

JUNE 2022

Consultation paper: Proposed variation to Standard Condition 2 of Standard Conditions for DIMS licences – Incidental financial advice

About this consultation

This consultation seeks input from discretionary investment management service (**DIMS**) licence holders on the proposed variation to Standard Condition 2 of the [Standard Conditions for discretionary investment management service \(DIMS\) licences \(DIMS Standard Conditions\) \(Standard Condition 2\)](#). Standard Condition 2 details the level of consumer protection that must be provided by a licensed DIMS provider when providing incidental financial advice to retail investors.

The consultation will be used to:

- ensure the variation is appropriate
- assess compliance costs
- fulfil the Financial Markets Authority's (**FMA**) obligations under section 405 of the FMC Act.

Next steps

The final day to make a submission on this consultation is **29 July 2022**. We will consider all submissions and publish the final condition after the consultation closes.

Submissions will be subject to the Official Information Act 1982. We may also make submissions available on our website or draw attention to submissions in internal or external reports. If you would like us to withhold any commercially sensitive, confidential or propriety information you submit, please let us know. Any request to withhold information will be considered according to the Official Information Act 1982.

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About this consultation

Introduction

The FMA may impose, vary, revoke, add to or substitute conditions of a licence issued under the Financial Markets Conduct Act 2013 (the **FMC Act**). We are proposing to vary Standard Condition 2, Incidental financial advice, following the introduction of the new Code of Professional Conduct for Financial Advice Services (the **New Code**).

Prior to varying, revoking, adding to or substituting any conditions of a licence, we are required to give the relevant licence holders no less than 10 working days' written notice, stating our reasons. We must also give licensees or their representatives an opportunity to make written submissions on the matter within the notice period. This consultation process satisfies these requirements.

We note that it is unlikely that the variation detailed below will materially impact licensed DIMS providers that also hold a transitional or full Financial Advice Provider licence (**FAP Licence**), as they will already be required to meet the obligations that are proposed in the variation to Standard Condition 2.

The reasons for varying Standard Condition 2 along with a proposed draft of the varied condition are set out below.

What financial advice is covered by a DIMS licence?

The definition of DIMS in section 432A of the FMC Act includes the provision of 'financial advice in the ordinary course of, and incidentally to, providing a discretionary investment management service'. This means that DIMS licensees do not need to hold a FAP Licence under the FMC Act if they are only providing incidental financial advice. An example of incidental financial advice is where you advise your client to widen the scope of their investment authority to allow the purchase of shares in a particular company, provided the existing investment strategy being implemented involves investing in companies similar to that company. If a DIMS licensee is providing more than incidental financial advice to their clients, they will need to hold a FAP Licence.

New Code

A new regulatory regime for financial advice commenced in New Zealand on 15 March 2021, when the Financial Services Legislation Amendment Act 2019 (**FSLAA**) came into force. FSLAA has introduced changes that are designed to improve financial advice for New Zealand consumers. One of several key changes introduced by FSLAA is the New Code, which was developed by the Financial Advice Code Working Group and prepared in accordance with what is now Part 4 of Schedule 5 to the FMC Act. The New Code is maintained by the Code Committee and replaces the Code of Professional Conduct for Authorised Financial Advisers (the **Old Code**).

For your reference the Old Code is attached at Appendix A and the New Code at Appendix B.

The New Code came into force on 15 March 2021 and supports the purposes of the FMC Act, including promoting the confident and informed participation of businesses, investors, and consumers in financial markets, avoiding unnecessary compliance costs, and ensuring the availability and quality of financial advice. The New Code has nine standards that are set out in two parts:

- Part 1: Ethical Behaviour, Conduct, and Client Care
- Part 2: Competence, Knowledge, and Skill

Differences between the Old Code and the New Code

There are several differences between the Old Code and the New Code. Some standards from the Old Code have been moved to the FMC Act and are now statutory duties. Some standards from the Old Code have become standard conditions for FAP Licences, and there are updates and changes to the remaining standards in the Old Code that are contained within the New Code. The key changes are outlined below.

The new statutory duties

The FMC Act now imposes duties on persons who give regulated financial advice to clients. Some apply to retail clients only and others apply to both retail and wholesale clients. These duties are set out in sections 431I to 431P of the FMC Act. Some of these duties replace standards in the Old Code, which have not been carried over to the New Code as summarised in the table below.

Old Code standard	Obligation under the new financial advice regime
<p>Code Standard 1</p> <p>An <i>Authorised Financial Adviser</i> must place the interests of the <i>client</i> first and must act with integrity. These obligations are paramount.</p>	<p>Code Standard 1 has been partly replaced by a statutory duty in s 431K of the FMC Act to give priority to clients' interests in the event of a conflict. This is further supplemented by Code Standard 2 of the New Code: Act with integrity.</p>
<p>Code Standard 7</p> <p>An <i>Authorised Financial Adviser</i> must ensure each <i>retail client</i> has sufficient information to enable the <i>client</i> to make an informed decision about whether to use the <i>Authorised Financial Adviser's financial adviser services</i>.</p>	<p>Code Standard 7 has been replaced by the statutory duty in s 431O of the FMC Act to make prescribed information available (see regulations 229A-229J and Schedule 21A of the Financial Markets Conduct Regulations 2014 (FMC Regulations)). These requirements are supplemented by Code Standard 4 of the New Code: Ensure that the client understands the financial advice.</p>
<p>Code Standard 8</p> <p>When providing a <i>financial adviser service</i> to a <i>retail client</i>, an <i>Authorised Financial Adviser</i> must agree with the <i>client</i> the nature and scope of the service to be provided.</p>	<p>The requirement to agree nature and scope has been replaced by a statutory duty that focuses on understanding, as detailed in s 431J of the FMC Act.</p>

We have identified that the statutory duties in sections 431J, 431K and 431N of the FMC Act are the most relevant to the provision of incidental financial advice by DIMS providers.

These duties are outlined below (and in full at Appendix C):

- **431J:** Duty to ensure client understands nature and scope of advice – A person must not give regulated financial advice to a retail client unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.
- **431K:** Duty to give priority to client’s interests – Any regulated financial advice delivered to a retail client must consider any conflicts of interest and give priority to the interests of the client.
- **431N:** Duty relating to offer that contravenes FMC Act or FMC Regulations – A person who gives regulated financial advice to a client must not recommend a financial product that contravenes the FMC Act or FMC Regulations.

Standards from the Old Code that have been moved to the standard conditions for FAP Licences

Two standards from the Old Code have been moved to the new standard conditions for both transitional and full FAP Licences as detailed in the table below.

Old Code standard	Obligation under the new financial advice regime
<p>Code Standard 11</p> <p>An <i>Authorised Financial Adviser</i> must ensure there is an appropriate internal process in place for resolving <i>client complaints</i> in relation to the <i>Authorised Financial Adviser’s financial adviser services</i>.</p>	<p>The requirement to have an internal process to resolve client complaints has been moved to standard condition 2 in the standard conditions for both transitional and full FAP Licences, which includes the requirement to have an internal complaints process.</p>
<p>Code Standard 13</p> <p>An <i>Authorised Financial Adviser</i> must ensure that records of all information and documents required under this <i>Code</i> are kept for a minimum of 7 years.</p>	<p>The record keeping requirement has been moved to Standard Condition 1 in the standard conditions for both transitional and full FAP Licences, which includes the requirement for records to be kept for 7 years.</p>

Other obligations

We have also considered whether there are any other obligations pertaining to financial advisers that should also apply to DIMS licensees when providing incidental financial advice. This included a review of:

- the disclosure obligations for financial advice and financial advice services within regulations 229A-229J and Schedule 21A of the FMC Regulations, and
- the full and transitional standard conditions for financial advice providers.

Other than the obligations in the New Code and the statutory duties identified above, we have concluded that there are no additional obligations on financial advice providers that should also apply to DIMS licensees when giving incidental financial advice. The disclosure obligations and standard conditions for financial advice providers relevant to the provision of incidental financial advice by DIMS providers are already covered by the relevant DIMS licensing minimum standards, standard conditions, and separate disclosure requirements. We are proposing to include an explanatory note to Standard Condition 2 that states that DIMS providers '*do not need to separately meet any of the other obligations that apply to financial advice service providers under the FMC Act*'.

Proposed variation

Standard Condition 2 currently requires DIMS licensees to have procedures that *ensure clients have a similar standard of consumer protection as that provided by advisers under the Old Code*. As noted above, there are several differences between the Old Code and the New Code. We are proposing to vary Standard Condition 2 and the explanatory note, as follows:

Standard Condition 2 currently reads:

2. Incidental financial advice

Standard condition:

You must maintain procedures for providing incidental financial advice to retail investors. These procedures must ensure clients have a similar standard of consumer protection as that provided by advisers under the Code of Professional Conduct for Authorised Financial Advisers.

Explanatory note: This condition relates to the standard of consumer protection which you must provide when giving financial advice in the ordinary course of, and incidentally to, providing a DIMS. This incidental financial advice is covered by your DIMS licence and is not separately regulated under the Financial Advisers Act 2008, but you must ensure similar protections for your clients. For further information, see our guidance and FAQs on DIMS regulation.

Proposed variation:

2. Incidental financial advice

Standard condition:

You must maintain procedures for providing incidental financial advice to retail investors. These procedures must ensure clients have a similar standard of consumer protection as that provided by a person who provides financial advice services in accordance with the Code of Professional Conduct for Financial Advice Services. These procedures must also ensure that you comply with the statutory duties in sections 431J, 431K and 431N of the FMC Act.

Until 15 March 2023, the competency requirements in Part 2 of the Code of Professional Conduct for Financial Advice Services do not prevent you from providing incidental financial advice if, immediately before 15 March 2021 when the new financial advice regime in the FMC Act came into force, you held a DIMS licence under the FMC Act and would have been permitted to provide that incidental financial advice. This is subject to any conditions on your licence.

Explanatory note: This condition relates to the standard of consumer protection that you must provide when giving financial advice in the ordinary course of, and incidentally to, providing a DIMS. This incidental financial advice is covered by your DIMS licence, and you do not need to separately meet any of the other obligations that apply to financial advice service providers under the FMC Act.

Effective date

If after the consultation we choose to proceed with the proposed variation, we intend to make the proposed changes effective immediately once published.

We note however that the proposed variation includes a safe harbour, in respect of the competency requirements in Part 2 of the New Code, for DIMS licensees that held their DIMS licence immediately before 15 March 2021 (**existing DIMS licensees**). This means that from the date that the proposed variation becomes effective:

Part 1 and relevant statutory duties:

- All DIMS licensees need to have procedures for providing incidental financial advice that provide a similar standard of consumer protection as that provided by a person that meets the requirements in Part 1 of the New Code and ensure compliance with the statutory duties in sections 431J, 431K and 431N of the FMC Act.

Part 2 competency requirements:

- Existing DIMS licensees, permitted to provide incidental financial advice prior to 15 March 2021, **will not** need to meet the competency requirements in Part 2 of the New Code until 15 March 2023.
- DIMS licensees, granted a licence on or after 15 March 2021, **will need** to ensure they provide a similar standard of consumer protection as that provided by the competency requirements in Part 2 of the New Code from the date that their licence is granted.

The reasons that we are proposing to include this safe harbour are set out below.

Transitional period

A two-year safe harbour from the competence, knowledge and skill requirements in Part 2 of the Code exists for financial advisers that were registered on the Financial Service Providers Register on 15 March 2021. This gives those that do not meet the competence, knowledge, and skill requirements of the New Code, including for example those who were registered financial advisers immediately before 15 March 2021, a two-year period to work towards meeting those standards. This means that a financial adviser may continue to give financial advice that they could legally give under the Financial Advisers Act 2008 until 15 March 2023, provided they satisfy the requirements in Part 1 of the New Code.¹

Acknowledging the interconnected nature of the licences and to ensure consistency across them, we are proposing a similar safe harbour for existing DIMS licensees that provide incidental financial advice, which will coincide with the expiration of the financial advisers' competency safe harbour.

Compliance costs

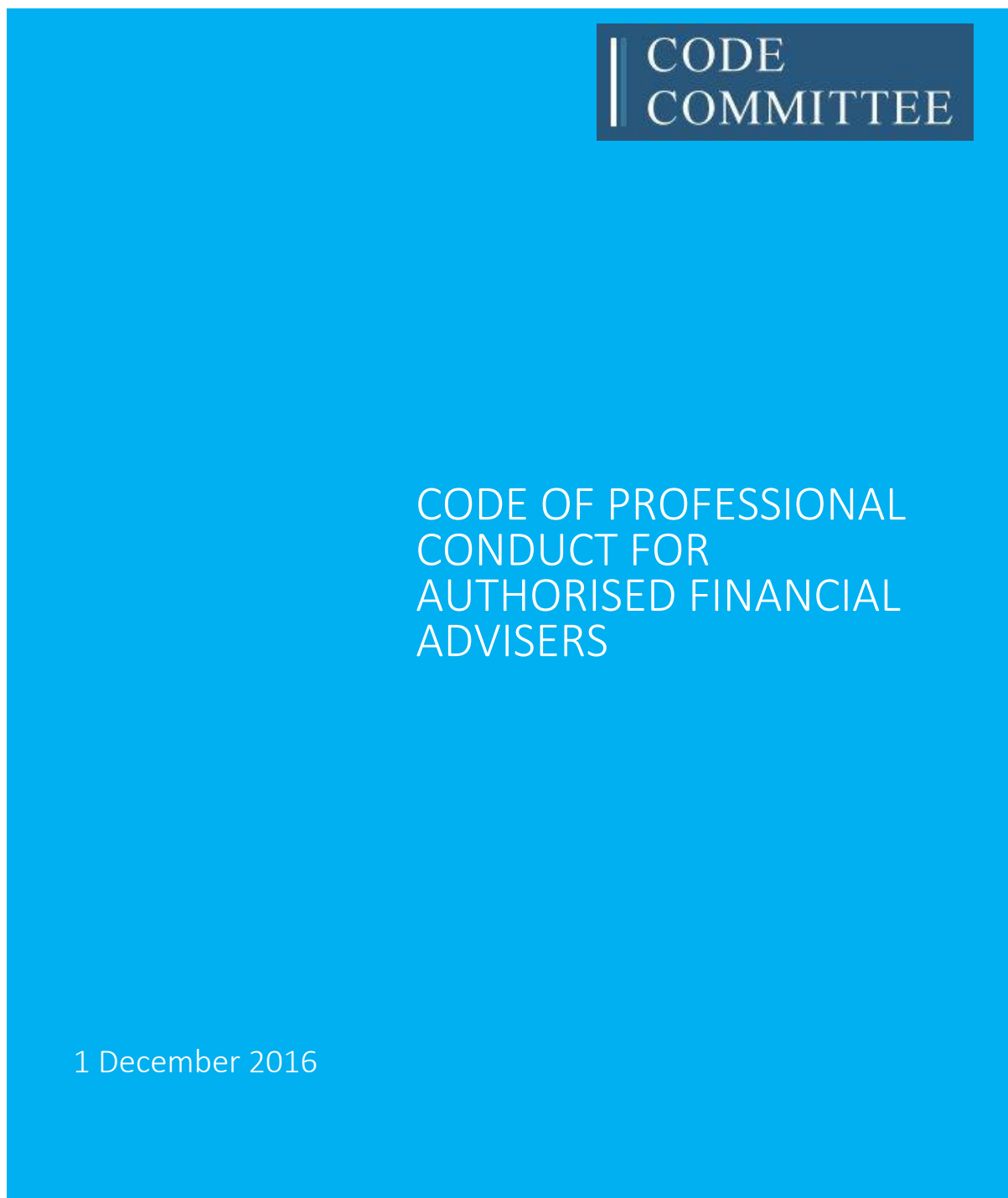
We acknowledge that changes to the competency requirements that have been introduced in Part 2 of the New Code may result in additional compliance costs for some DIMS licensees. The delay in meeting the requirements in Part 2 of the New Code should allow this burden to be distributed across multiple financial years.

There are several pathways to meeting the competency standards and we encourage you to explore your options further and discuss assessment options with Skills NZ.

¹ See Clause 81 of Schedule 4 to the FMC Act

Appendix

A: Old Code



The Code of Professional Conduct for Authorised Financial Advisers (AFAs) was approved by the Minister of Commerce under section 92 of the Financial Advisers Act 2008 on 21 September 2010 and came into force on 1 December 2010. The Code has since been updated and a revised Code was approved by the Minister of Commerce on 13 March 2014 which came into force on 1 May 2014. The Code has then been further updated and a further revised Code was approved by the Minister of Commerce and Consumer Affairs on 23 August 2016 and came into force on 1 December 2016.

The Financial Advisers Disciplinary Committee (FADC) is responsible for conducting disciplinary proceedings arising from complaints about AFAs, relating to breaches of the Code, referred to it by the Financial Markets Authority. More information about FADC, the hearing process and the procedural rules can be found at www.fadc.govt.nz

Document reference 3176500

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A. BACKGROUND

This is the Code of Professional Conduct for Authorised Financial Advisers for the purposes of the Financial Advisers Act 2008.

This section of the *Code* provides a brief overview of the scope and aims of the *Code*. The remainder of the *Code* contains the operative provisions which must be complied with by all *Authorised Financial Advisers*.

Financial advisers are required to be authorised under the Financial Advisers Act in order to provide a *personalised service* to a *retail client* that is:

- (a) *financial advice* or a *discretionary investment management service* in relation to a *category 1 product*; or
- (b) *an investment planning service*.

Financial advisers may also elect to become authorised under the *Act* in relation to *financial adviser services* provided in respect of any *category 2 product*, and in any other situations specified in regulations made under the *Act*. The overarching purpose of the Financial Advisers Act is “to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers”.

One of the key ways the *Act* seeks to achieve its purposes in relation to *financial adviser services* is by requiring all *Authorised Financial Advisers* (also referred to as *AFAs*) to comply with a code which provides for minimum standards of professional conduct. The overarching purpose of the *Act* provides the spirit underpinning the *Code*. When considering their conduct and disclosure obligations under the *Act* and the *Code*, *AFAs* should have that spirit in mind.

The *Act* requires the *Code* to contain minimum standards of competence, knowledge and skills, of ethical behaviour, and of *client* care. The *Code* is also required to provide for continuing professional training for *AFAs*, including specifying requirements that an *AFA* must meet for the purpose of continuing professional training. *AFAs* may be disciplined for breaches of the *Code*.

A number of the **Code Standards** include reference to legal obligations that would apply to *AFAs* irrespective of the *Code* requirements. Such references are included largely for the sake of completeness. However, the *Code* does not refer to all legal obligations of *AFAs*. *AFAs* must comply with all applicable laws, whether or not referred to in the *Code*.

This *Code* has been approved by the *Minister* under the Financial Advisers Act 2008 and comes into force either in part or in full, on a date or dates specified by *Gazette* notice under section 94 of the *Act*.

B. INTRODUCTION

Each standard in this *Code* consists of an overarching principle identified as a **Code Standard** together with additional provisions that contain further detail about the application of the **Code Standard**.

Unless otherwise stated, the additional provisions do not limit the application of the overarching principle under which they are stated, or the application of any other **Code Standard**. *AFAs* must apply the **Code Standards** in a way that encourages public confidence in the professionalism and integrity of financial advisers.

Terms used in this *Code* that appear in italics are defined in the definitions schedule.

This *Code* does not limit an *AFA's* legal obligations, including those under the *Act*.

C. MINIMUM STANDARDS OF ETHICAL BEHAVIOUR

Code Standard 1

An Authorised Financial Adviser must place the interests of the *client* first, and must act with integrity. These obligations are paramount.

This **Code Standard** applies to any activity of an *AFA* that relates to the *AFA's financial adviser services*.

The obligation to place the interests of the *client* first, and act with integrity in accordance with the overarching purpose of the *Act*, applies irrespective of the application and effect of any other **Code Standard**.

What is required to place a *client's* interests first for the purposes of the *Code* is determined by what is reasonable in the circumstances, including any regulatory obligations binding on the *AFA* in addition to the *Code*.

Compliance with this **Code Standard** does not require an *AFA* to provide services that are not within the range of the *AFA's* services, as advised to the *client in writing*, or provide *financial adviser services* in relation to *financial products* that are outside of that range.

An *AFA's* obligation under this **Code Standard** to place a *client's* interests first will not be breached by reporting to the Financial Markets Authority any breaches of the *Act* that the *AFA* reasonably believes to have occurred.

Code Standard 2

An Authorised Financial Adviser must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.

This **Code Standard** prohibits an *AFA* from conduct that would undermine public confidence in the professionalism or integrity of the financial advisory industry. However, this **Code Standard** does not prevent an *AFA* from commenting in good faith on the business, actions, or inactions of any *person* (including any other *financial adviser*, financial adviser group, financial service provider or industry body) or from exercising the *AFA's* reporting powers under section 45A of the *Act*.

Code Standard 3

An Authorised Financial Adviser must not state or imply that the Authorised Financial Adviser is independent, or that any financial adviser services provided are independent, if a reasonable person in the position of a client would consider that the Authorised Financial Adviser or the services provided are not independent.

The following are examples of circumstances where neither the AFA nor the AFA's provision of *financial adviser services* may be described as 'independent':

- (a) a *related person* of the AFA, or a *related person* of the AFA's employer or *principal*, is the *product provider* of a *financial product* (other than a *discretionary investment management service*) relevant to the *financial adviser service* provided; or
- (b) the AFA is subject to a contractual obligation to:
 - recommend a particular *financial product* or *financial products*; or
 - limit the AFA's recommendations or *discretionary investment management services* to a particular *financial product* or *financial products*; or
 - attain or maintain a target in relation to a particular *financial product* or *financial products*.

However, the contractual obligations falling within this paragraph (b) do not include the use of *discretionary investment management services*, wrap account services, platforms, or other portfolio administrative or custodial services, where the use of such services and the arrangements the AFA is able to put in place for the AFA's *clients* permit access to a wide range of *financial products* and *product providers*; or

- (c) the AFA or a *related person* of the AFA will or may directly or indirectly receive a *benefit* from a *person* other than the *client* for providing the services or from the *client's* acquisition of a *financial product* or products.

However, for the purposes of this paragraph (c) the following *benefits* do not affect an AFA's ability to describe the AFA or the AFA's services as independent:

- those that are paid, credited, or transferred to the *client*; and
- those that are remote or insignificant; and
- those that are received by the AFA in the form of salary or wages as an employee, or in the form of fees as a contractor, that are not determined in whole or in part by reference to volume or other targets relating to a particular *financial product* or *product provider*; and
- those that are received by the AFA (or by a *related person* of the AFA) for the provision of a *discretionary investment management service*, provided neither the AFA nor any *related person* of the AFA is a *product provider* of any *financial product* acquired through the *discretionary investment management service* or receives any *benefit* from the *product provider* of any *financial product* acquired through the *discretionary investment management service*.

An AFA must not state or imply that a researcher or other third party service provider used by the AFA in relation to the AFA's *financial adviser services* is independent unless the AFA has reasonable grounds to believe the third party would be able to describe themselves as independent under this **Code Standard**, if the third party were an AFA.

Code Standard 4

An Authorised Financial Adviser must not borrow from or lend to a retail client.

This **Code Standard** does not apply if the *client* is:

- (a) a *related person* of the *AFA*; or
- (b) in the business of borrowing or lending money or valuable property and the *AFA*'s borrowing or lending is in the ordinary course of the *client*'s business on terms consistent with the *client*'s normal business terms.

This **Code Standard** does not prevent an *AFA* or an *AFA*'s employer or *principal* from entering into financial arrangements on behalf of a *client* as the *client*'s agent to meet settlement obligations in relation to any *financial product*.

An *AFA* must not arrange for the *AFA*'s employer or *principal* to borrow from or lend to a *retail client*, other than in the ordinary course of the employer's or *principal*'s business.

Code Standard 5

An Authorised Financial Adviser must effectively manage any conflicts of interest that may arise when providing a financial adviser service.

Effective management for the purposes of this **Code Standard** includes a requirement for the *AFA* to identify, and clearly and effectively communicate to the *client*, all interests of the *AFA* or a *related person* that might influence the services the *AFA* provides to the *client*. Where a conflict of interest that arises when providing a *financial adviser service* is such that an *AFA* is unable to manage the conflict so as to place the interests of the *client* ahead of the interests of the *AFA* or a *related person*, the *AFA* must decline to act.

D. MINIMUM STANDARDS OF CLIENT CARE

Code Standard 6

An Authorised Financial Adviser must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.

When providing *financial adviser services* to a *client*, an *AFA* must:

- (a) provide only services that the *AFA* has the competence, knowledge, and skill to provide; and
- (b) provide the *services* and perform the *AFA's* obligations in a timely way; and
- (c) make recommendations only in relation to *financial products* that have been assessed or reviewed by the *AFA* to a level that provides the *AFA* with a reasonable basis for any such recommendation, or by another *person* if it is reasonable in all the circumstances for the *AFA* to rely upon that other *person's* assessment or review.

Communicating 'effectively' for the purposes of the *Code* requires an *AFA* to take reasonable steps to ensure the *client* understands the communication.

When transmitting the *financial advice* of another *person* to a *client*, an *AFA* must take reasonable care to ensure that the *person* providing the *financial advice* has an appropriate level of competence, knowledge, and skill to provide that advice, and either:

- ensure the *client* is aware that the *AFA* has not prepared the *financial advice* or assessed its suitability for the *client*; or
- accompany the *financial advice* with the *AFA's* own *financial advice* in relation to the same subject matter (in which case the *AFA* may have further obligations under **Code Standards 8-10**).

When providing *financial adviser services* to a *wholesale client*, an *AFA* must take reasonable steps to ensure the *client* is aware that the *client* is regarded as a *wholesale client* for the purposes of the *Act* and the *Code*, and also is aware of the consequences of that status.

Code Standard 7

An *Authorised Financial Adviser* must ensure each *retail client* has sufficient information to enable the *client* to make an informed decision about whether to use the *Authorised Financial Adviser's financial adviser services*.

The information an *AFA* may be required to provide a *retail client* under this **Code Standard** includes (but is not limited to) *written* information about the range of the *AFA's financial adviser services*, any limits on the *AFA's* authorisation, the *AFA's* qualifications to provide those services, the basis on which those services are provided, the fees the *client* must pay, and any interests the *AFA* is required to communicate under **Code Standard 5**, in relation to the *AFA's financial adviser services* provided to the *client*.

The requirements of this **Code Standard** may be satisfied in whole or in part by complying with the *AFA's* disclosure obligations under the *Act*. In some circumstances additional information may need to be provided to a *retail client* to ensure the *client* has sufficient information to be able to make an informed decision.

The information required under this **Code Standard** must be updated when there is any change in the *AFA's* circumstances that is material to the *financial adviser services* provided by the *AFA* to the *client*.

Code Standard 8

When providing a *financial adviser service* to a *retail client*, an *Authorised Financial Adviser* must agree with the *client* the nature and scope of the service to be provided.

The nature and scope of a *personalised service* provided to a *retail client* must be clearly and effectively communicated to the *client*.

The *AFA* must take reasonable steps to ensure the *client* is aware of the extent of any limitations on the scope of a *personalised service* agreed with a *retail client*, and of any implications those limitations may have for the *personalised service* to be provided.

Where a *class service* is provided, the *client* can be taken to have agreed to the nature and scope of the service, although the *AFA* must still take reasonable steps to ensure the *client* is aware of the limitations of the service provided.

Code Standard 9

When providing a *personalised service* to a *retail client* an *Authorised Financial Adviser* must take reasonable steps to ensure that the *personalised service* is suitable for the *client*, having regard to the agreed nature and scope of the *personalised service* provided.

Code Standard 10

Where an *Authorised Financial Adviser* provides a *personalised service* to a *retail client* that is an *investment planning service* or that relates to a *category 1 product*, the *Authorised Financial Adviser* must provide an explanation of the service provided that is sufficient to enable the *client* to make an informed decision about the *financial adviser service*.

The extent of any explanation required under this **Code Standard** is determined by what a *retail client* would reasonably require in the circumstances to make an informed decision, including:

- (a) sufficient information to enable the *client* to make an informed decision as to the suitability of the *financial adviser service* provided by the *AFA*, and
- (b) a concise description of the principal benefits and principal risks relevant to any *financial advice* provided as part of the *AFA's financial adviser services*, having regard to the characteristics of those services.

All explanations required under this **Code Standard** must be provided *in writing* to the *client* at the time the *personalised service* is provided, or as soon as practicable after that time, unless:

- the *AFA* has previously provided the *client* with an explanation under this **Code Standard** that is sufficient to cover the *personalised service* provided; or
- the *client* has either instructed the *AFA* (or the *AFA's* employer or *principal*) or confirmed a prior instruction that an explanation under this **Code Standard** is not required, or that any such explanation need not be *in writing*. Any such instruction or confirmation need not be *in writing*, but must reflect an unambiguous, active instruction or confirmation that is relevant to the *personalised service* currently being provided.

An *AFA* must not direct or influence a *client* to decline the explanation contemplated under this **Code Standard**. However, this restriction does not prevent an *AFA* from:

- drawing the *client's* attention to the *client's* ability to opt out of receiving the explanation contemplated under this **Code Standard**; or
- quoting or estimating a reasonable fee for providing an explanation under this **Code Standard**.

Code Standard 11

An Authorised Financial Adviser must ensure there is an appropriate internal process in place for resolving *client complaints* in relation to the *Authorised Financial Adviser's financial adviser services*.

The *complaint* resolution process under this **Code Standard** must ensure that:

- (a) the *client* is, as soon as reasonably practicable after making a *complaint*, provided with acknowledgement of the *complaint*, information about the *AFA's internal complaints* handling process, and how to complain to the Financial Markets Authority and to any applicable *external dispute resolution scheme*; and
- (b) a register is kept recording all *complaints*, and action taken towards resolving those *complaints*.

The *complaints* resolution process required under this **Code Standard** is required in addition to the *AFA's external dispute resolution scheme* (if any).

Code Standard 12

An Authorised Financial Adviser must record *in writing* adequate information about any *personalised services* provided to a *retail client*.

The information required to be recorded under this **Code Standard** in relation to each *retail client* must be sufficient to demonstrate compliance with **Code Standards 5-10**, and must include copies of all information and documents provided to, or received from, the *client in writing*, in connection with the *AFA's personalised services*.

An *AFA* who is an employee may satisfy the *AFA's* obligations under this **Code Standard** by taking reasonable steps to ensure that relevant measures taken by the *AFA's* employer are consistent with the measures contemplated under this **Code Standard**.

An *AFA* must comply with all obligations under the Privacy Act 1993. Without limitation, this includes obligations in relation to the use and disclosure of *clients'* personal information and the protection of that information from loss and unauthorised access, use, modification, or disclosure.

Code Standard 13

An Authorised Financial Adviser must ensure that records of all information and documents required under this Code are kept for a minimum of 7 years.

The 7-year minimum period required under this **Code Standard** generally commences on the last date that the *AFA* provides a *financial adviser service* to the *client*. However, for information relating to a *financial product* transaction entered into by the *client*, the 7-year minimum period for that information commences on the date that all *benefits* potentially available to the *client* from the *financial product* have been realised, if that date is earlier than the date that would otherwise apply. The records required under this **Code Standard** may be kept in electronic form, provided the records are readily retrievable.

An *AFA* may satisfy the *AFA's* obligations under this **Code Standard** by arranging for records or information and documents required under this **Code Standard** to be held by a third party (for example, the *AFA's* employer, a platform provider, or a purchaser of the *AFA's* business) by taking reasonable steps to ensure the third party keeps the records contemplated under this **Code Standard** for at least as long as the *AFA* would otherwise have been required to keep them.

E. MINIMUM STANDARDS OF COMPETENCE, KNOWLEDGE AND SKILLS REQUIRED TO PROVIDE FINANCIAL ADVISER SERVICES

Code Standard 14

Before providing a *financial adviser service*, an *Authorised Financial Adviser* must have the competence, knowledge, and skills to provide that service.

This **Code Standard** applies in addition to the requirements of **Code Standards 15 and 16** that relate to particular qualifications or *units* an *AFA* must attain.

An *AFA* must be able to demonstrate that the *AFA* has a reasonable basis for believing that the *AFA* has the level of competence, knowledge, and skills required by this **Code Standard**.

Code Standard 15

An *Authorised Financial Adviser* must have a knowledge of the Act, the Code, and other legal obligations relevant to the operation of the *Authorised Financial Adviser's* practice as a *financial adviser* (including relevant consumer protection laws), that is adequate for the proper operation of that practice.

An *AFA* must:

- (a) attain *Unit 26360*; and
- (b) be able to demonstrate the adequacy of the *AFA's* knowledge of relevant legislative obligations.

Code Standard 16

To be an *Authorised Financial Adviser*, a *financial adviser* must attain the *Components* of the *New Zealand Certificate in Financial Services (Level 5)* that are relevant to the *financial adviser services* provided by the *AFA*.

For the purposes of the *Code*, an *Authorised Financial Adviser* is deemed to have attained a particular *Component* of the *New Zealand Certificate in Financial Services (Level 5)* where the *Authorised Financial Adviser* has attained an alternative qualification or designation to that *Component* as specified in the *Code's Competence Alternatives Schedule*.

An *AFA* must attain the *Core Component* and the *financial advice strand* in order to provide a *personalised service* for a *retail client*.

An *AFA* must also attain the *investment strand* in order to provide a *retail client* with a *personalised service* involving *category 1 products*, unless *personalised services* provided by the *AFA* in relation to *category 1 products* are limited to providing *financial advice* in relation to withdrawing from a KiwiSaver scheme for the purpose of purchasing a first home.

In order to provide a *retail client* with a *personalised service* involving *category 2 products*, an *AFA* must attain:

- (a) The *Core Component* and the *financial advice strand* and at least one other *specialist strand*; or
- (b) A *specified qualification*.

In order to provide a *class service* for any *client*, or any form of *financial adviser service* for a *wholesale client*, an *AFA* must attain the *Core Component* and *Unit 26360*, but the *AFA* is not otherwise required to attain any other *Component* of the *New Zealand Certificate in Financial Services (Level 5)*.

An *AFA* who first became authorised to provide a *financial adviser service* in reliance upon a competency pathway that is no longer available to new applicants for authorisation will continue to be regarded as complying with this **Code Standard** in relation to providing that *financial adviser service*, provided there has been no break in the *AFA's* authorisation and the *AFA* is able to demonstrate compliance with the *AFA's CPD* obligations under the *Code* over the course of the *AFA's* authorisation.

For the avoidance of doubt, any requirement under this **Code Standard** to attain one or more *Components* or an alternative recognised in the *Competence Alternatives Schedule* or this **Code Standard** is in addition to the obligation to satisfy **Code Standard 14**.

Transition

Reference in the *Competence Alternatives Schedule* to a qualification being 'subject to the transition provisions of Code Standard 16' means the relevant qualification or *units* must have been fully attained at the time the *AFA* seeks authorisation for the first time, and will only be recognised for authorisations that come into effect prior to 1 January 2019.

F. MINIMUM STANDARDS FOR CONTINUING PROFESSIONAL TRAINING

Code Standard 17

An Authorised Financial Adviser must maintain and keep current a professional development plan for each CPD period.

An AFA's professional development plan must:

- (a) identify any areas for improvement in the AFA's competence, knowledge and skills in relation to the *financial adviser services* the AFA provides or intends to provide;
- (b) include the AFA's proposals for making those improvements; and
- (c) where available, include details of courses, seminars, workshops and any other training or professional development planned to be undertaken; and
- (d) in relation to any *financial adviser service* the AFA provides or intends to provide, take into account the minimum level of competence, knowledge, and skills an AFA is required to be able to demonstrate to provide that service under **Code Standard 16** at the start of the *CPD period*, with a view to identifying any areas for improvement or gaps in the AFA's competence, knowledge, and skills when compared with that level.

Code Standard 18

An Authorised Financial Adviser must undertake sufficient continuing professional training to maintain the Authorised Financial Adviser's competence at a level appropriate for the financial adviser services the Authorised Financial Adviser provides or intends to provide, and keep up to date with developments relevant to the Authorised Financial Adviser's practice.

In order to satisfy this **Code Standard**, an AFA must complete no less than 30 hours of *structured professional development* over the course of every two *CPD periods*.

In addition to that minimum *structured professional development* requirement, in each *CPD period* an AFA must undertake such additional training as is necessary to maintain the AFA's competence at the appropriate level required by this **Code Standard** or to satisfy the AFA's professional development plan for that *CPD period*, whether in the form of additional *structured professional development* or some other form.

An AFA must keep appropriate records of any *CPD* activity completed that is required by this **Code Standard** in a form suitable for demonstrating compliance with this **Code Standard**.

G. COMPETENCE ALTERNATIVES SCHEDULE

For the purposes of **Code Standard 16**, a *person* wishing to be an AFA is treated as having satisfied the requirements of a particular *Component* of the *New Zealand Certificate in Financial Services (Level 5)* where the *person* has attained an alternative qualification or designation as specified in this Schedule.

	Alternative Qualification	Alternative Designation
<i>New Zealand Certificate in Financial Services (Level 5) Component</i>	For the purposes of the <i>Code</i> , a <i>person</i> who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <i>Component</i>	For the purposes of the <i>Code</i> , a <i>person</i> who has attained one of the following designations is treated as having satisfied the requirements of the specified <i>Component</i>
<i>Core Component</i> Knowledge of financial services best practice, the regulatory environment for financial services, research and analysis processes, economic environment and financial system	<ul style="list-style-type: none"> • Any New Zealand issued tertiary qualification at degree level or above in or majoring in accountancy, business (including business administration and business analysis), commerce, economics, finance or management studies (including applied management) • Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)* • Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)* • Postgraduate Diploma in Personal Financial Planning (Waikato University)* • Bachelor of Applied Management (Personal Financial Planning) (Ara Institute of Canterbury) • Graduate Diploma in Personal Financial Planning (Ara Institute of Canterbury) • NZX Diploma • National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16 <p>* in each case, including their respective predecessor diploma qualifications</p>	<ul style="list-style-type: none"> • <i>Certified Financial Planner</i> • <i>CFA Charterholders</i> • <i>Chartered Life Underwriter</i> • <i>NZFMA Accredited individual</i> • <i>NZX Advisor</i> • <i>NZX Associate Advisor</i>

	Alternative Qualification	Alternative Designation
New Zealand Certificate in Financial Services (Level 5) Component	For the purposes of the <i>Code</i> , a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <i>Component</i>	For the purposes of the <i>Code</i> , a <i>person</i> who has attained one of the following designations is treated as having satisfied the requirements of the specified <i>Component</i>
<i>Financial advice strand</i> (Comprising <i>units</i> 26360, 25650, 25651, 25652, and 25653) Professional practice advice process and complying with legislation	<ul style="list-style-type: none"> • Bachelor of Applied Management (Personal Financial Planning) (Ara Institute of Canterbury) • Graduate Diploma in Personal Financial Planning (Ara Institute of Canterbury) • Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)* • Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)* • National Certificate in Financial Services (Financial Advice) (Level 5) , subject to the transition provisions of Code Standard 16 <p>* If attained after 30 June 2011</p>	No recognised alternative
<i>Investment strand</i>	<ul style="list-style-type: none"> • Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)* • Bachelor of Applied Management (Personal Financial Planning) (Ara Institute of Canterbury) • Graduate Diploma in Personal Financial Planning (Ara Institute of Canterbury) • <i>Units</i> 25648 and 25649 of the National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16. <p>* If attained after 30 June 2011</p>	<ul style="list-style-type: none"> • <i>CFA Charterholder</i>

H. DEFINITIONS SCHEDULE

In this *Code*, unless the context otherwise requires, the following terms have the meanings set out below. To assist, those terms are shown in *italics* wherever they appear in the body of the *Code*. Any term that is not defined in this Schedule, but is defined in the *Act* or in regulations made under the *Act*, has the same meaning in the *Code* as in the *Act* or in those regulations, as applicable. Where there is any inconsistency between the definition of a term defined in the *Act* and the definition of that term in the *Code*, the definition in the *Act* prevails.

Act	the Financial Advisers Act 2008
AFA	an <i>Authorised Financial Adviser</i>
Authorised Financial Adviser	a <i>person</i> described in section 51 of the <i>Act</i> who is authorised by the Financial Markets Authority under section 55 of the <i>Act</i>
Bank	has the same meaning as the term 'bank in New Zealand' in section 5 of the <i>Act</i>
benefit	any money, property, or other valuable consideration
business partner	a <i>person</i> who is a member of a partnership as defined in section 4 of the Partnership Act 1908
category 1 product	means any of the following products: <ul style="list-style-type: none">(a) an <i>FMCA financial product</i> (other than a product that is a category 2 product); or(b) a <i>DIMS facility</i> (other than a facility that is a <i>category 2 product</i>); or(c) an investment-linked contract of insurance (as defined by regulations); or(d) any other product specified by regulations made under the <i>Act</i>; or(e) a renewal or variation of the terms and conditions of an existing <i>category 1 product</i>
category 2 product	means any of the following products: <ul style="list-style-type: none">(a) a <i>bank term deposit</i>; or(b) any bonus bond; or(c) any call building society share; or(d) a call credit union share; or(e) a call debt security; or(f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or(g) a unit in a cash or term portfolio investment entity (as defined by regulations); or(h) a consumer credit contract within the meaning of the Credit Contracts

Component	a <i>Unit</i> or graduate outcome or set of graduate outcomes forming part of the New Zealand Certificate in Financial Services (Level 5) identified as a component of that qualification in the <i>Competence Alternatives Schedule</i>
Core component	the core compulsory <i>Component</i> of the <i>New Zealand Certificate in Financial Services (Level 5)</i> that all certificate holders are required to have attained
CPD	continuing professional development or training relevant to the <i>financial adviser services</i> the <i>AFA</i> provides or intends to provide
CPD period	in respect of an <i>AFA</i> , a 12-month period from the day of the year specified for this purpose in the <i>AFA's</i> terms of authorisation or, in the absence of any such day being specified, a calendar year with the first such period commencing on the 1 st day of January following the <i>AFA's</i> authorisation
DIMS facility	an agreement, arrangement, or understanding for the provision of a <i>discretionary investment management</i> service under an investment authority
director	has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a <i>person</i> who occupies a position comparable to that of a <i>director</i> (such as a trustee or a partner)
discretionary investment management service	a service which an <i>AFA</i> , acting under an authority granted to the <i>AFA</i> (or to the <i>AFA's</i> employer or <i>principal</i>) manages all or some of the <i>client's</i> holdings of <i>FMCA financial products</i> , and decides which <i>FMCA financial products</i> to acquire or dispose of on behalf of the <i>client</i>
external dispute resolution scheme	in respect of an <i>AFA</i> , the scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to which any complaint concerning the <i>AFA</i> must be referred
financial advice	making a recommendation or giving an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a <i>financial product</i> , noting that whether or not advice is financial advice is not affected by how the advice is given or communicated The mere provision of information, or making a recommendation or giving an opinion relating to a class of <i>financial products</i> , or making a recommendation or giving an opinion about the procedure for acquiring or disposing of a <i>financial product</i> , or transmitting the financial advice of another or recommending that a <i>person</i> consult a <i>financial adviser</i> , does not amount to financial advice
financial advice strand	the specialist strand of that name within the <i>New Zealand Certificate in Financial Services (Level 5)</i>
financial adviser	a <i>person</i> who provides a <i>financial adviser service</i>
financial adviser service	giving <i>financial advice</i> , or providing an <i>investment planning service</i> , or providing a <i>discretionary investment management service</i> , in the ordinary course of business

financial product	a <i>category 1 product</i> or a <i>category 2 product</i>
FMCA financial product	has the same meaning as in section 5 of the <i>Act</i>
internal complaints handling process	an <i>AFA's</i> internal process for handling and resolving complaints as described in Code Standard 11
investment planning service	<p>a service provided by an <i>AFA</i> under which the <i>AFA</i> designs, or offers to design, a plan for an individual that:</p> <p>(a) is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and</p> <p>(b) includes 1 or more recommendations or opinions on how to realise those goals (or 1 or more of them),</p> <p>regardless of whether the analysis and identification is of the individual's particular financial situation and goals or of the financial situations and goals attributable to a class of <i>persons</i> that the individual is identified as coming within</p>
investment strand	the <i>specialist strand</i> of that name within the <i>New Zealand Certificate in Financial Services (Level 5)</i>
Minister	has the same meaning as in section 5 of the <i>Act</i>
National Certificate in Financial Services (Financial Advice) (Level 5)	the qualification of that name that has been approved by the New Zealand Qualifications Authority (NZQA reference 1476)
New Zealand Certificate in Financial Services (Level 5)	the qualification of that name that has been approved by the New Zealand Qualifications Authority (NZQA reference 2315)
NZFMA Accredited individual	an individual who has achieved accredited individual status following the completion of the New Zealand Financial Markets Association Financial Services Accreditation Program
NZX Advisor and NZX Associate Advisor	an individual who has been accredited and approved by NZX as an NZX Advisor or NZX Associate Advisor (as applicable) as provided in the NZX Participant Rules
person	includes an individual, a corporation sole, a body corporate, and an unincorporated body (including the trustees of a trust)
personalised DIMS	has the same meaning as in section 15(2A) of the <i>Act</i>
personalised service	<p>(a) financial advice or an investment planning service:</p> <p>(i) given to or in respect of a <i>named client</i> or a <i>client</i> that is otherwise readily identifiable by the <i>AFA</i>; and</p> <p>(ii) the <i>AFA</i> has taken into account the <i>client's</i> particular financial situation or goals (or any one or more of them) in providing the service, or the <i>client</i> would, in the circumstances in which the service is provided, reasonably expect the <i>AFA</i> to take into</p>

	account the <i>client's</i> particular financial situation or goals (or one or any more of them),
	however a service is not personalised merely because the <i>client</i> comes within a class of <i>persons</i> having predefined characteristics and the <i>AFA</i> takes the fact that the <i>client</i> comes within that class into account; or
	(b) a personalised DIMS
principal	a <i>person</i> who is the <i>principal</i> in an agency relationship
product provider	means:
	(a) the issuer, in the case of an <i>FMCA financial product</i> ; or
	(b) the creditor, in the case of a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003); or
	(c) the insurer, in the case of a contract of insurance (other than an investment-linked contract of insurance); or
	(d) the <i>person</i> specified by regulations or in any other case
QFE	an entity that is registered and has QFE status or a number of partner entities that are each registered and jointly have QFE status
related person	(a) in relation to an individual, a parent, child, sibling, spouse, de facto spouse, civil union partner, employer or <i>business partner</i> of that individual, or a <i>principal</i> on whose behalf the individual provides <i>financial adviser services</i> by way of a contract for services; and
	(b) in relation to a body corporate A:
	(i) a <i>person</i> who
	▪ is also a body corporate; and
	▪ either has substantially the same shareholders as A; or
	▪ is under the control of the same <i>person</i> or <i>persons</i> as A; or
	(ii) a <i>person</i> who is able, directly or indirectly, to –
	▪ exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or
	▪ appoint or control 25% or more of a governing body of A; and
	(c) in any case, includes an associated person or a related body corporate, as those terms are defined under section 12 of the Financial Markets Conduct Act 2013
retail client	a <i>client</i> who is not a <i>wholesale client</i>
specialist strand	a strand forming part of the <i>New Zealand Certificate in Financial Services (Level 5)</i>
specified qualification	a diploma or other qualification granted by Massey University, Waikato University, or Ara Institute of Canterbury, specifically identified in the Competence Alternatives Schedule as an alternative to the <i>Core Component</i>

	or the National Certificate in Financial Services (Financial Advice) (Level 5)
structured professional development	<p>training that has identifiable aims and with outcomes relevant to the learning needs identified in the AFA’s professional development plan, and:</p> <ul style="list-style-type: none"> (a) is provided by a qualified educator or relevant subject matter expert; and (b) provides for interaction and feedback; and (c) participation is verifiable by documentation <p><i>Structured professional development</i> may include technical product training but excludes training provided for the principal purpose of promoting a particular <i>financial product</i></p>
unit	a <i>unit</i> standard forming part of the <i>National Certificate in Financial Services (Financial Advice) (Level 5)</i> or the <i>New Zealand Certificate in Financial Services (Level 5)</i> on the National Qualifications Framework
wholesale client	a <i>client</i> classified as a <i>wholesale client</i> under section 5C of the Act
written or in writing	includes in electronic form

B: New Code

CODE OF PROFESSIONAL CONDUCT FOR FINANCIAL ADVICE SERVICES

financialadvicecode.govt.nz

[New Zealand Government](https://www.govt.nz)

The Financial Advice Code

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 supports the purposes of the FMC Act including promoting the confident and informed participation of businesses, investors, and consumers in the financial markets, avoiding unnecessary compliance costs, and ensuring the availability and quality of financial advice.

The Code is part of a wider regulatory regime for financial advice. Subpart 5A of Part 6 of the FMC Act imposes statutory duties on persons who give regulated financial advice to retail clients. Those duties include:

- › to comply with the standards of ethical behaviour, conduct, and client care required by the Code
- › to meet the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the Code for giving the advice.

In the Code, “client” means a retail client and “financial advice” means regulated financial advice given to a client.

The Code includes commentary to help persons who give financial advice to comply with the standards. The commentary does not limit the standards.

financialadvicecode.govt.nz

ISBN: 978-1-98-857062-4 (**online**)

The Code was approved by the Minister of Commerce and Consumer Affairs on 7 May 2019 and the obligation to comply with the Code came into force on 15 March 2021.

The Standards

PART 1: ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE

1. Treat clients fairly
2. Act with integrity
3. Give financial advice that is suitable
4. Ensure that the client understands the financial advice
5. Protect client information

PART 2: COMPETENCE, KNOWLEDGE, AND SKILL

6. Have general competence, knowledge, and skill
7. Have particular competence, knowledge, and skill for designing an investment plan
8. Have particular competence, knowledge, and skill for product advice
9. Keep competence, knowledge, and skill up-to-date

PART 1:



ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE

STANDARD 1

TREAT CLIENTS FAIRLY

A person who gives financial advice must always treat clients fairly.

■ COMMENTARY

What is fair depends on the particular circumstances, including the nature and scope of the financial advice. Treating clients fairly should include:

- › 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 taking advantage of clients' lack of financial knowledge or other vulnerabilities
- › not applying undue pressure on clients.

Treating clients fairly does not mean that clients are not responsible for their own decisions or that they are not exposed to risk.

STANDARD 2

ACT WITH INTEGRITY

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

■ COMMENTARY

The standard applies to giving financial advice and to the activities and business practices that surround and support the giving of financial advice. That 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, media and the public.

Acting with integrity includes:

- › avoiding or appropriately managing any conflict of interests
- › not doing anything that would, or would be likely to, bring the financial advice industry into disrepute.

GIVE FINANCIAL ADVICE THAT IS SUITABLE

A person who gives financial advice must ensure that the financial advice is suitable for the client, having regard to the nature and scope of the financial advice.

■ COMMENTARY

Ensuring that the financial advice is suitable for the client should include having reasonable grounds for the financial advice. Reasonable grounds for the financial advice means those grounds that a prudent person engaged in the occupation of giving financial advice would consider to be appropriate in the same circumstances, such as those in relation to:

- › any strategy supporting the financial advice
- › any assumptions underlying the financial advice
- › any financial advice product covered by the financial advice
- › the client's circumstances that are relevant to the financial advice, such as their financial situation, needs, goals, and risk tolerance.

Depending on the nature and scope of the financial advice, a detailed analysis of the client's circumstances may be required or it may be reasonable to make assumptions about the client's circumstances based on particular characteristics of the client.

If the financial advice includes a comparison between two or more financial advice products, the financial advice should be based on an assessment of each product.

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

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.

■ COMMENTARY

Section 431J of the FMC Act provides 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 advice being given, including any limitations on the nature and scope of the advice.

This standard relates to the financial advice itself.

Understanding the financial advice includes the client having sufficient comprehension of the content, risks and consequences of the financial advice, and of the nature of any ongoing and other services related to the financial advice, to be able to make timely and informed decisions about the financial advice, such as:

- › whether the financial advice is based on valid assumptions about the client's circumstances
- › whether to follow the financial advice
- › whether the fees and costs associated with following the financial advice, such as those of any financial advice product or platform, are acceptable
- › whether and when to seek additional financial advice.

What amounts to reasonable steps by the person who gives the financial advice will depend on the circumstances, such as the nature and scope of the financial advice, and the skills, experience and vulnerabilities of the client.

STANDARD 5

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 the client that is collected or held by a person who gives financial advice. That includes information in work papers and records, and the financial advice given to the client.

Client information about a client should only be used, retained or disclosed:

- › for the purpose of giving financial advice to the client
- › for another purpose that is directly related to giving the financial advice
- › if the use, retention or disclosure is required or permitted by law
- › for another purpose if the client has agreed.

Client information should be retained only for as long as it is required for one or more of those reasons. When it is no longer needed, the client information should be returned to the client or disposed of securely.

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 is broader than personal information under the Privacy Act. To the extent that it relates to personal information, however, the standard is intended to be applied consistently with obligations under the Privacy Act.

PART 2:

COMPETENCE, KNOWLEDGE, AND SKILL

STANDARD 6

HAVE GENERAL COMPETENCE, KNOWLEDGE, AND SKILL

A person must not give financial advice unless the person meets the standard of general competence, knowledge, and skill.

The standard of general competence, knowledge, and skill is that the person has capabilities equivalent to the general qualification outcomes of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315). The general qualification outcomes are qualification outcomes 1-4 of that certificate.

■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their general competence, knowledge, and skill by any of the following ways:

- › hold version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5)
- › hold the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies any of the ways stated above.

■ COMMENTARY

A person may demonstrate competence, knowledge, and skill in a way that is different from those listed above, for example by reference to the financial advice provider's procedures, systems and expertise.

If a person seeks to demonstrate competence, knowledge, and skill by reference to an alternative qualification or experience, they should do so in an objective, measurable and independently verifiable manner.

STANDARD 7

HAVE PARTICULAR COMPETENCE, KNOWLEDGE, AND SKILL FOR DESIGNING AN INVESTMENT PLAN

A person must not give financial advice that includes designing an investment plan unless the person meets the standard of particular competence, knowledge, and skill for designing an investment plan.

The standard of particular competence, knowledge, and skill for designing an investment plan is that the person has the capabilities equivalent to the qualification outcomes of the investment strand of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315).

■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their particular competence, knowledge, and skill for designing an investment plan by any of the following ways:

- › has achieved the qualification outcomes of the investment strand of version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser, permitted to provide investment planning services, immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies either of the ways stated above.

■ COMMENTARY

This standard is an interim standard. The Code Committee intends to consult in the future on whether higher qualification outcomes should be the required standard of particular competence, knowledge, and skill for designing an investment plan.

The Standard 6 commentary also applies to this standard.

HAVE PARTICULAR COMPETENCE, KNOWLEDGE, AND SKILL FOR PRODUCT ADVICE

A person must not give financial advice that includes a recommendation or opinion about either:

- › acquiring or disposing of (or not acquiring or disposing of) a financial advice product
- › switching funds within a managed investment scheme

unless the person meets the standard of particular competence, knowledge, and skill for product advice.

The standard of particular competence, knowledge, and skill for product advice is that the person has the capabilities equivalent to the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315).

The relevant strand means the specialist strand of the certificate 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 strands that are most relevant to all those products.

■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their particular competence, knowledge, and skill for product advice by any of the following ways:

- › has achieved the qualification outcomes of the relevant strand of version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser, permitted to provide financial adviser services in relation to the financial advice product to which the financial advice relates, immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies either of the ways stated above.

■ COMMENTARY

The Standard 6 commentary also applies to this standard.

KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP-TO-DATE

A person who gives financial advice must undertake continuing professional development as follows:

Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain:

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

Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.

■ COMMENTARY

There are many ways in which a person might satisfy the requirements for continuing professional development. For example, an individual might maintain an up-to-date understanding of the regulatory framework for financial advice in New Zealand by completing, after any material changes to that regulatory framework, the requirements for qualification outcome 4 of the New Zealand Certificate in Financial Services (Level 5) version 2.

C: Statutory duties in sections 431J, 431K and 431N of the FMC Act

431J Duty to ensure client understands nature and scope of advice

A person must not give regulated financial advice to a retail client unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

431K Duty to give priority to client's interests

(1) This section applies if—

- (a) a person **(A)** gives regulated financial advice to a client **(C)**; and
- (b) A knows, or ought reasonably to know, that there is a conflict between—
 - (i) C's interests; and
 - (ii) A's own interests or the interests of a person connected with the giving of the advice.

(2) In giving the advice, A must give priority to C's interests by taking all reasonable steps to ensure that the advice is not materially influenced by any of the following:

- (a) A's own interests;
- (b) the interests of a person connected with the giving of the advice.

(3) In this section, each of the following is a person **connected with the giving of the advice**:

- (a) a person associated with A;
- (b) if A gives the advice on behalf of a financial advice provider, —
 - (i) the financial advice provider;
 - (ii) a person associated with the financial advice provider;
 - (iii) if A is engaged by the provider through 1 or more interposed persons, —
 - (A) an interposed person;
 - (B) a person associated with an interposed person.

431N Duty relating to offer that contravenes Act or regulations

(1) A person **(A)** who gives regulated financial advice to a client **(C)** must not recommend that C acquire a financial product if—

- (a) the product is a contravening product; and
- (b) A knows, or ought reasonably to know, that the product is a contravening product.

(2) A financial product is a **contravening product**—

- (a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations;

or

- (b) if, —
 - (i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and
 - (ii) the contravention has not been remedied.

Consultation questions

1. Have you previously delivered incidental financial advice, that required compliance with Standard Condition 2? (i.e., the incidental financial advice was covered by your DIMS licence only and you were not separately regulated under the Financial Advisers Act 2008 or the new financial advice provisions in the FMC Act).
2. Do you intend to provide incidental financial advice under your DIMS licence, which will require compliance with Standard Condition 2 in the future?
3. Please tell us the category of persons who provide incidental financial advice on your behalf, for example:
 - a) All advice is provided through either Financial Advisers or Nominated Representatives, who are engaged by a licensed Financial Advice Provider or an Authorised Body,
 - b) Incidental financial advice is provided by persons who are not Financial Advisers or Nominated Representatives, or
 - c) No incidental financial advice is provided.
4. Do you have any concerns around the proposed new wording of Standard Condition 2? Please provide your reasons.
5. Do you have any concerns around the implications of Standard Condition 2? Please provide your reasons.
6. Do you have any concerns around the compliance cost associated with Standard Condition 2? Please provide your reasons.
7. Do you have any concerns around the timing of the variation implementation for current or new DIMS licensees? Please provide your reasons.
8. Do you have any comments in relation to the competency safe harbour that we are proposing to carry over to DIMS licensees? Please provide your reasons.
9. Do you have any other comments?

