



## **Pro Bono Financial Planning and Compliance: Frequently Asked Questions by Compliance Departments**

*Foundation for Financial Planning (FFP) acknowledges and thanks our pro bono compliance counsel, MarketCounsel Consulting, for their ongoing partnership and collaboration. MarketCounsel provided the answers to these frequently asked questions.*

Below is a list of questions that pro bono financial planners often receive from their compliance departments. The responses that follow each question are based on the general rules and regulations covering financial advisers and are not specific to any one firm. As always, you should closely follow your internal policies and procedures in pursuing pro bono opportunities.

### **1. Does My Firm Have a Duty to Supervise My Pro Bono Volunteer Activity?**

#### *Investment Advisory Firms:*

We do not believe that investment advisory firms have a duty to supervise this activity. Although an investment advisory firm has a continuing responsibility to supervise all persons acting on its behalf,<sup>1</sup> you will not be providing advice on behalf of your firm or representing your firm in any way. Instead, you will be providing advice in your individual capacity as a CFP® Professional on a pro bono basis.

#### *Broker-Dealers:*

The rules for broker-dealers are less clear than the rules for investment advisory firms and your firm will have to decide what its responsibilities are, and you will need to follow their requirements. However, we do not believe that the pro bono activities performed by CFP® Professionals affiliated with broker-dealers need to be supervised. The most applicable FINRA rule, Rule 3270<sup>2</sup> (Outside Business Activities of Registered Persons) says that “no registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, **from any other person as a result of any business activity outside the scope of the relationship with his or her member firm**, unless he or she has provided prior written notice to the member, in such form as specified by the member” (emphasis in bold added). Pro

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<sup>1</sup> The SEC has stated that the “delicate fiduciary relationship” between an investment adviser and a client imposes an obligation on an adviser to review and to monitor the activities of its employees. [Shearson Lehman Brothers, Inc. and Stein Roe & Farnham, Exchange Act Rel. No. 23640 \(Sept. 24, 1986\)](#).

<sup>2</sup> Note that we do not expect anyone to participate in any private securities transactions which would be subject to Rule 3280. That rule defines a “Private securities transaction” to include any “transaction outside the regular course or scope of an associated person’s employment with a member....” You will not be making or recommending any securities transactions.

bono financial planning does not fit into this description. It is not a business activity. There is no compensation either directly or indirectly for providing the pro bono services.

*General:*

To address the absence of a registered firm providing supervision, the Foundation for Financial Planning (FFP) has policies and procedures in place to govern your pro bono activity. For example, FFP imposes clear prohibitions on recommending yourself or your firm for additional services and products. You cannot use these programs to generate leads or cultivate potential paying clients. Further, FFP has taken out the adequate [insurance coverage](#) to address any risk caused by your activities, although there has been no need to use the insurance during FFP's history. Finally, you will be held to the CFP® Code of Ethics and Standard of Conduct to ensure that your advice is provided in the best interests of the recipient.

To be clear, regardless of rule requirements, you must follow your firm's policies, procedures and permissions. If your firm decides that they must supervise your activities, that trumps any FINRA or SEC rules.

## **2. Do I Need to Get Permission from My Firm to Engage in Pro Bono Volunteer Activity?**

Some firms require their staff to get permission specifically to engage in outside business activities. Other firms are more general and require their staff to get permission to engage in volunteer services as well. As discussed in question 1, it is our opinion that pro bono financial planning is not a "business activity" as no compensation is received or expected. However, even if your firm's policies and procedures only require you to disclose "outside business activities," we believe you should disclose this activity to your firm as an "outside activity." We believe that it is in everyone's best interest for the firm to know that you are providing this important and noble service. Furthermore, if you appear in any of FFP's videos, testimonials, or [impact stories](#), you should get permission based on your firm's policies and procedures.

## **3. Will I be Acting in My Registered or Licensed Capacity?**

No. This activity does not involve compensation for investment advice, so it does not require registration as an investment adviser representative.<sup>3</sup> Since the activity is limited to financial planning/advice, it does not involve effecting or facilitating securities transactions and so it does not require licensing or registration related to broker-dealer activities.<sup>4</sup> An important piece to remember is that there is no direct or indirect compensation for the service.

## **4. Does This Activity Need to Be Disclosed on My U4?**

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<sup>3</sup> Definition of Investment Adviser Representative. Investment Advisers Act Rule 203A-1(1)(a) <https://www.law.cornell.edu/cfr/text/17/275.203A-3>.

<sup>4</sup> Guide to Broker-Dealer Registration. <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html>

No. This activity does not need to appear on your employment history since you are not employed by FFP, its partners, or its nonprofit grantees. Nor does the activity need to be disclosed as an outside business activity on your U4 because you are not engaged in a business and will not be receiving any compensation in any form. Further, each engagement is specifically limited in scope (as addressed below) and is not a long term or continuing activity.<sup>5</sup>

## 5. Does This Activity Need to Be Disclosed on My Brochure Supplement?

No. If you are required to provide a Brochure Supplement to your clients, you must disclose whether you are engaged in any investment-related business or occupation.<sup>6</sup> The terms “business” and “occupation” are not specifically defined in the form’s instructions and so should be understood in the ordinary usage of the words. It is our interpretation that a pro bono activity should not be considered a business or occupation.

## 6. Should I Use My Personal or Business Email Address While Conducting Pro Bono Service?

This is a question you can ask your employer when getting permission to do pro bono work. Either way, you should make it clear that you are not representing your firm in providing the services.

## 7. What is MarketCounsel Consulting?

MarketCounsel Consulting is the leading business and regulatory compliance consultancy to the country’s preeminent independent investment advisers throughout all stages of their lifecycle. From its roots in 2000, MarketCounsel has been steadfast in its mission to deliver solutions to the most substantial challenges faced by entrepreneurs in this fast-growing and highly-regulated industry and it has emerged as one of its most effective advocates. From the initial launch of an adviser to its regulatory compliance management platform, and from its business growth to its succession strategies, MarketCounsel consistently delivers trusted counsel within an extraordinary service experience by leveraging the finest minds in the industry, advanced technologies and sound business processes. The firm’s annual event, the MarketCounsel Summit, has become the premier gathering for the country’s

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<sup>5</sup> Form U4 General Instructions. The other business instructions read: *Enter "yes" or "no" to indicate whether you currently are engaged in any other **business**, either as a proprietor, partner, officer, director, employee, trustee, agent, or otherwise. Exclude non-investment-related activity that is exclusively charitable, civic, religious or fraternal, and is recognized as tax exempt.* <https://www.finra.org/sites/default/files/AppSupportDoc/p015111.pdf>

<sup>6</sup> General Instructions for Part 2 of Form ADV. Item 4 for Part 2B asks *If the supervised person is actively engaged in any **investment-related business or occupation**, including if the supervised person is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant (“FCM”), commodity pool operator (“CPO”), commodity trading advisor (“CTA”), or an associated person of an FCM, CPO, or CTA, disclose this fact and describe the business relationship, if any, between the advisory business and the other business.* <https://www.sec.gov/about/forms/formadv-part2.pdf>

leading growth-oriented, independent investment advisers and serves as both a spark and catalyst for conversation among the industry's leaders.

## **8. What is the Foundation for Financial Planning (FFP)?**

FFP is the nation's only 501(c)(3) nonprofit charity solely devoted to supporting the delivery of pro bono financial planning. Since 1995, FFP has powered pro bono planning by supporting efforts that link volunteer financial planners to people in crisis or need, providing them with free, quality advice to improve their finances and their lives.

FFP acts as the national engine for pro bono financial planning. FFP provides financial support, technical assistance, training, and resources to enable nonprofits around the country to develop and sustain pro bono financial planning programs for the people they serve. Working with partners like the Financial Planning Association® (FPA®), the National Association of Personal Financial Advisors (NAPFA), the Certified Financial Planner Board of Standards® (CFP Board®), and others, the FFP helps engage and train volunteer advisors on how to participate in these programs, which serve some of the most financially vulnerable members of our society, including wounded veterans, domestic violence survivors, struggling single parents, people with cancer, and many more.

The FFP also packages and shares pro bono program models and free resources to help planners and consumers make the most of their pro bono engagement.

## **9. Who Can Help with Further Questions?**

If you have additional questions, please contact Rachel Roth, FFP's Director of Grants and Programs at [rroth@ffpprobono.org](mailto:rroth@ffpprobono.org) to learn more.

*Thank you to MarketCounsel Consulting for compiling this resource.*

