

31 March 2010

Important Information on Draft Code and Consultation

The Code Committee has today released the draft Code of Professional Conduct for Authorised Financial Advisers (AFAs), and has called for submissions on the draft Code.

We are appreciative of the submissions and feedback received so far on our three previous discussion papers, and also for the opportunity to meet with consumers, advisers, professional bodies and groups, companies, government agencies, training and assessment providers, and other interested parties. We have given careful consideration to the submissions, and these have enabled us to develop a document that we believe is entirely consistent with the purposes of the Financial Advisers Act 2008 :

“...to promote the sound and efficient delivery of financial advice, and to encourage public confidence in the professionalism and integrity of financial advisers...”

In developing our proposed set of Standards, we have had to consider some widely polarised views expressed in relation to a number of the main consultation points. These differences of opinion appearing in the submissions have generally been resolved by stepping back and determining approaches that are consistent with both the Act’s objectives, and with an effectively functioning financial advisory industry.

Consultation and Submissions

We are keen to receive submissions and feedback on the draft Code. **Submissions close at 5pm, Friday 7 May, 2010.** Details on how to make a submission are outlined at the end of this note. The Code Committee appreciates that consumers, advisers, and other parties may benefit by meeting with the Committee. We have planned a series of information meetings around New Zealand in early-mid April to provide opportunities for you to ask questions and seek elaboration, and provide initial feedback. Hopefully, this will assist you in the preparation of your submissions.

Details about these information meetings are also outlined at the end of this note.

Draft Code Style and Structure

The draft Code has been written in a manner that is intended to make it accessible to consumers and advisers, and to make clear what the proposed initial minimum standards are with respect to –

- Ethical behaviour
- Client care
- Competence, knowledge, and skills, and
- Continuing professional training

There are 21 proposed Standards. Each Standard consists of an overarching principle identified in a highlighted text box, together with additional provisions that contain detail about the application of each Code Standard.

Authorised Financial Advisers are required to comply with the spirit of the Code, as well as with the strict letter of the Code Standards. A common theme coming through most of our consultation

meetings with advisers is an appreciation that if advisers wish to be perceived as professionals, they must act as professionals in all their dealings with clients, satisfying minimum standards of professional conduct.

New Concepts

As a result of very useful feedback given to the Code Committee during the consultation process, we have introduced some new concepts. These are defined in the Definitions Schedule, and built into several of the ethical behaviour, client care and competence Code Standards-

- Recognised alternative qualifications or designations
- Personalised financial advice
- Wholesale client

Access to Other Code Committee Papers

In the week after Easter, the Committee proposes to provide access to our summaries of the feedback we received each of the earlier consultation papers. These will give interested parties an understanding of information that has been provided to the Committee, and which supported the rationale for the substantive decisions of the Committee. These documents will be available at:

www.financialadvisercode.govt.nz

Financial Service Providers (Pre-Implementation Adjustments) Bill and Impact

A Bill was introduced to Parliament earlier this year, aimed at ensuring that the Financial Advisers Act and the Financial Service Providers Act could be implemented effectively and consistently within existing policy frameworks. A Supplementary Order Paper was introduced in the 2nd half of March. Details can be found at www.legislation.govt.nz

The proposals need to go through normal parliamentary process, including Select Committee review. However, if and as enacted, they will have an impact on the Code in a number of key areas, including:

- Enabling the Code Standards to be phased in during transitional periods, and for different provisions to be brought into force at different dates.
- “Investment management decisions.” This is a new term.
- Investment transactions. The Code Committee received many submissions seeking relief from some or all of the requirements of the draft Code in the area of investment transactions. The Supplementary Order Paper contemplates that investment transactions will be placed outside the concept of financial adviser services altogether and replaced with a new broker regime.

The drafting of the Code has proceeded on the assumption that the Bill will be enacted as introduced to parliament, and as amended by the Supplementary Order Paper. However, given the timing of the release of the Supplementary Order Paper, the impact of treating investment management decisions as financial adviser services has not been factored into the draft Code. Submissions on how the Code should treat this category of financial adviser service are particularly welcome.

Advisers part way through qualifications

Advisers in the process of training for a qualification or designation listed in the Code’s Competence Alternatives Schedule may be eligible for authorisation before they finish their course if they can demonstrate they have already met the required standards for the National Certificate in Financial Services (Financial Advice) (Level 5). They can do this by having their knowledge and experience assessed against the relevant unit standard sets, which will involve payment of the appropriate assessment fee.

The general obligation applies: they must ensure that they only take on the advice activities for which they have the requisite competence, knowledge and skills.

Advisers in training who have not yet attained Level 5, or a relevant alternative qualification or designation, can work for an AFA but cannot give advice requiring authorisation, in their own right. We encourage advisers to continue their formal studies. We have already commented that future Code Committees may 'raise the bar' for all or particular classes of advisers.

Proposed Timetable

Following the close of submissions on the draft Code on 7 May 2010, the Committee will consider all feedback. We would then expect to formally present the draft Code in early June to the Commissioner for Financial Advisers for his consideration and formal approval. The Code would then be forwarded to the Minister for Commerce for his approval, and formal gazetting. Only at this point will the draft Code become final.

As a result of this process, it is quite likely that there will be some variations between the draft Code now being released and the final version. We will endeavour to keep stakeholders informed as drafting developments arise.

Information Meetings

The schedule for meetings is outlined below. As you can see, we have tried to give you every opportunity to attend by extending coverage to a broader range of regional centres. The length of meetings is up to attendees, but we imagine that they could run for up to two hours. As previously advised, the final decision to go ahead with each meeting is dependent upon our getting sufficient registrations.

It is now clear that many professional bodies, companies and other groups are also well advanced in their plans for extensive roadshows around New Zealand, helping their members and associates to get ready for the implementation of the Code and the Financial Advisers regime, planned for late 2010.

Our information meetings will be held:

7 April	8.30am Takapuna	Bruce Mason Centre,
8 April	2pm Ellerslie	Ellerslie Event Centre, 80-100 Ascot Avenue
9 April	8.30am Hamilton	Kingsgate Hotel, 100 Garnett Avenue
	2pm Tauranga	Hotel on Devonport, 72 Devonport Rd
13 April	8.30am Palmerston North	Coachman Hotel, 140 Fitzherbert St
	2pm Napier	Hawkes Bay Club, Marine Parade
14 April	8.30am Wellington	James Cook Hotel, 147 The Terrace
15 April	8.30am Dunedin	Level 9, Forsyth Barr House, The Octagon
	2pm Invercargill	Kelvin Hotel, cnr of Kelvin St and Esk St
16 April	8.30am Christchurch	Millenium Hotel, 14 Cathedral Square
	3pm Nelson	Trailways Hotel, 66 Trafalgar St

You can register by contacting us at consultation@financialadvisercode.govt.nz.

How to Make Submissions and Give Feedback

We are keen to receive your feedback on the draft Code, and encourage you to make a submission. This is probably the final formal consultation opportunity for you to help shape our regulatory framework. While the format and content of your submissions is up to you, we suggest that you relate your feedback to specific Code Standards.

- Email us at consultation@financialadvisercode.govt.nz, or
- Writing to

Code Committee
c/o Securities Commission
PO Box 1179
Wellington 6011

Your submission must include your name, address, and contact phone number. You must specify if you require your submission, or part of it, to remain confidential to the Code Committee and our Secretariat, subject to any overriding statutory obligation.

Thanks for taking the time to read this note, and the draft Code. We encourage you to provide feedback.

Ross Butler

Chair

Code Committee for Financial Advisers

chair@financialadvisercode.govt.nz

31 March 2010

More Information and Useful Websites

- www.financialadvisercode.govt.nz Code Committee papers
- www.afacompetence.org.nz Unit Standard Sets, on-line self-evaluation tool
- www.seccom.govt.nz Securities Commission