



**NATIONAL ASSOCIATION  
OF COMMERCIAL  
FINANCE BROKERS**

*Code of  
Practice*

# NATIONAL ASSOCIATION OF COMMERCIAL FINANCE BROKERS

## CODE OF PRACTICE

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### **National Association of Commercial Finance Brokers**

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Registered Office: 17 Gandy Street, Exeter, Devon, EX4 3LS      Registered in England No. 3305378

## **Section A                      Objectives of the Association**

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*(these are a summarised form of the Objectives prescribed in the Association's Memorandum of Association).*

*Primary Objectives*      To maintain, promote and, when appropriate, enforce a Code of Practice, for and on behalf of its members.

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

*Secondary Objectives*      To encourage professional and social interaction between its members.

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

To monitor any Bill, Act of Parliament, Regulation or Order relevant to commercial lending or finance broking or related areas and to make submissions to the appropriate authorities in respect of any such material.

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

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

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

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

## ***Section B***                      ***Rules of Conduct***

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1.
  - 1.1 A Member (which for the purposes of the Code of Practice shall include a full Member or Associate (also currently known as “Subscriber”) elected under Article 4 of the Constitution) shall conduct himself and his business so as to conform at all times with:
    - 1.1.1 the Association’s Code of Practice (and amendments and revisions subsequent hereto);
    - 1.1.2 the Objectives of the Association;
    - 1.1.3 prevailing legislation;
  - 1.2 No Member shall conduct his business in such a way as to give the Association (acting through its Board) reasonable cause to believe that his actions:
    - 1.2.1 involve dishonesty, dishonourable or deceitful behaviour, or are otherwise unfair to clients (whether or not criminal proceedings have been instigated) or;
    - 1.2.2 in the reasonable opinion of the Association bring, or are likely to bring, the Association and its membership into disrepute or unacceptably prejudice or compromise its reputation or integrity.
2. A Member shall:
  - 2.1 not seek, or acquire, business using business methods which in the opinion of the Association (acting through its Board) are (or are likely to be reasonably perceived to be) oppressive, dishonest, deceitful, misrepresentative or in any other manner contrary to the aims or standards of the Association;
  - 2.2 not propose to a prospective client terms and conditions for the provision of services which (applying standards recommended by the Association from time to time) are anything other than fair and reasonable;
  - 2.3 prior to the acceptance of a client’s instructions, submit a memorandum of instructions summarising the material terms on which an approach to a funding source is to be based.
  - 2.4 following submission to the client of the memorandum of instructions obtain his client’s written acceptance to his Terms of Business. It is the duty of the Member to inform the client, prior to acceptance, that acceptance of the terms of business will constitute a legally binding contract between Member and client [in the case of the Leasing and Factoring divisions, in which fees are not generally payable by a client to a Member, paragraphs 2.3 and 2.4 will not apply unless, exceptionally, the Member does charge his client with a fee, in which event the paragraphs will apply in full];

- 2.5 not act in circumstances where the client cannot be represented with a standard of competence consistent with their professional status;
- 2.6 at all times and when representing his client's interests use all due diligence, exercise reasonable care and skill in effecting his client's instructions and keep his client properly and regularly informed including complying promptly with reasonable requests for information;
- 2.7 disclose in writing to his client any existing conflict of interest or any circumstances which might give rise to a conflict of interest;
- 2.8 disclose to his client all information within his actual knowledge which is material to the client's seeking of finance according to the circumstances of his business;
- 2.9 in any matter treat clients and all other third parties at all times with standards of fairness and courtesy consistent with the Member's professional status;
- 2.10 at all times respect (and ensure that his staff do likewise) the confidentiality of information supplied to him in the course of his business;
- 2.11 not make any profit for his own or any other person's purposes by the use of confidential information gained from the client;
- 2.12 give impartial and objective advice to his client free from any external or adverse pressures or interest which would destroy or weaken the Member's independence or agency relationship with his client;
- 2.13 at all times only refer commercial finance proposals to reputable lenders/funders;
- 2.14 on receiving formal instructions to act for a client and having considered available comparable products appropriate to his client's requirements, to advise the client to the best of his ability as to the product recommended by the Member;
- 2.15 not advertise or promote his services in such a way as to cause offence, attract charges of poor taste or misrepresentation, or breaches of prevailing legislation, or advertise in any style or content likely to bring the Association and its Membership into disrepute. (Acceptable advertising may include confirmation of his membership of the Association by use of the Association's logo.) Advertising will be conducted in accordance with principles specified by prevailing legislation or nationally recognised advertising Codes;
- 2.16 where client monies are held by a Member, for whatever period of time, maintain separate bank accounts in respect of client monies and the Member's monies;
- 2.17 except where the client's consent has been obtained, not solicit other Member's clients;

- 2.18 avoid the charging or collection of any commission or other payment which might be perceived, or construed as being, excessive or incompatible with the prevailing terms of business normally applied in the industry;
- 2.19 not give any undertaking, or other assurance, to a client or other third party which cannot be discharged;
- 2.20 maintain proper records of all business undertaken on behalf of a client and disclose such information as the client may reasonably require subject to it arising exclusively from the contractual Broker:Client relationship;
- 2.21 establish a complaints procedure which, if not providing satisfaction to the complainant, provides for a complaint to be made to the Association (including under its Arbitration scheme);
- 2.22 respond promptly and comprehensively to requests, whether written or oral, for information requested by the Board in respect of complaints lodged against the Member or for any other purpose reasonably required by the Board.
- 2.23 Ensure that his staff are fully aware of the Member's responsibilities under these Rules. The Member shall be deemed to be liable for any breach of these Rules by his staff and shall be accountable to the Association accordingly.

## *Section C*

## *Complaints and Disciplinary Proceedings*

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- 1 Where the conduct of a Member shall appear in the reasonable opinion of either:-
- the Board (acting on behalf of the Association pursuant to its powers under Article 60 of the Constitution)
  - one or more Members of the Association (independent of the Board)
  - a client of a Member or other associated party
  - a Patron

materially to breach these rules or otherwise be injurious to the reputation or integrity of the Association or otherwise be objectionable in any respect a complaint shall be submitted and heard in accordance with the provisions of Rules C.1.1 to 6.2 inclusive as follows:

- 1.1 A formal written complaint must be lodged by, or on behalf of, the complainant (who may include the Board acting under C.1 above, ), with the Chief Executive of the Association who will notify it to the Member concerned.
- 1.2 The complaint will first be considered by the Chief Executive who shall have the right to call for such papers or information as he may require and which are in the possession of the Member against whom the complaint has been lodged, following which he will:
- 1.2.1 acknowledge receipt of the complaint to the complainant within 5 working days of receipt of the complaint;
- 1.2.2 refer the matter to the Chairman of the Association's Compliance Committee with his preliminary recommendations, (which may, if he considers there to be insufficient grounds, include a recommendation to dismiss the complaint summarily). The Chairman may endorse the Chief Executive's recommendation to dismiss the complaint summarily. He may also instruct that the complaint is heard by the Association's Compliance Committee (acting as a Complaints Committee and referred to in Rules C.1.2.2. to 4.1 as "the Committee") in accordance with the provisions of paragraphs 1.2.3 to 2.7 inclusive. The Committee shall have power to co-opt up to two additional Members and, subject to a quorum of four, shall act on behalf of the Board as a complaints and disciplinary committee. The Chairman will be the President of the Association. The Deputy President will not serve on the Committee. In the event that the President is unavailable the Deputy President shall take his place but the Deputy Chairman shall not then chair, nor serve on, any Appeal Committee convened under 2.3 to hear an appeal consequent on the

primary hearing. In the absence of the President at the primary hearing the President may chair the subsequent Appeal Committee.

- 1.2.3 The complainant will be informed in the letter of response from the Chairman under 1.2.1 above that notwithstanding the summary dismissal of his complaint he may nevertheless resubmit his complaint with the Chief Executive and instruct that the matter be heard in accordance with the provisions of Rules 1.2.2 to 2.7 inclusive.
- 1.3 In the event that the complaint is lodged against any one of the Executive Officers or Directors it will be incumbent upon the President for the time being to co-opt a Member of the Association willing to serve on the Board in place of that Executive Officer or Director until the complaint (and any appeal) has been discharged.
- 1.4 The complaint must be heard within 30 working days of the complaint being received by the Chief Executive or 30 working days of the date on which the complainant exercises his right to refer the matter to the sub-Committee under paragraph 1.2.3.
- 1.5 the Member will be offered the opportunity to appear in person before the Committee in order to justify or explain his conduct and/or to make statements in writing if appropriate.
- 1.6 The Member may appear with and be represented by another person nominated by him in writing prior to the hearing.
- 1.7 The Committee's decision which must be unanimous may include a caution, reprimand or suspension pending further investigation, or expulsion, and will be notified in writing to the Member and the complainant within 5 working days of the hearing.

EXAMPLES of breaches which may justify immediate suspension, or expulsion, (though not exhaustive), include:-

- conviction of any criminal offence which in the reasonable opinion of the Board has brought, or is likely to bring, the Association into disrepute;
- if a petition for a Bankruptcy Order is presented against a Member (or, where a corporate body, has a petition for an Administration Order presented against it or resolves to present a petition for an Administration Order or has a winding-up petition presented against it or is wound up voluntarily or compulsorily in the United Kingdom or elsewhere);
- if it appears to the Board and is notified to a Member in writing that he no longer continues to meet the current qualifications for Membership or any condition for Membership from time to time imposed on him;
- a Member applies for an interim order under the Insolvency Act 1986 or calls a meeting of his creditors for the purposes of an arrangement or composition with his creditors or enters into any such arrangement under the said Act;

- if being a corporate body, the Member calls a meeting of its creditors or enters into any arrangement with its creditors under the Companies Act 1985 or Insolvency Act 1986 or calls a meeting of its members for the purposes of being wound up voluntarily (other than for the purposes of a reconstruction or amalgamation) or has a winding-up petition presented against it voluntarily or compulsorily in the United Kingdom or elsewhere;
- where being engaged in any profession, or subject to the disciplines of a duly authorised regulatory body, he shall be prohibited by the disciplinary body of that profession or body from continuing to practice or to be registered therewith;

## **2. APPEAL**

- 2.1 In the event that the Member or the complainant wishes to appeal against the finding of the Committee, he may serve written notice of his intention to appeal to the Board.
- 2.2 Notice of appeal must be served on the Chief Executive within 10 working days of the date on which the letter conveying the Committee's decision is dispatched.
- 2.3 The Board will convene an Appeal Committee which will be chaired by the Deputy President. The Committee will comprise a minimum of 4 persons, including the Chairman, who will fix the date for the appeal. The President (subject to the provisions of 1.2.2) shall not serve on the Committee. The appeal must be heard within 30 working days of receipt by the Chief Executive of notice of the appeal.
- 2.4 The Appeal Committee will exclude the members of the Committee appointed to hear the original complaint.
- 2.5 The Member will be invited to attend the appeal and be represented in accordance with the procedures determining attendance at the primary hearing.
- 2.6 The decision of the Appeal Committee appointed by the Board (based on a simple majority of votes) shall be conveyed in writing to the Member and the complainant within 5 working days of the hearing of the appeal.
  - 2.6.1 Any decision made under Rule 1.7 or 2.6 shall include a reference to the Association's Arbitration Scheme with the Chartered Institute of Arbitrators and to the right of either party to the complaint or disciplinary proceedings to apply to the Chartered Institute of Arbitrators (details of the application requirements will be provided by the Chief Executive).
  - 2.6.2 Notice of a party's intention to apply to the Institute of Arbitrators must be given to the Chief Executive within 7 working days of the Appeal Committee's decision and formal application to the Institute (in the form prescribed by the Institute) must be submitted to the Institute within 21 days of the said decision.

2.7 Subject to the decision of any Arbitration proceedings the Appeal Committee's decision shall be final and binding on the Member and the complainant.

### **3. CAUTION OR REPRIMAND**

3.1 Subject to the rights of appeal herein before set out, the Committee may issue a written caution or reprimand to the offending Member and on such terms as to the Member's future behaviour and performance as it considers fit and appropriate in the circumstances.

### **4. SUSPENSION**

4.1 Subject to the rights of appeal herein before set out, the Committee shall have power to suspend a Member (including summary suspension) whom it has reasonable cause to believe has breached the Rules of Conduct (pending further investigation) or where it believes suspension to be appropriate pending the hearing of a complaint or appeal under the foregoing procedures.

4.2 The Member shall not in any circumstances be entitled to hold himself out to be a Member of the Association whilst his membership remains suspended and shall enjoy none of the privileges of membership during such period.

4.3 The Member shall nevertheless continue to be subject to the Rules during the period of suspension.

### **5. EXPULSION OR OTHER TERMINATION**

5.1 If the decision of the disciplinary proceedings referred to above (including any appeal) is for the expulsion of the Member (or other termination of his membership) the Member shall cease to be a Member of the Association and he shall not in any circumstances thereafter be entitled to hold himself out to be a Member of the Association in any way nor shall he have any rights on the Association or its property or funds. If he does so the Association may take such action (including legal proceedings) against him as it deems to be necessary.

### **6. CRIMINAL PROCEEDINGS**

6.1 In the event that criminal proceedings are brought against a Member whilst a complaint is being considered under the above Rules the Committee will suspend the complaint proceedings pending the outcome of the criminal action.

### **7. PUBLICATION OF FINDINGS**

7.1 Subject to the provisions of sub-Clause 6.2, and to any restrictions imposed on the Association under prevailing legislation, the Association reserves the right to make known its findings under disciplinary proceedings to the Members and Patrons of the Association and, exceptionally, in any national, or trade, newspaper or publication as it thinks fit.

7.2 Such information may be published, subject to external legal advice.

**8. RESPONSIBILITY FOR THE ACTS OF OTHERS**

- 8.1 A Member will be answerable (and accountable) to the Association for the acts of all his partners, employees and directors (whether they are registered individuals of the Association or not).

## *Section D*                      *Generally*

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1.        This Code of Practice (as amended from time to time) shall be read in conjunction with the provisions of the Constitution of the Association. In the event that a conflict arises in the interpretation of the Code or the Constitution the provisions of the Code of Practice will prevail.
2.        A Member shall be deemed to have read and understood the Constitution and Rules of Conduct at the time his application for Membership is accepted and shall raise no objection in relation thereto.
3.        The Rules are constantly under review but any subsequent amendments or revisions thereto will be preceded by a reasonable period of notice to Members of the Association. Notification of such changes shall be conducted in accordance with the procedures stipulated in the Constitution.
4.        The Rules are intended to determine the standards of integrity, professionalism, conduct and practice expected of the Association's Members. They do not, nor are they intended to, affect the contractual relationship negotiated and agreed in the ordinary course of Members business activities between Members and their clients or other third parties.

## *Section E                      Definitions and Notices*

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Where the context so allows:

- The reference “Constitution” shall be deemed to be a reference to the Association’s Memorandum and Articles of Association.
- The expression “Code of Practice” shall be deemed to include reference to the Objectives, the Rules of Conduct and to the Complaint and Disciplinary procedures contained herein and vice versa.
- Words importing the male gender include the female and neuter words in the singular plural and vice versa and references to “acts” includes “omissions”.
- Reference to any provision of an Act of Parliament or Statutory Regulations includes a reference to any subsequent statutory modification, re-enactment or amendment of that provision for the time being in force.

## ***NACFB Code of Practice for Lease and Asset Finance Brokers***

### ***INTRODUCTION***

- 1.1** This section of the Code applies to any Member of the NACFB in the business of broking or arranging asset finance deals, or acting in any other way as an intermediary between an asset finance provider and a customer, where the latter is a business or a public body (hereinafter referred to as “the Intermediary”. It applies to any Intermediary who may engage in any activity from the simple introduction of a customer to an asset finance provider through to actively organising finance for a customer. In this context, asset finance may include lease finance, hire purchase or such other finance as the asset finance provider may offer and the customer may require, in relation to equipment.
- 1.2** The Intermediary will be independent of the provider of funds for the transaction and will obtain remuneration for its services. It may arrange, structure and provide for the inclusion of other services in an asset finance transaction.
- 1.3** The Intermediary may act as an intermediary between asset finance providers and customers; or it may act as an Intermediary between asset finance providers, the supplier of the goods and the customer. In some instances it may have no contact with the customer.
- 1.4** Where appropriate NACFB members shall also adhere to the key commitments and relevant provisions set out elsewhere in the FLA’s Business Code of Practice and the Local Authority and NHS Business Code.
- 1.5** The Intermediary’s provision of services as described in 1.1 above will be on terms consistent with their mandate to place business. The mandate may be any written or verbal agreement that the Intermediary has with its client.

### ***TERMS OF BUSINESS***

- 2.1** Where dealing on behalf of the customer, the Intermediary will obtain the customer’s consent to act on its behalf, setting out the terms of business

agreement (TBA) under which the Intermediary will provide services as described in 1.1 above. Consent may be verbal or in writing. If a fee is paid by the customer, written consent to the TBA, including the fee structure, must be obtained. This TBA will be provided to the asset finance provider if requested.

2.2 Where appropriate, the Intermediary will inform the asset finance provider:

- (i) That it is engaging in broker to broker transactions;
- (ii) That it is paid a retainer by the customer;
- (iii) Whether it is acting on behalf of either the customer or the supplier of the goods;
- (iv) That it has a financial or personal interest in either the supplier of the goods or the customer's business;

In addition, the Intermediary will, where appropriate, inform the asset finance provider(s) and the customer:

- (v) That it is submitting written credit applications to more than one finance provider and the number of such applications; and will inform the customer that a record of each search will be stored;
- (vi) That it has an interest in the residual value of the assets financed in a deal;
- (vii) That it is receiving a fee from both the asset finance provider(s) and the customer.

2.3 Where searches are made for data on any individual, in respect of business covered by this Section, that individual's prior consent will be obtained in writing or in any other durable medium by the Intermediary.

## ***COMPLAINTS PROCEDURES***

3.1 These are detailed in the NACFB's Code of Practice

## *Section G*

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# **NACFB Code of Practice for Residential Investment Mortgage Intermediaries**

## **1**     *Scope*

- 1.1 The objective of this supplementary Code is to encourage best practice amongst intermediaries who are advising borrowers on the most suitable types and sources of mortgage loans for the purchase or refinance of residential letting properties.

The Code emphatically does not relate to, or seek to control any activity that involves:

- (a) Investment advice within the scope of prevailing financial services legislation for advice
- (b) The commercial implications of a Buy to Let purchase
- (c) The suitability of property offered as security for a mortgage.

- 1.2 Notwithstanding 1.1 above, intermediaries shall make available to their clients a copy of the Council of Mortgage Lenders' leaflet "Buying to Let".

## **2**     *Definitions*

- 2.1 An intermediary is an individual, partnership or corporate body who/ that assists or advises clients in the selection of a Residential Investment Mortgage (RIM), and in the presentation of an application to a lender in order to secure such a mortgage.
- 2.2 A RIM is any mortgage on a residential property which is, or has been, purchased for the purpose of letting to residential tenant(s). It includes changes of use of a property for this purpose. The Code has been prepared on the basis, and understanding, that a RIM is a commercial mortgage and is not regulated under the Mortgage Code or prevailing financial services legislation.

## **3**     **Rules of Conduct:**

### **Subscribers to the Code shall:**

- 3.1 Not seek or acquire business using methods that are, or are likely to be regarded as oppressive, dishonest, deceitful, misrepresentative, or in any

other manner contrary to the objectives or standards of the Association or are likely to undermine its integrity;

- 3.2 Propose to a potential client terms and conditions for the provision of services which are fair and reasonable;
- 3.3 Use all due diligence, and take such action as is necessary and appropriate, in protecting their clients' interests and ensure that the services applied to the arrangement of a loan comply with prevailing relevant laws and regulation;
- 3.4 Respect (and ensure that staff do likewise) the confidentiality of information supplied to them in the course of their business;
- 3.5 Only refer proposals to lenders who are registered with the MCCB or are members of the CML or IMLA;
- 3.6 Give competent advice to clients on the most appropriate type of mortgage for the purchase or refinance of a letting property, having reviewed the client's needs and financial circumstances, so far as is divulged by the client, and appropriate comparable products;
- 3.7 Obtain the client's written acceptance to a Terms of Business Agreement (TBA) incorporating indicative terms. It is the duty of the intermediary to inform the client, prior to acceptance, that acceptance of the TBA will constitute a legally binding contract between intermediary and client. Where fees are to be charged on the "issue" of an offer of loan, the terms must not be materially different from those contained in the "Indicative Terms".
- 3.8 Assist clients in understanding the financial implications of their mortgage and how the account will operate to include:
  - 3.8.1 Repayment methods – Capital & Interest or Interest only and term;
  - 3.8.2 Flexible mortgages - how these products can affect risk management and the positive and negative taxation implications e.g. Vat efficiency versus deduction of tax;
  - 3.8.3 Interest rates – variable, fixed, base rate or Libor linked, capped, collars, discounted;
  - 3.8.4 For interest only mortgages the responsibility to arrange a method of repayment at the end of the term and the effects of failing to do so;
  - 3.8.5 Early repayment penalties and changes to interest payment at the end of a fixed rate term;
  - 3.8.6 Description of related insurances e.g. Building insurance, life assurance, insurance protection against voids and tenant default and mortgage payment protection (and whether it is a condition of the mortgage that such additional cost shall be incurred);

- 3.8.7 An explanation of related fees and costs e.g. valuation and legal fees, arrangement fees, redemption fees and insurance premiums.
- 3.8.8 Consumer Credit Act – the potential implications on the credit ratings of borrowers residing at the same address as individuals with adverse credit histories.
- 3.8.9 Explanation of the implications of referring the clients details to credit reference agencies.
- 3.9 Keep the client properly and regularly informed and comply promptly with reasonable requests for information.
- 3.10 Disclose in writing to the client any conflict of interest or any circumstances that might give rise to a conflict of interest i.e. appointed agent of a lender and / or business relationship that exists with the seller or his / her agent;
- 3.11 Charge fees, commissions or other payments that are compatible with the prevailing terms of business normally applied in the industry. Unless otherwise agreed between the client and broker, client fees should be based on the successful arrangement of a mortgage and should not generally exceed 1% of the gross advance ;
- 3.12 Disclose to the client, upon their written request, the lender’s commission and any other commissions / fees paid to them by other parties involved in the transaction
- 3.13 Maintain proper records of all business undertaken on behalf of a client and disclose such information as the client may reasonably require subject to it arising exclusively from the contractual Intermediary: Client relationship.
- 3.14 Maintain a company complaints procedure, which if not providing satisfaction to the complainant, provides for a complaint to be made to the Association (including under its Arbitration scheme).
- 3.15 With the client’s or other complainants consent, and consistent with prevailing data protection legislation, respond promptly and comprehensively to requests, whether written or oral, for information required by the Association in respect of complaints lodged against the Member.
- 3.16 Ensure that staff are fully aware of the Member’s responsibilities under these Rules. The Member shall be deemed to be liable for any breach of these Rules by his staff and shall be accountable to the client and to the Association accordingly.

## **4 *Marketing of Mortgages***

### **Subscribers shall:**

- 4.1 Not send marketing material indiscriminately and be selective in targeting persons under the age of 18 years.

- 4.2 Ensure that advertising complies with prevailing advertising standard regulations in that it is clear, fair, reasonable and not misleading.

## **5 *Complaints***

Procedures for handling complaints referred to the Association and details of sanctions and appeals are set out in Section C of the full NACFB Code of Practice. However, where a serious breach of the Code of Practice is alleged, the Committee selected to hear the complaint will additionally include a nominated IMLA or CML member.

## **6 *General***

Subscribers to this supplement of the NACFB Code of Practice are also required to comply with other rules of conduct contained in the full Code.

## **NOTICES**

All correspondence and notices issued under the Rules of Conduct should be delivered personally to or sent by first class post or facsimile transmission to:

The Chief Executive  
The National Association of Commercial Finance Brokers  
17 Gandy Street  
Exeter EX4 3LS



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