

The Financial Advice Code

[Version: Consultation draft October 2018]

This is the Code of Professional Conduct for Financial Advice Services prepared in accordance with Part 4 of Schedule 5 of the Financial Markets Conduct Act 2013 (the **FMC Act**).

The code contains the minimum standards of professional conduct that must be demonstrated by all persons who give regulated financial advice. Under the FMC Act:

- A person who gives regulated financial advice to a retail client must comply with the standards of ethical behaviour, conduct and client care required by the code. Those standards are set out in Part 1 of the code.
- A person must not give regulated financial advice to a retail client unless the person meets the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the code for giving the advice. Those standards are set out in Part 2 of the code.

In the code, “client” means a retail client and “financial advice” means regulated financial advice given to a client. Headings, commentary, examples and side boxes are provided to assist interpretation and do not limit the standards.

The code is part of a wider regulatory regime for financial advice. Persons who give financial advice also have obligations under other parts of the regime, including under the FMC Act and regulations made under that Act (FMC Regulations).

PART 1: ETHICAL BEHAVIOUR, CONDUCT AND CLIENT CARE

[Standard 1] **Treat clients fairly and act in their interests**

A person who gives financial advice must always treat clients fairly and act in their interests.

COMMENTARY

Fairness is not one-sided and depends on the particular circumstances. Treating clients fairly usually includes:

- treating clients with respect
- listening to clients, considering their views and responding to their concerns and preferences
- communicating with clients in a timely, clear and effective manner

- not exploiting clients' vulnerabilities, including lack of financial knowledge
- applying business practices that promote the interests of clients, having regard to the nature and scope of the financial advice
- acting in accordance with the spirit and intent of the person's legal obligations, including under the FMC Act, FMC Regulations and the code.

Other standards in the code and obligations under the FMC Act and the FMC Regulations address specific elements of treating clients fairly. Those obligations and standards do not limit this standard.

[Standard 2] **Act with integrity**

A person who gives financial advice must always act with integrity.

COMMENTARY

A person who acts with integrity is honest and consistently does the right thing.

The standard applies to giving financial advice and to the activities and business practices that surround and support the giving of financial advice. For example, it includes how a person who gives financial advice:

- describes themselves and their business
- publishes and shares information with clients, prospective clients and the public
- interacts with clients, prospective clients, colleagues, regulators, and the public.

[Standard 3] **Manage conflicts of interests**

A person who gives financial advice must have arrangements in place to manage conflicts of interests, including arrangements to:

- where practicable, avoid conflicts of interests
- identify conflicts of interests
- ensure that conflicts of interests are controlled in accordance with the requirements of the FMC Act
- adequately disclose conflicts of interests to clients.

Conflict of interests: Section 431J of the FMC Act requires that, where there is a conflict of interests, priority must be given to the client's interests by taking all reasonable steps to ensure that the advice is not materially influenced by the other interests.

[Standard 4] **Take reasonable steps to ensure that the client understands the financial advice**

A person who gives financial advice must take reasonable steps to ensure that the client understands the financial advice and all material risks and consequences of:

- the nature and scope of the financial advice (and of any limitations on the nature and scope)
- following the financial advice, including any associated fees and costs.

COMMENTARY

Clients should be able to make informed decisions about the financial advice, for example:

- whether the nature and scope of the financial advice is acceptable to them
- whether the fees and costs associated with following the financial advice, including for example those of any financial advice product or platform, are acceptable to them
- whether to act on the financial advice
- the nature of any ongoing advice support, and whether and when to seek additional financial advice.

Section 431I of the FMC Act requires that a person must not give financial advice unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the financial advice, including any limitations on the nature and scope. The standard requires that reasonable steps must be taken to ensure that the client also understands the material risks and consequences of that nature and scope.

Information that does not aid the client's understanding of the financial advice may not need to be given to the client. For example, some details about suitability that are not relevant to the client's understanding of the financial advice may be retained in internal work papers.

Example: Beth, a financial adviser, recommends that a client replace an existing life insurance policy with a new policy that provides similar benefits to the existing one. The nature and scope of the financial advice given by Beth excludes a comparison between the existing and the new policy. Beth therefore explains to the client that there are some situations that are covered under the existing policy (including specific benefits, premiums applicable now and in the future, health events or life events) that may not be covered under the new policy, and conditions that may apply because of the replacement (such as a requirement for underwriting, loading as a result of the change in health circumstances, and any stand down periods). Beth checks that client understands each of these risks and consequences.

[Standard 5] **Give financial advice that is suitable for the client**

A person who gives financial advice must ensure that the financial advice is suitable for the client. The person must have reasonable grounds for the financial advice, having regard to the nature and scope of the financial advice and the client's circumstances.

Reasonable grounds for the financial advice means grounds that a prudent person engaged in the profession of giving financial advice would consider to be adequate in the same circumstances, including in relation to:

- the strategy underpinning the financial advice
- each financial advice product covered by the financial advice.

The client's circumstances means those aspects of the client's situation, needs, goals, and risk tolerance that a prudent person engaged in the profession of giving financial advice would consider to be relevant to the financial advice.

COMMENTARY

Suitability, in this context, requires the financial advice to be matched to the client's circumstances so that the product or plan is appropriate for the client, having regard to the nature and scope of the financial advice.

In some situations, an in-depth analysis of the client's circumstances may be required. In others, it may be reasonable to conclude that the financial advice is suitable where the client's circumstances include particular characteristics.

If the nature and scope of the financial advice includes an actual or implied comparison between two or more financial advice products, the financial advice should be based on an assessment and comparison of each product. This includes, for example, where an existing product held by the client is being replaced by a new product which provides similar features or benefits.

A person who gives financial advice may rely on another person's assessment of a financial advice product or strategy. The person giving the advice should be able to demonstrate that it is reasonable to rely on the other person.

Example: A client wants to deposit a one-off lump sum with a bank at a branch and asks what type of account should be used to invest the money. The implied nature and scope of the advice is limited to bank account products offered by that bank. The teller asks a few questions to confirm relevant aspects of the client's circumstances, such as when the client will need the money and whether it is possible that the money might be required sooner. The teller has access to the bank's systems that show the client's personal details and that the client already has a transaction account with the bank. The bank has a system to identify what bank products are suitable for a client whose circumstances include particular characteristics. Based on the bank's system, the teller

recommends investing the money in a 12 month term deposit account rather than a savings account. The teller briefly explains to the client what the advice is, its limitations, and how to get further advice when the investment matures. The teller checks that the client understands those matters. An electronic file note is kept by the bank of the advice that was given and why it was suitable for the client.

[Standard 6] **Protect client information**

A person who gives financial advice must take reasonable steps to protect client information against loss and unauthorised access, use, modification, or disclosure.

COMMENTARY

Client information includes all information about clients that is collected or held by a person who gives financial advice. That includes, but is not limited to, information in work papers and records, and the financial advice given to clients.

Unless disclosure is required by law or the client agrees otherwise, client information about a particular client may be used only for giving financial advice to the client or another purpose that is directly related to giving that financial advice. This applies even where the client information would be used for another purpose in an anonymised form.

Physical and electronic security measures should be maintained so that only authorised personnel of the financial advice provider have access to client information.

Client information should only be held for as long as it is required for the purposes of the engagement, or to comply with a regulatory requirement. The client information then should be returned to the relevant client or disposed of securely.

There are also other legal obligations relating to client information. Those obligations include privacy law (for example, the Privacy Act 1993) and laws that require or enable disclosure of client information in certain circumstances (for example, under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).

[Standard 7] **Resolve complaints**

A person who gives financial advice must provide arrangements for resolving complaints by clients.

A complaint is an expression of dissatisfaction made to or about a person, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

COMMENTARY

The arrangements should provide for the client to be given a prompt acknowledgement of the complaint and information about other options for resolving the complaint, for example

how to escalate the complaint to an external dispute resolution scheme or to the Financial Markets Authority.

Where practicable, the investigation and assessment of complaints should be independent of any individual who may have been involved in the cause of the complaint.

[Standard 8] **Not bring the financial advice industry into disrepute**

A person who gives financial advice must:

- always act in a manner that promotes confident and informed participation by consumers in financial markets
- not do anything that would, or would be likely to, bring the financial advice industry into disrepute.

COMMENTARY

The standard prohibits conduct that would undermine public trust or confidence in financial markets or the financial advice industry.

The standard does not prevent the person from:

- commenting in good faith on the business, actions, or inactions of any other person (including any financial advice provider financial adviser, regulatory authority, or industry body), or regarding the industry generally
- exercising the person's reporting powers under section 431R of the Act.

PART 2: COMPETENCE, KNOWLEDGE, AND SKILL

Duty to exercise care, diligence, and skill: Section 431K of the FMC Act requires that a person who gives financial advice must exercise the care, diligence, and skill that a prudent person engaged in the profession of giving financial advice would exercise in the same circumstances.

The minimum standards of general competence, knowledge, and skill that must be demonstrated by persons who give financial advice are set out in [Standard 9]. They apply to all persons that give financial advice.

The minimum requirements for continuing professional development for persons who give financial advice are set out in [Standard 10]. They apply to all persons that give financial advice.

The minimum standards of particular competence, knowledge, and skill that must be demonstrated by persons who give financial advice are set out in [Standard 11] and

[Standard 12]. They apply in respect of different types of financial advice, financial advice products, or other circumstances. The different types of financial advice are:

- Designing an investment plan, addressed in [Standard 11]
- All other types of financial advice, addressed in [Standard 12].

[Standard 9] **Have general competence, knowledge, and skill**

The minimum standards of general competence, knowledge, and skill are the general qualification outcomes of the New Zealand Certificate in Financial Services (Level 5) approved by the New Zealand Qualifications Authority in September 2014 (NZQA reference 2315). The general qualification outcomes are the core qualification outcomes (graduate outcomes 1-4) and the qualification outcomes under the financial advice strand.

The code does not limit the ways that a person may demonstrate their general competence, knowledge, and skill. However, a person may demonstrate the standard by any one of these ways:

Individuals

- have the New Zealand Certificate in Financial Services (Level 5) or the National Certificate in Financial Services (Financial Advice) (Level 5)
- be an authorised financial adviser immediately before the commencement of the code

Entities

- give financial advice only through individuals who can demonstrate the standard
- have procedures, systems and expertise that together mean that the entity has the capabilities equivalent to those of an individual who alone has achieved the general qualification outcomes

Nominated representatives

- complete the learning outcomes specified for their role by their financial advice provider that mean that, together with the procedures, systems and expertise of the financial advice provider, the nominated representative has the capabilities equivalent to those of an individual who alone has achieved the general qualification outcomes.

COMMENTARY

[Consultation note: The CWG intends to review the latest version of the Level 5 qualification in force at the time the draft code is submitted to the Minister for approval and, if satisfied that its qualification outcomes are appropriate, specify that version in the code.]

A person seeking to demonstrate that an alternative qualification satisfies the standard, should be able to demonstrate equivalence in an objective, measurable and independently verifiable manner. Overseas qualifications should be accompanied by demonstration of an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

Older relevant qualifications may be used to demonstrate achievement of qualification outcomes provided the person can demonstrate how they have maintained competence, knowledge, and skill since attaining the qualification, including having an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

Example: A financial advice provider gives advice only through three nominated representatives. Each nominated representative completes Level 5 and therefore they and the financial advice provider all meet the standard.

Example: A financial advice provider gives advice through a nominated representative. The nominated representative completes the in-house training required by the financial advice provider. The financial advice provider's procedures, systems and expertise include an advice process that the nominated representative must follow, checking and other controls for the financial advice, expertise of the supervisor, and expertise of the person who designed the advice process. The training, taken together with those factors, means that the nominated representative has capabilities equivalent to the qualification outcomes. The nominated representative and the financial advice provider therefore both meet the standard.

[Standard 10] **Keep competence, knowledge, and skill up-to-date**

The minimum requirements for continuing professional development are:

Individuals must complete learning activities designed to ensure that they maintain both:

- the competence, knowledge, and skill to provide the financial advice they give
- to the extent relevant to their role, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

Entities must regularly review their procedures, systems and expertise to ensure that they maintain the capabilities to provide the financial advice they give.

The code does not limit the ways that a person may demonstrate continuing professional education. However, an individual may demonstrate that they are maintaining an up-to-date understanding of the regulatory framework for financial advice by achieving the qualification outcomes of the then current Level 5 unit standard that includes understanding of the regulatory framework for financial advice in New Zealand.

[Standard 11] Have particular competence, knowledge, and skill for designing an investment plan

The minimum standards of particular competence, knowledge, and skill for designing an investment plan are the qualification outcomes under the investment strand of the New Zealand Certificate in Financial Services (Level 5) approved by the New Zealand Qualifications Authority in September 2014 (NZQA reference 2315).

The code does not limit the ways that a person may demonstrate their particular competence, knowledge, and skill for designing an investment plan. However, a person may demonstrate the standard by any one of these ways:

Individuals

- have achieved the qualification outcomes under the investment strand of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- be an authorised financial adviser immediately before the commencement of the code

Entities

- give financial advice only through individuals who can demonstrate the standard
- have procedures, systems and expertise that together mean that the entity has the capabilities equivalent to those of an individual who alone has achieved the qualification outcomes under the investment strand of the New Zealand Certificate in Financial Services (Level 5)

Nominated representatives

- complete the learning outcomes specified for their role by their financial advice provider that mean that, together with the procedures, systems and expertise of the financial advice provider, the nominated representative has the capabilities equivalent to those of an individual who alone has achieved the qualification outcomes under the investment strand of the New Zealand Certificate in Financial Services (Level 5).

COMMENTARY

This standard is an interim standard. The Code Committee intends to consult in the future on whether higher qualifications should be required to demonstrate particular competence, knowledge, and skill for designing an investment plan for new entrants to the sector after a future date.

[Standard 12] **Have particular competence, knowledge, and skill for other types of financial advice**

The minimum standards of particular competence, knowledge, and skill for other types of financial advice are the qualification outcomes under the relevant strand of the New Zealand Certificate in Financial Services (Level 5) approved by the New Zealand Qualifications Authority in September 2014 (NZQA reference 2315).

The relevant strand means the product strand of the Level 5 qualification that is most relevant to the type of financial advice product to which the financial advice relates. If the financial advice relates to more than one type of financial advice product, the relevant strand means the product strands that are relevant to all those products.

The code does not limit the ways that a person may demonstrate their particular competence, knowledge, and skill for other types of advice. However, a person may demonstrate the standard by any one of these ways:

Individuals

- have achieved the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- in the case of the investment strand, be an authorised financial adviser immediately before the commencement of the code

Entities

- give financial advice only through individuals who can demonstrate the standard
- have procedures, systems and expertise that together mean that the entity has the capabilities equivalent to those of an individual who alone has achieved the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5)

Nominated representatives

- complete the learning outcomes specified for their role by their financial advice provider that mean that, together with the procedures, systems and expertise of the financial advice provider, the nominated representative has the capabilities equivalent to those of an individual who alone has achieved the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5).