

## Introduction

FAAA REGULATION 02/04 Use of the FAAA brand by Members outlines the obligations and rights of Members in the Non-practising CFP® Professional membership category in relation to the CERTIFIED FINANCIAL PLANNER® mark, the CFP® mark and the CFP® Logo mark (the “CFP Marks”).

The CFP Marks are trademarks owned by Financial Planning Standards Board Ltd and licensed exclusively to the FAAA, which grants the CFP designation to financial planning professionals who meet its initial and ongoing certification standards and requirements. CFP certification is the global symbol of excellence in financial planning.

All Members are required to warrant each year that they have used the CFP Marks and FAAA brand in accordance with relevant legislation. The FAAA is aware that the designation CERTIFIED FINANCIAL PLANNER® includes an expression which is restricted under section 923C of the Corporations Act (2001), that being ‘financial planner’. The consideration for members with using the designation ‘CFP®’ or the CFP Logo mark (which incorporates the letters CFP) is that they may be understood to be an abbreviation of ‘CERTIFIED FINANCIAL PLANNER®’ and therefore the ‘FP’ element may be considered an expression of ‘like import’ to the term ‘financial planner’. Expressions of ‘like import’ to the expression ‘financial planner’ are also restricted under section 923C. Throughout this document when we refer to use of the CFP designation, we mean any use of a designation that comprises of one or more of the CFP Marks.

This guideline is intended to provide guidance to non-practising CFP professional members on how they might be able to use the CFP designation (‘Permitted use of Designations’) by providing examples of when the designation can be used, as well as use of the CFP designation that would not be permitted (‘Prohibited use of Designations’).

Whilst the following guidelines have been prepared with legal advice, FAAA Members should consider seeking legal advice specific to their individual situation.

## Definitions

**Financial Service** means for the purposes of this document:

- a. provide financial product advice; or
- b. deal in a financial product; or
- c. provide a claims handling and settling service.

**Non-practising CFP Professional (Non-practising CFP professional)** means FAAA members who meet the criteria for the non-practising CERTIFIED FINANCIAL PLANNER® professional membership category, as set out in the FAAA Member Regulation.

**‘Permitted use’** anticipates that the use may be by the non-practising CFP professional themselves or by their authorising corporate authorised representative (**CAR**) or AFS licensee in relation to the non-practising CFP professional.

- By way of example, a time when a CAR or AFS licensee might use the CFP Marks in relation to a non-practising CFP professional would be when making representations about the non-practising CFP professional on the website of the AFS licensee or CAR.

**Relevant provider:** a person is a relevant provider if the person:

- a. is an individual; and
- b. is:

- i. a financial services licensee; or
  - ii. an authorised representative of a financial services licensee; or
  - iii. an employee or director of a financial services licensee; or
  - iv. an employee or director of a related body corporate of a financial services licensee; and
- c. is authorised to provide personal advice to retail clients, as the licensee or on behalf of the licensee, in relation to relevant financial products.

### Use of the tables

The following tables set out nine common examples of when the CFP Marks can be used, together with a clarification as to why the use would be permissible. Members should note the warnings provided under each example when reviewing their own situation.

## Use of the CFP® designation is permitted where the designation is being used:

### EXAMPLE ONE

#### **In relation to a service which is not a financial service.**

For example, mortgage broking, accounting, business consulting, teaching.

#### **REASON**

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider. Use of a restricted word or expression in relation to services which are not financial services does not breach section 923C.

**WARNING:** The non-practising CFP professional member should ensure that designations are not used in relation to a financial service.

### EXAMPLE TWO

#### **In relation to a role supporting financial advisers, such as paraplanner, business development manager, or client service officer role.**

(Provided the use is not related to a financial service provided by the Non-practising CFP professional member).

#### **REASON**

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

The non-practising CFP professional member is not typically providing financial services (including financial product advice or dealing). Rather, they are assisting advisers to provide financial services. Accordingly, the use of the designation is not in relation to a financial service provided by the member.

**WARNING:** If the non-practising CFP professional member provides financial services, then there is a risk the use could be regarded as being in relation to these financial services.

The member must not use the designation in relation to financial services they provide unless the financial services are provided in the circumstances set out in examples 7 or 9.

### EXAMPLE THREE

#### **In relation to a role as a compliance manager or responsible manager.**

Provided the use is not related to a financial service provided by the Non-practising CFP professional member.

#### **REASON**

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider. The non-practising CFP professional member is not typically providing financial services (including financial product advice or dealing). Rather, they are overseeing the provision of financial services, including (possibly) the provision of personal advice to retail clients. Accordingly, the use of the designation is not in relation to a financial service provided by the member.

**WARNING:** The non-practising CFP professional member must not use the designation in relation to financial services they provide unless the financial services are provided in the circumstances set out in examples 7 or 9.

## Use of the CFP® designation is permitted where the designation is being used:

### EXAMPLE FOUR

#### In relation to mentoring financial advisers.

##### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider. The non-practising CFP professional member is not providing financial services and therefore use of the designation is not in relation to financial services provided by the member.

**WARNING:** If the non-practising CFP professional member provides financial services, then there is a risk the use could be regarded as being in relation to these financial services.

The member must not use the designation in relation to financial services they provide unless the financial services are provided in the circumstances set out in examples 7 or 9.

### EXAMPLE FIVE

#### In relation to something other than a financial service.

For example, when outlining qualifications in a CV, displaying your certificate on the wall, or using the CFP marks in postnominals where the use is unconnected to a service (for example, on a business card, or where the member is attending a formal dinner and their name is recorded on the guest list or appears on a name tag).

##### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

As it is not being used in relation to a service, the designation, by implication, is not being used in relation to a financial service provided by the member.

**WARNING:** If the member provides financial services, it may be arguable that the designation is being used in relation to financial services.

To avoid this risk, the member may wish to avoid using the designation in these situations. The risk is removed if the member provides financial services only in the circumstances set out in examples 7 or 9.

### EXAMPLE SIX

#### On LinkedIn, in an email signature, or on a corporate website – provided the use is not related to a financial service provided by the non-practising CFP professional member.

##### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 only prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

The use is not in relation to a financial service provided by the member.

**WARNING:** If the member provides financial services, it may be arguable that the designation is being used in relation to financial services provided by the member.

To avoid this risk, the member may wish to avoid using the designation in these situations.

The risk is removed if the member provides financial services in the circumstances set out in examples 7 or 9.

## Use of the CFP® designation is permitted where the designation is being used:

### EXAMPLE SEVEN

#### In relation to financial product advice (general or personal) provided to WHOLESALE clients.

(But not in relation to other financial services, such as dealing, provided to retail or wholesale clients, or in relation to general advice provided to retail clients).

#### REASON

Subsections 923C(3) and (4) of the Corporations Act 2001 state that it is not a contravention of subsections 923C(1) and (2) if the restricted expression is only used in relation to the provision of advice to wholesale clients.

It is not clear whether the term 'advice' is intended to mean 'financial product advice' but it would seem logical to take that interpretation.\* On that basis, both general and personal advice to wholesale clients would be covered.

**WARNING:** These non-practising CFP professional members are likely to be providing dealing services to their clients when they implement personal advice they provide and may also provide dealing services to wholesale clients when no personal advice has been provided to those clients. They may also provide a claims handling and settling service to wholesale clients. Some members may also provide financial services other than personal advice (such as general advice, dealing, or claims handling and settling), to retail clients.

If using the designation, the member needs to curtail the use so it is clear they are only using it in relation to their provision of financial product advice to wholesale clients.

### EXAMPLE EIGHT

#### In relation to training (online or otherwise) to WHOLESALE clients only.

#### REASON

Subsections 923C(3) and (4) of the Corporations Act 2001 state that it is not a contravention of subsections 923C(1) and (2) if the restricted expression is only used in relation to the provision of advice to wholesale clients.

It is not clear whether the term 'advice' is intended to mean 'financial product advice' but it would seem logical to take that interpretation.\* On that basis, both general and personal advice to wholesale clients would be covered.

Training normally entails the provision of general advice and may entail the provision of personal advice.

**WARNING:** The non-practising CFP professional member should ensure that all clients attending the training are wholesale clients.

### EXAMPLE NINE

#### In relation to financial product advice provided to a body in the CFP member's capacity as employee or director of that body.

#### REASON

Subsections 923C(5) and (6) of the Corporations Act 2001 state that it is not a contravention of subsections 923C(1) and (2) if the restricted expression is only used in relation to advice provided to a body by an individual where the individual is an employee or director of the body.

Again, the use of the term 'advice' is presumably intended to mean 'financial product advice'.

**WARNING:** The financial product advice in question is likely to be personal advice given the fact that it is given to the body specifically.

\* This is on the basis that the term 'advice' seems closer to 'financial product advice' than to 'personal advice' or 'general advice' specifically. It is also on the basis that the intention here is to give greater freedom in relation to representations made in relation to services provided to wholesale clients.

## Prohibited use of the CFP® designation

'Prohibited use' means that use is prohibited whether it is by the non-practising CFP professional themselves or by their authorising CAR or AFS licensee in relation to the non-practising CFP professional.

By way of example, a time when a CAR or AFS licensee might use the Designations in relation to a non-practising CFP professional would be when making representations about the Non-practising CFP professional on the website of the AFS licensee or CAR.

## Use of the CFP® designation is prohibited:

### EXAMPLE ONE

**In relation to the provision of general advice to retail clients by the non-practising CFP professional.**

#### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider (with exceptions in relation to the provision of 'advice' to wholesale clients – subsection 923C(3) and (4)).

### EXAMPLE TWO

**In relation to the provision of dealing services to retail and/or wholesale clients (including 'execution only' services to retail and/or wholesale clients and implementation of personal advice provided to wholesale clients) by the non-practising CFP professional.**

#### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

### EXAMPLE THREE

**In relation to the provision of claims handling and settling services to retail and/or wholesale clients by the non-practising CFP professional.**

#### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

### EXAMPLE FOUR

**In relation to the role as a finfluencer.**

#### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider (with exceptions in relation to the provision of 'advice' to wholesale clients – subsection 923C(3) and (4)).

Unless the non-practising CFP professional could restrict their finfluencing activities to wholesale clients only, these activities will amount to the provision of general advice to retail and wholesale clients.

## Use of the CFP® designation is prohibited:

### EXAMPLE FIVE

**In relation to training (online or otherwise) to retail clients.**

#### REASON

Subsections 923C(1) and (2) of the Corporations Act 2001 prohibit the assumption or use of a restricted expression in relation to a financial service provided by an individual who is not a relevant provider.

The provision of training typically amounts to financial product advice (and in the case of a non-practising CFP professional training retail clients would have to be restricted to general advice).

### EXAMPLE SIX

**As part of another word or expression or in combination with other words, letters or other symbols (for example, 'non-practising CERTIFIED FINANCIAL PLANNER®'), where used in relation to a financial service provided by the non-practising CFP professional.**

#### REASON

Subsection 923C(8) of the Corporations Act 2001 prohibits a restricted expression being assumed or used as part of another word or expression or in combination with other words, letters or other symbols.

**WARNING:** The non-practising CFP professional cannot use the designation as part of a broader description explaining that the designation does not apply in relation to particular financial services.

## Risks in relation to misleading, deceptive or similar conduct

Whenever a non-practising CFP professional member uses the designation, they should take actions to avoid any risk that they give the impression that they are authorised to provide personal advice to retail clients.

Giving this impression risks breaching provisions relating to misleading or deceptive conduct, false or misleading representations, or other statutory consumer protection provisions.