

**Draft Code of Professional Conduct for Financial Advice Services**  
Financial Advice New Zealand Submission  
9 November 2018

**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.

**Financial Advice New Zealand Response**

We agree, but believe that the standard should be changed to: 'A person who gives financial advice must place the interests of the client first, always treat clients fairly and act in their interests.'

*Reason*

We believe the intention behind the legislation is to put client's interest first and be consumer centric.

This addition of "must place the interests of the client first" sets the tone of the Code. Putting the client's interests first is a cornerstone behaviour of professionalism, and as such should be reflected in the Professional Code of Conduct.

**Standard 2**

**Act with integrity**

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

**Financial Advice New Zealand Response**

We strongly agree - highlighting the importance of integrity in the Professional Code of Conduct will reinforce this essential element of professionalism.

**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.

### **Financial Advice New Zealand Response**

We agree, but there are four areas we recommend for further consideration.

1. We would expect the word 'independent' to be covered in either disclosure and /or licensing requirements.

#### *Reason*

Historically, there was disputed use of the term 'independent'. The absence of a definition as to what is 'independent advice' is, poses a significant risk to the consumer.

2. We refer the Code Working Group to FSLAB S431J – Duty to give priority to client's interests. The proposed test for a conflict of interest - 'where practicable' the person must avoid the conflict - is now a lower and less objective test. Under the current Code 5 – an adviser must effectively manage any conflicts of interest that may arise. The 'effective management' meant, that if there was a conflict where the adviser could not place the client's interests first and above their own, then they must decline to act (one way to avoid a conflict).

#### *Reason*

CS3 seems to be in direct contradiction to CS1 (even in its current format). By lowering the avoidance threshold to the contingent situation where the conflict needs only to be avoided only if 'practicable', is likely to reduce public confidence and trust where conflicts arise, and weakens the intent of a Financial Advice Code.

3. The bullet points should be re-ordered, placing 'identify conflicts of interest' first.

#### *Reason*

The first step in this standard is for an adviser to recognise where conflicts and potential conflicts may exist. The failure to identify familiar situations as potential conflicts of interest, is a typical 'blind spot' area for many professionals.

The second step is to consider to remove oneself from the conflict where the client's interests cannot be placed first (hence the need to reframe CS1).

4. Change last bullet point to: 'actively disclose conflicts of interest to clients and record their understanding as such.'

#### *Reason*

Conflict of interest needs constant review and monitoring as business practices change, and where conflict occurs it is fundamentally important that the client understands these conflicts.

## 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.

### Financial Advice New Zealand Response

We agree but there are three important areas in which we believe this standard should be strengthened.

1. The following should be included in the standard:

A person who gives financial advice must behave professionally in all dealings, communicate clearly, concisely and effectively, and take reasonable steps to ensure that the client understands the financial advice and all material risks and consequences of that advice.

#### *Reason*

The Financial Advice Code should include a reference to professional behaviour and Standard 4 is the relevant positioning for this statement.

2. We have serious concerns there is no reference as to how an adviser needs 'to evidence' their advice.

There has been an argument that such requirements would be 'prescriptive', but we would expect this Financial Advice Code contain the overarching requirements to provide and retain evidence of advice.

Further, we would expect that disclosure regulations contain specific requirements, and that licensing requirements outline the procedures and processes.

#### *Reason*

The current Code format could allow an adviser or FAP to provide advice without retaining any record of such advice being – either in written or digital record (such as video recorded advice, audio recorded advice). This seriously leaves the client at risk, with regards to the original communication, the client comprehension of that advice, and their recourse and redress options should that advice prove to be deficient, incomplete, conflicted or risky.

3. The example be changed to a more appropriate example.

## **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.

### **Financial Advice New Zealand Response**

We agree, but there are three areas in which we believe the standard should be strengthened.

1. In the standard (bullet point 2) change the words to: 'each financial advice product, recommendation or service covered by the financial advice.'

#### *Reason*

Advice is not limited to product. Advice may actually be a course of action or service.

2. In the commentary change the word 'the product or plan' to 'recommendation or service'

#### *Reason*

Advice is not limited to product. Advice may actually be a course of action or service. Suitability is a crucial component of quality financial advice, and acting in a professional client-first manner.

3. We believe it is fundamentally important the following commentary is not amended in any way: "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. 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."

## **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.

#### **Financial Advice New Zealand Response**

We agree - protecting the personal information of clients is – in the digital age – an increasingly important responsibility of any professional. It is good to see this reinforced by the Code.

## **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.

#### **Financial Advice New Zealand Response**

We agree, however, to ensure there is some substance in the complaints process, we believe the 'arrangements' must be included in either disclosure and/or licensing requirements and will need to be extensively more comprehensive.

A defined, external disputes resolution process that is a clearly communicated with clients from the outset, is essential to building public confidence and trust in the professionalism of financial advisers.

## **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.

#### **Financial Advice New Zealand Response**

We agree - the new Financial Advice Code will be an essential milestone in reinforcing the professional behaviours required of financial advisers, and that all advisers are operating as a representative of the whole 'community'.

## PART 2: COMPETENCE, KNOWLEDGE, AND SKILL

### 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
- AND
- 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.

#### **Financial Advice New Zealand Response**

We disagree and urge the Code Working Group to reconsider this standard – our recommendations and rationale are outlined below:

1. We believe that all persons involved in the provision of a financial advice service should be required to have attained the minimum qualification of the New Zealand Certificate in Financial Services, or be able to demonstrate through an approved Recognised Prior Learning process that they have the knowledge, competence and skills that would be expected of a person who had completed the NZ Certificate in Financial Services, irrespective of the organizational structure they operate under.

### *Reason*

To achieve the standard of general competence, knowledge and skill the following must be obtained:

Knowledge is what an adviser gains through structured study, training and research exercise - and is formalised through a moderated assessment - which leads to the attainment of a qualification awarded at a particular time. You cannot re-attain a qualification. (RPL process could lead to the same qualification outcome).

Competence is an adviser's ability to do something efficiently and successfully. Adviser competence therefore requires an ongoing commitment to maintaining knowledge and keeping up-to-date with developments relevant to them (the descriptor in the old Code 18 ) with the "the ability to perform the activities within an occupation to the required standard, consistently and over time" (Source: FPSB). The commitment to this process is called 'continuing professional development' or 'CPD'. The international definition of 'structured' CPD is a 'learning activity which tests the acquisition and/or application of abilities, professional skills and knowledge'.

Skill points to personal aptitude, proficiency and mastery in an adviser's financial particular advice area – in other words applying all their knowledge and competencies (gained through CPD and experience) to the dynamic circumstances of the client's situation.

2. New Code 9 states: 'the minimum standards of general competence, knowledge and skills are the general qualification outcomes of the NZ Certificate in Financial Services Level 5'. That poses a fundamental confusion.

### *Reason*

The 'qualification outcomes' and 'graduate outcomes' of NZFSL5 are standards of minimum KNOWLEDGE attainment for an individual – and are not measures of competence and skills gained through experience and CPD.

Further, it is impossible for organisational 'capability' to be measured by personal qualification outcomes.

The analogy has been made of hospitals employing the most stringent procedures, systems and expertise to reduce patient risk and enhance patient health outcomes. However those providing patient care (nurses) are also required to be highly trained, AND qualified. The example has been given that 'bank tellers' do not require to be qualified under the proposed Code. We agree, that if they are not giving regulated financial advice, 'bank tellers' need only the basic knowledge in privacy and consumer protection law; just like nurse aids need instruction in hygiene and patient safety. However, if giving regulated financial advice, all consumers deserve to have someone qualified to provide that advice – relevant to their role.

MBIE during their consultation of the new legislation was at pains to establish a new regime on the advice-sector's call for an 'even playing field'. This Code provides a waiver for nominated representatives to be qualified, contrary to the intent of the new regime.

We believe this direction is a serious departure from international trends and a major departure from the UK and Australia codes where advisers are required to have minimum qualifications.

In addition to this the recently released Bank Conduct and Culture Report highlighted that 'all banks need to focus on strengthening the frameworks, processes and controls that prevent, detect and manage conduct and culture issues'.

This report we believe may require the Code Working Group to review Standard 9 and the reliance, which is placed on FAP's for the procedures, systems and expertise and resulting outcomes for consumers.

3. The proposed code will set up a two-tiered system of advisers in NZ: mandatory qualification for 'individual' financial advisers, and 'equivalence' for nominated representative.

*Reason*

The Industry Training Act allowed vocational qualifications to be developed by the Industry Training Organisation Skills Org. This Code mandates the personal attainment of a qualification for one group and uses the 'outcomes' in that same qualification to provide a standard to evidence 'equivalence'. However, that was not the intended use of NZQA qualifications.

The consequences of excluding nominated representatives from obtaining qualifications is that 'nominated representative' employees will: be trained and yet unqualified; have no formal NZQA record of learning; have reduced job mobility which would limit career prospects and arguably remuneration prospects.

4. Overseas and alternative qualifications are allowable: advisers must be able to 'demonstrate equivalence' in an objective measureable and independently verifiable manner". We believe the FMA should be resourced to outline at what level this 'equivalence' is required and what requirements they would waiver (if any).

*Reason*

The matching of overseas qualifications to the NZCFL5 in many cases is difficult and cost prohibitive. It would be desirable for the Code to have a list of commonly accepted alternatives to the graduate outcomes so as to lower the barriers for qualified overseas advisers. Further it would be good to have the graduate outcomes that would NEVER be waived, e.g. attainment of Unit standard U26360 (or the current equivalent)

We recommend that the Code Committee also signal an intention to review the knowledge, competence and skills required for advisers providing Business Risk advice to private businesses, and to consider the requirement for a higher level of qualification for advisers who are providing risk advice to this sector, on the basis that the current unit standards in the Life & Health strand are related to Personal Risk advice only.

*Comment:* A key objective of the new regime is to build public confidence and trust in the financial services sector: ensuring that New Zealanders deal with qualified people is an absolutely crucial component in this. Moreover, qualifications across the sector will play a crucial role in lifting the professionalism of the industry and creating career pathways.



## **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.

### **Financial Advice New Zealand Response**

We disagree and urge the Code Working Group to reconsider this standard.

We believe that a minimum number of 15 hours p.a. should be required, a professional development plan be in place and updated every year, and a CPD log maintained. In addition, the definition of structured and unstructured CPD should to be added to the Code.

#### *Reason*

We would argue that CPD obligations are personal requirements (how can a FAP do CPD?) and therefore it is inappropriate to put CPD standards into licensing requirements.

A commitment to ongoing professional development is a cornerstone of professionalism. It is fundamental that an adviser have a professional development plan to ensure they keep their key competencies and knowledge up-to-date. The Code ought to have a minimum level AND require 'any additional CPD' to maintain their competency as per the current Code of Conduct.

We support the Level 5 unit standard that includes understanding of the regulatory framework for financial advice in New Zealand. This requirement and adding minimum annual hours of CPD will retain consistency of attainment across the advice sector.

## **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).

### **Financial Advice New Zealand Response**

We disagree and urge the Code Working Group to reconsider this standard. Our key recommendations are outlined below:

1. We believe that all persons involved in the provision of a financial advice service should be required to have attained the minimum qualification of the New Zealand Certificate in Financial Services, or be able to demonstrate through an approved Recognised Prior Learning process that they have the knowledge, competence and skills that would be expected of a person who had completed the New Zealand Certificate in Financial Services, irrespective of the organizational structure they operate under.

2. We believe the 'interim standard' for an investment plan needs to be reviewed with urgency, and would like to be part of these discussions.
3. There needs to be consideration of where KiwiSaver advice sits within the Investment Plan spectrum. Currently, a range of financial advisers provide product advice on KiwiSaver, which would be considered to be outside of providing an investment plan.

It is proposed a minimum for providing KiwiSaver advice is 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).

4. The terms relating to alternative qualifications needs to be included in this section as per CS9. Ensuring that New Zealanders only deal with qualified individuals is essential in supporting professionalism across the sector.

## **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).

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