirements once again were cited most often (31%). Various FCA requirements followed (19%), included some that were also listed as codes. There were several other individual responses that appear as both codes and standards, including the UK Stewardship Code and the ICAEW Code of Ethics.

The findings align with our view that codes represent fundamental expectations of conduct by individual and are thus easier to recall. Whereas standards are often perceived more operationally through addressing actions between businesses and/or clients. The overlap of the two lists also show that individuals are not explicitly separating the scope and requirements of Codes, Standards and Regulations.

Public Accountability

Questions in sections 2, 3 and 4 all addressed the topic of public accountability of those committing violations of codes, standards, or regulations. Section 2 Question 9 displayed a strong consensus that those found to have acted improperly within the industry must be held accountable publicly. 67% believe public accountability is significantly important to building and maintaining public trust of the industry.

Unfortunately, this desired action was not seen in practice as per the answers to Section 3, Question 16 and Section 4, Question 22. Only 28% of respondents indicated awareness of violations and sanctions being publicized for the identified codes. Whereas, the awareness rate for the publication of violations of identified Standards was 31%. With trust being a key element for strong client relationships, this represents a meaningful area for improvement for our industry.

Required Reaffirmation

Of those responding, more than 8 in 10 were aware of the requirement for reaffirmation for codes. That number doubled to more than 4 in 10 being unaware of such required periodic affirmation for standards. Interestingly, requirements for codes leaned towards individual affirmation, whereas Standards requirements are more often placed upon firms. If it is important to have publicity of violations, awareness of the requirements to periodically reaffirm adherence to a code or standard can provide a positive signal to clients and other market participants.

Conclusion: How to use codes, standards and regulations to promote good conduct in financial services globally

The ideal interaction between codes, standards and regulations

The table overleaf (page 20) provides further illustration of the inter-relationship between codes, standards and regulations on the basis of the characteristics commonly associated with them. The table specifies the characteristics that one would commonly associate with (or expect, as a minimum, to be exhibited in) a code, a standard or a regulation given the overall aim of promoting and achieving good market conduct. This table is indicative and non-exhaustive and is representative of our approach to analysing the characteristics, roles, and interrelationship of codes, standards and regulations.

Considering the historic context

2018 marked the 10th year since the global financial crisis (GFC) and the effects are still being felt. According to Chatham House, the crisis required a write-down of over \$2 trillion from financial institutions alone and estimated lost growth at \$10 trillion, which was over one-sixth of global GDP in 2008. To put it in perspective, 532,833 homes were foreclosed in the United States. After the GFC, US foreclosures rose to an average of 2.6 million annually from 2008-2010. The pay for millennials entering the work-force is still 7% lower than the pre-crisis peak⁹³. The public has a right to be angry.

Importance of trust, accountability and making a public example of bad practice

Trust is an essential ingredient in order for markets to function properly and efficiently. Public perception of financial institutions has risen since 2008, but progress has been slow, and more work needs to be done with only 44% of UK retail investors trusting financial services.

Holding firms, and especially the individuals who comprise a firm accountable for their actions is one important step to helping restore trust within financial services and codes, standards & regulation provide the contextual reference documents to make this possible. At the same time a balance is required to prevent the erosion of trust in the industry, much like trust in the media has been eroded by negative perceptions of the quality of media articles due to the phenomenon of fake news and the significant commercialisation of content.

Driving accountability through regulations

Lawmakers and regulators have responded since the global financial crisis with a number of regulatory reforms. Most notably in 2013, the UK regulatory landscape was reformed with the abolition of the Financial Standards Authority (FSA) and the introduction of the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). New legislation such as the Markets in Financial Instruments Directive (MiFID II) and Treating Clients Fairly "TCF" are examples of how rules have been introduced to help develop a corporate culture where firms must hold due regard for the interests of clients and must treat them fairly. No doubt lessons were learned from the GFC, regulation has evolved, and regulators are more aware. Financial markets are exceptionally complex, global and, constantly evolving. UK financial markets employ 2 million people who provide services to 40 million consumers. Given that the FCA regulates 58,000 firms with just 3,500 staff that is quite a tall order.

Holding senior management accountable and the importance of firm culture

In March 2016, the FCA and PRA introduced the Senior Managers & Certification Regime whereby the regulator would only approve senior managers or a Senior Manager Function where a statement of responsibilities was in place within a firm. The responsibility of determining whether staff, other than senior management, had the required competencies thus shifted from the regulator to the senior managers within the firm. Under the regime, senior managers cannot delegate their responsibility, remain accountable for their statement of responsibility and, will be personally liable if they have been proved to have fallen short of their responsibility, even for a period after leaving a firm. Senior managers now have a similar incentive and accountability structure to those incentives within a regulated profession like surgeons, lawyers and doctors. This is a major change in accountability and crucially senior managers can no longer claim ignorance and/or state that the problem originated down the chain of their command or somewhere else in the entity. Moreover, Senior Managers are now not only expected to be held in a high regard they are accountable and responsible for defining culture within a firm.

Culture, codes and standards are not cookie cutter and must be adapted for each firm. What works for a large firm with thousands of professionals may not work for a firm with a handful of employees. In short, senior managers have moved from the executive office to the coal-face of financial services. Culture is no longer defined as tone from the top but being proactively lead from the top. Firms are no longer ubiquitous, faceless entities. They are now a collection of finance professionals with specific responsibilities and they are accountable for their inactions as well as their actions. When a Firm has fallen afoul of the rules it is likely that the Regulator will look unkindly on senior management who have let culture be defined by default rather than by deliberate actions to ensure ethical and fair outcomes for the clients and market participants with whom the firm interacts.

Driving accountability through regulatory recognition of codes

A major change introduced by the FCA in July 2018 was a new policy that would see the regulator recognise certain industry code of conduct and practices for unregulated markets. Financial markets are global and do not operate within one country's jurisdiction. For example, the foreign exchange market, or the money market, operates 24 hours a day across many geographies and time zones. Like surgeons, lawyers or dentists, each sub-category or market within a larger financial market has its own rules of practice, codes or conducts. These are where market specialists have detailed knowledge and can articulate what is (and is not) appropriate conduct within a specialist market like foreign exchange or the money markets. Organisations like the Global Foreign Exchange Committee, an organisation of central banks and commercial banks, can now have their codes or standards approved and recognised by the regulator. Industry codes and standards can help senior managers discharge their duties by providing guidance for staff under their supervision on what is (and what is not) acceptable market conduct as well as providing regulators with evidence of contextual market expectations.

A framework for how Codes, Standards and Regulations inter-relate

Characteristic	Codes	Standards	Regulations	Comments
Objective				Aspirational content is usually included in codes and sometimes in standards, which may be technical and objective. Aspirational content in codes and some standards with a "comply or explain" approach can serve to raise the bar over time, and effectively complement regulations.
Describes Aspirational Behaviour	✓	#	-	
Describes Proscriptive Behaviour	✓	✓	✓	
Describes Prescriptive Behaviour	✓	✓	✓	
Nature and content				Codes should usually stick to principles and be brief, and refer to detailed standards regulations should similarly refer to standards but should be precise and leave no room for interpretation. For example, the Global FX code, the UK Corporate Governance Code and the UK Money Market Code seem to be a combination of a code and associated standards (like a single document comprising the CFA Institute Code and Standards) and probably should be recognised as such.
Contains principles or is principles-based	✓	#	✓	
Contains specifics or is rules-based	#	✓	✓	
Seeks to govern internal/ individual conduct	✓	✓	✓	
Seeks to standardise expectations in relation to external parties e.g. client or counterparty	✓	✓	✓	
Seeks to standardise market activity	-	✓	✓	
External – Oversight Body	#	✓	✓	
Usage, interaction and overlap				Where relevant, codes and regulations can point to standards, instead of containing the standard within a code or regulation. This facilitates reviews and updates appropriate to each type of document. If a firm opts not to be a signatory of market codes and standards they could still have market access, but they find themselves limited in which counterparties they can deal with. Some counterparties might require that the firm is a signatory to relevant codes and standards. For example, the FCA opting to recognise codes as evidence of relevant localised market expectations seems an appropriate development, and a careful approach is expected to be maintained to facilitate a balance between compliance (with the letter of the codes and standards) and incremental improvement (driven by aspirational content).
Adherence required for market access	#	#	✓	
Adherence required by counterparties	#	✓	✓	
Influence adoption e.g. Regulator-recognised codes or standards	✓	✓		
Influence the management of Legal Risk	(✓)	(✓)	✓	
Influence the management of Reputational Risk	✓	✓	✓	
Influence the management of Reputational Opportunity	✓	✓	✓	
Authorship				Ideally a combination of industry bodies, senior management and legal/compliance professionals would be involved in drafting codes, standards and regulations so they are balanced, practicable and serve their intended purpose in interaction/combination with the rest of the codes, standards and regulations applicable to the same area. The authors of the other applicable codes, standards and regulations should be consulted while drafting to avoid conflicts at a later date requiring remediation (e.g. the no action relief for US investment managers complying with European MiFID II research unbundling rules).
Set by business leaders	✓	✓	✓	
Set by business practitioners (across industry)	✓	✓	✓	
Set by legal or compliance professionals	✓	✓	✓	
Adherence				Keeping codes and standards voluntary and letting signatories use them as a badge of quality is useful. Where codes and standards are referred by regulations, they effectively can become subsidiary regulation and the regulator should include this in their cost benefit analysis. One alternative is that the regulator may have a different set of standards for regulatory mandatory compliance purposes than voluntary standards for the same topic set by the industry which may be far more comprehensive in scope.
Inherently Legally Binding	#	#	✓	
Voluntary (not inherently legally binding)	#	#	-	
Oversight				
By Statutory regulatory Body			✓	
By industry self-regulated body	✓	✓		
By Firm or Self-Regulated	✓			
Enforcement and effect of Breach				Affected parties might sue offenders under section 138D of the Financial Securities and Markets Act 2000. Breaches of regulation and material breaches of codes and standards that may be caught by regulatory disclosure requirements may be reported to the regulator. However, this doesn't necessarily drive greater individual accountability or enhance the quality of voluntary codes and standards. Publicly calling out individuals responsible for breach can improve individual accountability. However, maintaining trust is important at the same time, and calling out actions publicly can lead to an erosion of trust similar to bad news. A middle ground is to report breaches of voluntarily applicable codes and standards to an industry group (under say Chatham house rules) with the group responsible to review risks and breaches and share remediation measures and practice guide-lines. This would enable industry participants to learn from others' mistakes and help incrementally improve codes and standards over time. Incentivising Information sharing can be a challenge and both positive incentives (such as recognition for contribution to industry practices) or negative incentives (such as requiring auditors or regulators or the firms' risk managers to join the body reviewing the breaches to ensure firms actually report the most significant breaches) can be designed based on the context.
Private Action by an affected party	✓	✓	✓	
Licence Revocation			✓	
Enforced Remediation			✓	
Financial Penalty			✓	
Public Censure	#	#	✓	
Limits to market access enforced by external body	✓	✓	✓	
Reputational Damage	✓	✓	✓	

Final thoughts

In their simplest form, codes are the over-arching and underlying principles that define the culture of the firm. An effective code would be succinct and financial services firms need not overcomplicate codes with catchy marketing phrases that confuse their application. There is also no need to constantly update or change a code, but regular affirmation is a positive, reinforcing activity.

A code that is constantly updated is probably not well defined. Standards, on the other hand, are constantly evolving depending on the asset class, market or product. Standards require subject matter experts to understand technical complexities and nuances in order to make sure that rules are fit for purpose and have clear application principles that are unambiguous.

Senior management within firms are accountable for developing both codes and standards that are appropriate for their firm. Culture is developed, enhanced and preserved when senior managers enforce codes and standards upon themselves and professionals within the firm. Codes and standards need to be looked at in the context of the governance structure of the firm and are not a one size fits all strategy. Organisations need to resist the temptation to cut and paste as what works for one firm may not necessarily work for another.

The survey responses from the questionnaire provided an interesting insight. Given that the majority of respondents were from senior management it was not surprising that a majority of respondents felt that senior management should be involved in formulating codes and standards for the firm. The survey also revealed that senior management was not involved in setting codes and standards but respondents thought it was wholly appropriate for senior management to be at the centre of a firm's codes and standards. Given that senior management is now responsible and accountable for actions within the firm this realisation is a welcome development.

Codes and standards are not a tick box exercise but a framework that defines culture within a firm. Codes and standards (the latter especially) continually developed by management are perhaps one of the best frameworks to demonstrate to both the regulator and clients that adequate controls and culture are in place to provide good outcomes for clients.

Frameworks that are undefined and ill-thought can lead to cultures that evolve with no intended purpose which can lead to unintended and undesirable outcomes. Given that senior management can now be held personally, and, financially liable for their inactions (as well as their actions) this is a poor destination to at which arrive, especially in the eyes of the regulator.

On a final note, it is important to stipulate that risk cannot be eliminated from financial services and mistakes will happen. All participants in financial services have a shared interest in earning and keeping the public's trust. To pursue this shared interest, firms need to put aside their competitive nature and collaborate with each other and the regulator on how shared experiences can be used to enhance public trust.

Summary of conclusions

Overall, the key conclusions we present are:

- **Clarity:** Codes are overall high-level principles. They may not change annually. Standards are specifications and detail that are constantly adapting at the micro level (such as product or asset class). Senior managers need to reflect on these codes and standards annually and make sure that they are consistent with the desired firm culture. Management is accountable for ensuring that the conduct of their staff is in line with the codes, standards and regulations they are obligated to follow.
- **Senior manager involvement:** Senior managers should be involved in setting codes and standards and held accountable. As confirmed by senior managers responding to our survey, most senior managers have not provisionally been involved in drafting codes and standards.
- **Interaction:** Codes and standards need to be considered not in isolation but in combination given their respective applicability. While this may seem simple, interaction effects (especially cross border) might be complex and require industry groups to help drive a consistent approach.
- **Sharing learnings from breaches:** Industry working groups that formally review and share learnings from breaches of voluntary codes and standards can help firms incrementally improve how their codes and standards complement regulations to drive effective governance for better client protection.

Appendix 1 – The CFA Institute's Code of Ethics and Standards of Professional Conduct

Reproduced below are the CFA Institute's Code of Ethics and Standards of Professional Conduct as obtained from <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx> on 21/02/2019 at 23:56 hours.



CODE OF ETHICS AND STANDARDS OF PROFESSIONAL CONDUCT

PREAMBLE

The CFA Institute Code of Ethics and Standards of Professional Conduct are fundamental to the values of CFA Institute and essential to achieving its mission to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. High ethical standards are critical to maintaining the public's trust in financial markets and in the investment profession. Since their creation in the 1960s, the Code and Standards have promoted the integrity of CFA Institute members and served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. All CFA Institute members (including holders of the Chartered Financial Analyst® [CFA®] designation) and CFA candidates must abide by the Code and Standards and are encouraged to notify their employer of this responsibility. Violations may result in disciplinary sanctions by CFA Institute. Sanctions can include revocation of membership, revocation of candidacy in the CFA Program, and revocation of the right to use the CFA designation.

THE CODE OF ETHICS

Members of CFA Institute (including CFA charterholders) and candidates for the CFA designation ("Members and Candidates") must:

- Act with integrity, competence, diligence, respect and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession.
- Promote the integrity and viability of the global capital markets for the ultimate benefit of society.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

STANDARDS OF PROFESSIONAL CONDUCT

I. PROFESSIONALISM

- A. Knowledge of the Law.** Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government, regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.
- B. Independence and Objectivity.** Members and Candidates must use reasonable care and judgment to achieve and maintain independence and objectivity in their professional activities. Members and Candidates must not offer, solicit, or accept any gift, benefit, compensation, or consideration that reasonably could be expected to compromise their own or another's independence and objectivity.

- C. Misrepresentation.** Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.
- D. Misconduct.** Members and Candidates must not engage in any professional conduct involving dishonesty, fraud, or deceit or commit any act that reflects adversely on their professional reputation, integrity, or competence.

II. INTEGRITY OF CAPITAL MARKETS

- A. Material Nonpublic Information.** Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information.
- B. Market Manipulation.** Members and Candidates must not engage in practices that distort prices or artificially inflate trading volume with the intent to mislead market participants.

III. DUTIES TO CLIENTS

A. Loyalty, Prudence, and Care. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests.

B. Fair Dealing. Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.

C. Suitability.

1. When Members and Candidates are in an advisory relationship with a client, they must:

- a. Make a reasonable inquiry into a client's or prospective client's investment experience, risk and return objectives, and financial constraints prior to making any investment recommendation or taking investment action and must reassess and update this information regularly.
- b. Determine that an investment is suitable to the client's financial situation and consistent with the client's written objectives, mandates, and constraints before making an investment recommendation or taking investment action.
- c. Judge the suitability of investments in the context of the client's total portfolio.

2. When Members and Candidates are responsible for managing a portfolio to a specific mandate, strategy, or style, they must make only investment recommendations or take only investment actions that are consistent with the stated objectives and constraints of the portfolio.

D. Performance Presentation. When communicating investment performance information, Members and Candidates must make reasonable efforts to ensure that it is fair, accurate, and complete.

E. Preservation of Confidentiality. Members and Candidates must keep information about current, former, and prospective clients confidential unless:

1. The information concerns illegal activities on the part of the client or prospective client,
2. Disclosure is required by law, or
3. The client or prospective client permits disclosure of the information.

IV. DUTIES TO EMPLOYERS

A. Loyalty. In matters related to their employment, Members and Candidates must act for the benefit of their employer and not deprive their employer of the advantage of their skills and abilities, divulge confidential information, or otherwise cause harm to their employer.

B. Additional Compensation Arrangements. Members and Candidates must not accept gifts, benefits, compensation, or consideration that competes with or might reasonably be expected to create a conflict of interest with their employer's interest unless they obtain written consent from all parties involved.

C. Responsibilities of Supervisors. Members and Candidates must make reasonable efforts to ensure that anyone subject to their supervision or authority complies with applicable laws, rules, regulations, and the Code and Standards.

V. INVESTMENT ANALYSIS, RECOMMENDATIONS, AND ACTIONS

A. Diligence and Reasonable Basis. Members and Candidates must:

1. Exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions.
2. Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

B. Communication with Clients and Prospective Clients. Members and Candidates must:

1. Disclose to clients and prospective clients the basic format and general principles of the investment processes they use to analyze investments, select securities, and construct portfolios and must promptly disclose any changes that might materially affect those processes.
2. Disclose to clients and prospective clients significant limitations and risks associated with the investment process.
3. Use reasonable judgment in identifying which factors are important to their investment analyses, recommendations, or actions and include those factors in communications with clients and prospective clients.
4. Distinguish between fact and opinion in the presentation of investment analysis and recommendations.

C. Record Retention. Members and Candidates must develop and maintain appropriate records to support their investment analyses, recommendations, actions, and other investment-related communications with clients and prospective clients.

VI. CONFLICTS OF INTEREST

A. Disclosure of Conflicts. Members and Candidates must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with respective duties to their clients, prospective clients, and employer. Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively.

B. Priority of Transactions. Investment transactions for clients and employers must have priority over investment transactions in which a Member or Candidate is the beneficial owner.

C. Referral Fees. Members and Candidates must disclose to their employer, clients, and prospective clients, as appropriate, any compensation, consideration, or benefit received from or paid to others for the recommendation of products or services.

VII. RESPONSIBILITIES AS A CFA INSTITUTE MEMBER OR CFA CANDIDATE

A. Conduct as Participants in CFA Institute Programs. Members and Candidates must not engage in any conduct that compromises the reputation or integrity of CFA Institute or the CFA designation or the integrity, validity, or security of the CFA Institute programs.

B. Reference to CFA Institute, the CFA Designation, and the CFA Program. When referring to CFA Institute, CFA Institute membership, the CFA designation, or candidacy in the CFA Program, Members and Candidates must not misrepresent or exaggerate the meaning or implications of membership in CFA Institute, holding the CFA designation, or candidacy in the CFA program.

Appendix 2 – CFA UK Questionnaire on Codes, Standards & Regulations

We are requesting just 15 minutes (or perhaps just 5 minutes) of your time...!

The CFA Society of the UK (the "CFAUK") is currently looking into the roles and inter-relationship of codes, standards and regulation in promoting best practice and conduct in UK financial services (the "Project").

In today's era of "Individual Accountability" (read "the Senior Managers & Certification Regime (and Conduct Rules)"), CFA UK believes that you, as practitioners, need clarity as to your obligations, and those of your firm, in relation to a wide range of documents drafted to promote best conduct in our industry. As part of the research process for the Project, we are seeking feedback from our members (as well as senior compliance professionals and industry leaders) on those issues that sit at the core of the Project.

It would be of enormous value to the Project therefore, if you could participate in this online survey, which should take less than 15 minutes to complete. The survey is divided into 3 sections and if you do not have time to complete all sections, we would still be grateful for your participation in Sections 1&2 which could take no more than 5 minutes.

Your responses are completely confidential and anonymous; and will help us to provide a picture of opinion that includes the views and insights from those at the heart of UK financial market practice.

Thank you.

[Begin Survey](#)

If the above link does not work, copy and paste the following into your browser's address bar: [\(link\)](#)

Section 1: About you

1. Are you a Senior Manager or directly affected by the Senior Manager's regime?
2. Are you a member of the CFA UK Society?
3. How many years of experience do you have working in financial services?
4. Within which of the following (broadly defined) functions do you work? Front Office; Control & Operations; Legal & Compliance; Audit; Executive Management; Non-Executive Oversight

Section 2: General

To what extent do you agree or disagree with the following statements. Check the box that you feel most applies. Feel free to use the free-form comment box to expand upon your answer if you wish:

- a. "Codes should be enforceable by regulators."

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

- b. "Codes should be enforceable by regulators."

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

- c. "Codes cover individual behaviour."

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

- d. "Standards cover behaviour between individuals."

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

- e. "Regulation covers both individual behaviour and behaviour between individuals."

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

- f. "Regulation alone is sufficient to ensure proper behaviour in international financial markets".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments (optional):					

g. "For customers to trust the financial services industry they need to see individuals and firms that behave improperly publicly brought to account".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

h. "Codes and standards have an important role to play in setting a firm's culture to ensure proper behaviour in international financial markets".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

i. "Codes should be set by business leaders".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

j. "Standards should be set by business practitioners".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

k. "Regulation is best set by lawyers".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

l. "A standard tells you how to do what you do".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

m. "Regulation tells you what you must do".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

n. "A Code tells you what society would hope you would do".

Strongly Agree	Agree	Neither agree or Disagree	Disagree	Strongly Disagree	Don't Know
Comments (optional):					

o. To what extent do you find both codes and standards useful over and beyond the requirement of regulation? (tick the one that most closely applies)

Not at all		Partly		Generally		Significantly	
Comments (optional):							

Section 2a: Codes

For the purposes of this questionnaire, we define a Code as:

"a description of an individual's responsibilities based on a set of principles or values (note: an individual may be covered by the code either as an individual or because the firm he is employed by is covered by the code)".

1. Identify a code, other than the CFA Institute Code & Standards or the CFA Institute Asset Manager Code, which you consider guides your professional conduct.

--

2. Is this code regularly updated?

Yes		No		Don't Know	
-----	--	----	--	------------	--

3. Does this code require periodic affirmation of adherence from (i) you or (ii) your firm?

Firm:	Yes		No		Don't Know	
-------	-----	--	----	--	------------	--

Individual	Yes		No		Don't Know	
------------	-----	--	----	--	------------	--

4. Does this code convey a requirement on the individual or their firm to honour their underlying principles over and above any legal and regulatory requirements?

Yes		No		Don't Know	
-----	--	----	--	------------	--

Section 2b: Standards

For the purposes of this questionnaire, we define a Standard as:

"a description of a member's conduct or behaviour that is intended to specify the appropriate course to be followed and standard of care to be observed in specified circumstances."

5. Identify a standard, other than the CFA Institute Code & Standards or GIPS, to which you are currently expected to adhere.

--

6. Is this standard regularly updated?

Yes		No		Don't Know	
-----	--	----	--	------------	--

7. Does this standard require periodic affirmation of adherence from (i) you or (ii) your firm?

Firm:	Yes		No		Don't Know	
-------	-----	--	----	--	------------	--

Individual	Yes		No		Don't Know	
------------	-----	--	----	--	------------	--

8. Does this standard convey a requirement on the individual or their firm to honour their underlying principles over and above any legal and regulatory requirements?

Yes		No		Don't Know	
-----	--	----	--	------------	--

Section 3a: Codes (cont...)

For the purposes of this questionnaire, we define a Code as:

"a description of an individual's responsibilities based on a set of principles or values (note: an individual may be covered by the code either as an individual or because their employer is covered by the code)".

9. To what extent have you personally been involved in drafting or revising codes in the recent past? (Tick the box that best applies)

Never		Once		Regularly	
-------	--	------	--	-----------	--

10. Are you aware of this code ever having been breached (either by a firm or an individual) in the past and of sanctions subsequently being issued and made public?

Yes		No		Not sure	
-----	--	----	--	----------	--

Section 3b: Standards (cont...)

For the purposes of this questionnaire, we define a Standard as:

"a description of an individual's conduct or behaviour that is intended to specify the appropriate course to be followed and standard of care to be observed in specified circumstances."

11. To what extent have you personally been involved in drafting or revising standards in the recent past? (Tick the box that best applies)

Never		Once		Regularly	
-------	--	------	--	-----------	--

12. Are you aware of this standard ever having been breached either by a firm or an individual in the past and of sanctions subsequently being issued and made public?

Yes		No		Not sure	
-----	--	----	--	----------	--

End notes

- ¹<https://www.fca.org.uk/publication/consultation/cpl17-37.pdf>
- ²<https://www.fca.org.uk/publication/policy/ps18-18.pdf>
- ³<https://www.fca.org.uk/publication/consultation/cpl18-39.pdf>
- ⁴See Appendix 1
- ⁵<https://www.cfainstitute.org/en/ethics/codes/asset-manager-code>
- ⁶<https://www.cfainstitute.org/ethics/codes/about-gips-standards>
- ⁷<https://www.unpri.org/signatories/what-are-the-principles-for-responsible-investment>
- ⁸Section (VI) (9) no page 41 of https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf, which refers to Rule 204A-1
- ⁹<https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/fund-manager-code-of-conduct/fund-manager-code-of-conduct.pdf>
- ¹⁰<https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/codes/>
- ¹¹<https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/>
- ¹²<https://www.fasea.gov.au/wp-content/uploads/2018/11/Standards-Summary.pdf>
- ¹³<https://www.fca.org.uk/publications/policy-statements/ps18-18-industry-codes-conduct-discussion-paper-fca-principle-5>
- ¹⁴https://www.gipsstandards.org/compliance/Documents/sec_gips_white_paper_final.pdf
- ¹⁵<https://www.cfainstitute.org/ethics/codes/research-objectivity-standards>
- ¹⁶<https://www.cfainstitute.org/ethics/codes/soft-dollar-standards>
- ¹⁷<https://www.iaa.org.uk/members/member-benefits/code-of-professional-conduct/>
- ¹⁸https://assets.publishing.service.gov.uk/media/5b92508d40f0b6558152e655/CFA_Institute_and_IC_Select.pdf
- ¹⁹<https://s.wsj.net/media/FCAletter1.pdf>
- ²⁰<https://www.sec.gov/news/press-release/2017-200-0>
- ²¹<https://www.handbook.fca.org.uk/handbook/EG/2/10A.html?date=2018-09-29>
- ²²<https://www.handbook.fca.org.uk/handbook/DEPP/6/2.html?date=2018-09-29#D60>
- ²³<https://www.bsigroup.com/en-GB/about-bsi/media-centre/press-releases/2014/October/> and <https://www.bsigroup.com/en-GB/about-bsi/media-centre/press-releases/2013/november/Setting-the-standard-for-a-safer-more-trusted-financial-services-sector/New-reports-identify-how-the-Insurance-and-Investment-industries-can-benefit-from-standards/>
- ²⁴<https://www.bsigroup.com/LocalFiles/en-GB/standards/BSI-Standards-research-report-Opportunities-for-Standards-in-Investment-and-Asset-Management-UK-EN.pdf>
- ²⁵<https://www.bsigroup.com/en-GB/about-bsi/uk-national-standards-body/BIS-Exploring-new-areas-with-government-funding/projects/Sustainability/sustainable-finance/Sustainable-Finance-Standardization-Programme/>
- ²⁶<https://www.unpri.org/pri/what-are-the-principles-for-responsible-investment>
- ²⁷[https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-\(September-2012\).pdf](https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf)
- ²⁸<https://www.frc.org.uk/getattachment/f70e56b9-7daf-4248-aae-a46bad67c85e/Annual-Review-of-CG-R-241018.pdf>
- ²⁹<https://www.unpri.org/sustainable-markets/regulation-map> and <https://www.unpri.org/Uploads/g/d/j/global-guide-for-responsible-investment-database-methodology-september-2016.pdf>
- ³⁰<https://www.msci.com/esg-sustainable-impact-metrics>
- ³¹https://www.unpri.org/Uploads/l/h/o/full2019rf_42136.pdf
- ³²<https://www.unpri.org/signatories/reporting-for-signatories>
- ³³https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf and https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_report_on_guidelines_on_product_governance.pdf
- ³⁴<https://www.fca.org.uk/news/statements/cryptocurrency-derivatives>
- ³⁵<https://www.fca.org.uk/publication/feedback/fs17-04.pdf>
- ³⁶http://www.tisa.uk.com/publications/828_225_DraftApproachtImplementationtoCostsChargesV1612Sept.pdf
- ³⁷<https://scmdirect.com/wp-content/uploads/2018/02/SCM-Direct-MiFID-II-Cost-Reporting-Research-12-Feb-2018.pdf>
- ³⁸<https://www.fca.org.uk/firms/priips-disclosure-key-information-documents>
- ³⁹<https://www.fca.org.uk/publication/occasional-papers/occasional-paper-32.pdf>
- ⁴⁰<https://www.theinvestmentassociation.org/assets/files/about-industry/DCPT%20QandA%20-%20180510.pdf>
- ⁴¹<https://www.plsa.co.uk/Policy-and-Research-Investment-Cost-Transparency-Initiative>
- ⁴²<http://www.financialeuropeanworkinggroup.com/emt-v2-final-version/>
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- ⁴⁴<https://www.theinvestmentassociation.org/investment-industry-information/data-exchange-frameworks/>
- ⁴⁵https://www.charteredbanker.com/resource_listing/cpd-resources/cbpsb_code_of_professional_conduct.html
- ⁴⁶<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>
- ⁴⁷The CFA Institute Standards of Professional Conduct (see Appendix 1), under A) Knowledge of the Law, within I) Professionalism
- ⁴⁸https://www.globalfxc.org/docs/fx_global.pdf
- ⁴⁹<https://www.handbook.fca.org.uk/handbook/COC0N/4/1.html?date=2016-03-07>
- ⁵⁰<https://www.bankofengland.co.uk/-/media/boe/files/markets/money-markets-committee/uk-money-markets-code.pdf?la=en&hash=C7854B22B681B65244EE35A8CC306288454B4506>
- ⁵¹<http://mishkenot.org.il/Hebrew/docs/ethics/%D7%A7%D7%95%D7%93%D7%99%D7%9D%20%D7%90%D7%AA%D7%99%D7%99%D7%9D%20%D7%A9%D7%9C%20%D7%90%D7%A8%D7%92%D7%95%D7%A0%D7%99%D7%9D%20%D7%A2%D7%A1%D7%A7%D7%99%D7%99%D7%9D/Enron%20Code%20f%20Ethics.pdf>

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- ⁵³<https://www.fca.org.uk/publication/consultation/cp17-37.pdf>
- ⁵⁴<https://www.fca.org.uk/publication/consultation/cp18-39.pdf>
- ⁵⁵<https://www.fca.org.uk/publications/feedback-statements/fs20-1-recognition-codes-feedback-qcp-25-cp19-27>
- ⁵⁶<https://www.handbook.fca.org.uk/handbook/COCON/>
- ⁵⁷<https://www.ifrs.org/issued-standards/list-of-standards/>
- ⁵⁸<https://www.ivsc.org/standards/international-valuation-standards>
- ⁵⁹<https://www.handbook.fca.org.uk/handbook/COBS/>
- ⁶⁰<https://www.handbook.fca.org.uk/handbook/MAR/>
- ⁶¹<https://www.handbook.fca.org.uk/handbook/COCON/>
- ⁶²<https://www.cfainstitute.org/-/media/documents/code/gips/gips-standards-2010.ashx>
- ⁶³See "Should" in glossary of GIPS (page 31) at <https://www.cfainstitute.org/-/media/documents/code/gips/gips-standards-2010.ashx>
- ⁶⁴See 3.30, Final Recognition Criteria within FCA Policy Statement 18/18 - <https://www.fca.org.uk/publication/policy/ps18-18.pdf>
- ⁶⁵See 3.24 of FCA Policy Statement 18/18 - <https://www.fca.org.uk/publication/policy/ps18-18.pdf>
- ⁶⁶For example, see <https://www.unpri.org/signatories/signatory-directory>
- ⁶⁷For example, see <http://www.lgim.com/uk/en/about-us/codes-and-standards/>
- ⁶⁸See 4.A.1 of the GIPS standards AND <https://www.frc.org.uk/getattachment/a39aa822-ae3c-4ddf-b869-db8f2ffe1b61/what-constitutes-an-explanation-under-comply-or-explain.pdf>
- ⁶⁹See <https://www.handbook.fca.org.uk/handbook/TC/App/4/1.html> for the qualifications, and <https://www.fca.org.uk/firms/training-competence> for an overview
- ⁷⁰For example, see https://www.gipsstandards.org/compliance/pages/firms_claiming_compliance.aspx
- ⁷¹<https://www.fca.org.uk/firms/regulatory-reporting/adviser-reporting-requirements>
- ⁷²<https://www.gipsstandards.org/standards/2020/pages/index.aspx>
- ⁷³<http://www.privateequityvaluation.com/Valuation-Guidelines>
- ⁷⁴<https://www.theinvestmentassociation.org/assets/files/consultations/2014/20140513-SORP2014.pdf>
- ⁷⁵<https://www.bankingstandardsboard.org.uk/assessment-results-2017/>
- ⁷⁶<https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/>
- ⁷⁷<https://www.cfainstitute.org/en/research/multimedia/2018/professional-conduct-standard-IIIc-suitability>
- ⁷⁸<https://www.handbook.fca.org.uk/handbook/COBS/9A/2.html?date=2018-10-01>
- ⁷⁹The Financial Conduct Authority (FCA) and Prudential Regulations Authority (PRA) represent primary regulators within the UK market
- ⁸⁰In the UK, these responsibilities fall to different regulators. A regulator requiring this balance is the US Securities and Exchange Commission.
- ⁸¹See <https://www.fca.org.uk/publication/correspondence/grg-letter-16-feb-2018.pdf>
- ⁸²The Financial Services and Market Act of 2000 provides the basis for the operations of the FCA.
- ⁸³Packaged Retail and Insurance-based Investment Products (PRIIPs) are an example of product related regulations
- ⁸⁴See <https://www.lawcom.gov.uk/project/fiduciary-duties-of-investment-intermediaries>
- ⁸⁵MiFID II presented new concepts for regulatory implementation
- ⁸⁶The FCA Board oversee the operations of the organization.
- ⁸⁷The Practitioner Panel of the PRA provides direct input from those covered by its regulations
- ⁸⁸<https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/FCA-powers-perimeter-300118.pdf>
- ⁸⁹ <https://www.handbook.fca.org.uk/handbook/EG/2/10.html>
- ⁹⁰The PRA has several types of consultation practices.
- ⁹¹The FCA Supervision Division pillars for engagement include risk approaches and direct engagement.
- ⁹²The Regulatory Decisions Committee of the FCA is the final element for the issuance of sanctions.
- ⁹³Resolution Foundation, "CROSS COUNTRIES International comparisons of intergenerational trends", February 2018



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