CODE
COMMITTEE

# CODE COMMITTEE'S RESPONSE TO MAJOR SUBMISSION POINTS RAISED ON THE FIRST DRAFT OF THE CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS

**6 July 2010**

CODE COMMITTEE

## INTRODUCTON

The first draft of the Code of Professional Conduct for Authorised Financial Advisers under the Financial Advisers Act 2008 was released for public consultation on 31 March 2010, following on from three previous consultation papers issued by the Code Committee on proposed minimum standards of competence, knowledge and skills, on ethical behaviour and client care, and on continuing professional training. This issues paper summarises the major submission points raised on the first draft of the Code and outlines the main elements of the Committee's response to those issues in preparing the second draft of the Code released for public consultation on 2 July 2010.

When considering the second draft of the Code, the Committee had to consider not only the feedback received from its numerous public consultation meetings and the 173 substantive submissions received in response to the draft Code, but also the significant changes that were made to the regulatory regime for financial advisers pursuant to the Financial Advisers Amendment Act 2010 that was passed at the end of June. That Amendment Act originated from the Financial Service Providers (Pre-Implementation Adjustments) Bill 2010, and reflected substantive changes made between the first and second readings of that Bill. A number of the changes made have directly impacted on the Committee's consideration of the appropriate minimum standards to recommend under the Code. For the sake of good record, those changes included:

- A change to the scope of financial adviser services captured, so that only services provided in the ordinary course of business are now caught within the regime, along with services provided in the course of business of a registered financial service provider.
- The concept of 'financial advice' has been narrowed, by removing the previous 'guidance' limb and specifying a number of activities that will no longer constitute 'financial advice' for the purposes of the Act, with the result that a number of participants in the financial advisory industry whose services were previously caught within the regime are now outside its scope.
- Replacing the concept of 'investment transactions' with 'discretionary investment management decisions' as one of the limbs of financial adviser services.
- Replacing 'financial planning services' with a narrower concept of 'investment planning services' as another of the three limbs of financial adviser services.
- Introducing a separate regime for broking services which now falls outside the regulatory regime for financial adviser services.
- Creating a new emphasis on 'personalised services' provided for 'retail clients'.
- Introducing specific provisions in respect of 'class services'.
- Providing relief from the authorisation requirements and from various other provisions of the regime for financial adviser services performed for 'wholesale clients'.
- Providing a mechanism for any financial adviser to opt into authorisation for services that do not require authorisation with the scope of the ability to opt-in to be determined by regulation.

- Changing the scope of what will constitute a category 1 product by replacing the previous references to services in relation to estates or interests in land with a reference to land investment products (to be defined by regulations), and moving a number of near cash investments into the category 2 product space.
- Conferring wide ranging exemption and regulation making powers upon the Securities Commission.
- Providing the Securities Commission with greater powers to tailor terms and conditions of authorisation.
- Substantially overhauling the regime for Qualifying Financial Entities, including a specific exclusion for authorised financial advisers from counting as 'QFE advisers'.
- Introducing a new whistle-blowing provision into the Act itself, following on from a specific whistle-blowing standard proposed in the initial draft of the Code.

In addition to the above changes, various statements have been made by or on behalf of the Minister of Commerce in relation to the timing of the implementation of the regime. The key announcements in this regard are that:

- Registration will be required for all financial service providers other than financial advisers no later than 1 December 2010.
- Registration will be required for financial advisers from 1 April 2011, meaning that individuals looking to rely on QFE adviser status will need their Qualifying Financial Entity to have its QFE status conferred prior to that date.
- Restrictions on providing financial adviser services that only authorised financial advisers can provide will come into effect on 1 July 2011.
- Financial advisers will be able to be authorised earlier than 1 July 2011 if they are able to get their applications in order prior to that time, with an earliest date any authorisation is likely to be able to be effective being 1 December 2010.

The second version of the Code released on 2 July 2010 has endeavoured to take all of the changes to the financial advisers regulatory regime into account. A key factor in the approach taken is that pursuant to section 86 of the Financial Advisers Act, the Code is required to provide for minimum standards of professional conduct that must be demonstrated by authorised financial advisers, as well as provide for continuing professional training for authorised financial advisers. The Code therefore covers conduct expected of authorised financial advisers as professionals, with the minimum standards of professional conduct expected not necessarily limited to financial adviser services, or to financial adviser services that require their provider to be authorised before they can be provided.

In providing this issues paper, the Committee hopes to address a number of queries that might be raised by those who have previously engaged in the consultation process, as well as help inform consultation feedback on the second draft.

Any written submissions on the second draft of the Code need to be received by the Code Committee no later than 21 July 2010. The Committee's intention is to be in a position to recommend a final version of the Code to the Commissioner for Financial Advisers prior to the end of July.

Ross Butler
Chair

CODE COMMITTEE

# CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS

Table summarising major submissions points raised on the first draft of the Code and the Committee's response

| Issue raised | Response |
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| **Background, Introduction and General** | |
| *Numerous submissions were received regarding the overall style of the draft Code. Most supported a principles-based approach, and were positive about the style adopted, but differing views were expressed as to the amount of prescription desirable to underpin those principles* | With the high level of support received for the overall style of the Code, a major change in the approach would be inappropriate. However, comments on the balance struck in the draft between principles and prescription have been taken into account in preparing the second draft. The Committee has endeavoured to ensure there is sufficient certainty of application provided in the Code, without compromising the flexibility of a principles-based approach. |
| *A number of submitters were uncertain as to whether the opening sections were intended to form part of the Code and have operative effect* | The Committee wished to create a document that would be helpful for consumers in placing the Code in context. Additional commentary has been added to make it clear that this is the intention behind the Background section, with the balance of the Code providing the operative obligations for authorised financial advisers (AFAs). |
| *The concept of the 'spirit' of the Code is unclear and the application of an obligation to comply with that 'spirit' is uncertain.* | Considerable support was expressed for imposing an obligation of this nature. The Committee considered it important that advisers have regard to the intent of behind the specific Code Standards as well as their express requirements.<br>To provide greater clarity, the obligation has been reworded to spell out what the Committee's intentions were, by requiring the Code Standards to be applied in a way that promotes the purposes of the Financial Advisers Act 2008 ('Act'), with reference to encouraging public confidence in the professionalism and integrity of financial advisers. Reference to the spirit of the Code has been moved to the Background section to avoid any confusion.<br>The expectation of the Committee is that the Code will be interpreted in a manner consistent with what a reasonable person would have understood the Committee to have intended in the circumstances by using the language that we did. The Code Standards should not be interpreted in a strict or unduly literal manner without regard to the purpose of the Act. Requiring the Code Standards to be applied in a way that encourages public confidence in the professionalism and integrity of financial advisers emphasises this expectation. |

| Issue raised | Response |
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| *Should the Code contain information regarding consumer rights and compliant information?* | The Code is focused specifically on the obligations of AFAs. Consumers may refer to the Code to ensure an AFA is acting appropriately, but the Committee's role does not extend to attempting a summary of consumer rights.<br>The Ministry of Consumer Affairs is best placed to provide consumers with guidance in this respect. |
| **Ethical Behaviour** | |
| **Code Standard 1**<br>Placing client interests first and acting with integrity | |
| *The Code Standard ('CS') 1 will be difficult for employees to comply with if a competitor's products need to be considered* | Clarification has been added to CS 1 to spell out the Committee's intention that an AFA is not required to consider financial products or matters outside the scope of the AFA's services.<br>The Committee also considered that the obligations on an AFA would be clearer if the qualification of CS 1 to only apply when providing financial adviser services was removed. This recognises that the Code is for the professional conduct of AFAs. As a profession, it is important that distinctions on ethical behaviour are not drawn depending upon what types of activities are involved, especially when clients may not appreciate the subtlety of the distinction. |
| *Should the 'client first' concept be strengthened to 'must act in the best interests of the client'? Should fiduciary duties be imposed?* | The 'client first' concept remains, as it provides a clear obligation that is easily understood. It is a standard that has been adopted in numerous other contexts. Requiring an AFA to act in a client's 'best interests' was seen as being overly subjective, and raised a risk of AFAs being unfairly judged with the benefit of hindsight.<br>Introducing the concept of 'fiduciary duties' was not considered appropriate. That concept is a legal one, arising from the basis of the specific client-adviser relationship. Attempting to impose such duties in the abstract was not considered helpful in practice. |
| *Does CS 1 mean commissions cannot be paid?* | Commissions are still able to be received, so long as there is transparency and the commissions do not compromise the quality of the underlying advice provided. An AFA recommending one product over another purely because of the level of commission the AFA stands to receive is likely to be in breach of CS 1. |

| Issue raised | Response |
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| *A concern was raised that AFAs may have competing obligations, and the Code Standard should be limited to treating clients fairly* | Where conflicts arise, AFAs have disclosure obligations under CS 6 and 7. It is then open to the AFA to seek guidance from the client as to what the client considers is required to ensure the client's interest are not compromised.<br>If the AFA is still unable to resolve the conflict of interest and place the client's interest first (i.e. is compelled to prefer the interests of a third party ahead of the interests of the client) the simple answer is that the AFA cannot act. The Committee did not believe it would be appropriate to grant relief from this Code Standard in these situations, as this requirement is at the heart of the Code and the concept of professionalism.<br>The one limitation to the 'client first' obligation that has been added to CS 1 is to confirm that the obligation does not restrict an AFA's responsibility to report breaches of the Act to the Securities Commission. |
| **Code Standard 2**<br>Obligation not to bring AFA or financial advisers into disrepute | |
| *Concern has been raised that the concept of 'not bringing AFAs into disrepute' is too wide and encompasses an adviser's personal life and actions* | CS 2 has now been limited to the 'financial advisory industry' generally and conduct that would undermine public confidence in that industry. Personal conduct is unlikely to undermine the industry, although it may still impact on the perception of an individual adviser and their business nonetheless. |
| *Should CS 2 require the reporting of 'actions bringing into disrepute' as per CS 7?* | CS 7 has now been superseded by the new section 45A of the Act, and clear 'whistle blowing' protections now exist under the Act.<br>CS 2 has been clarified to confirm that commenting, in good faith, in respect of other advisers, and exercising powers under section 45A, is not prevented by CS 2. |
| **Code Standard 3**<br>Use of term "Independent" | |
| *Some submitters argued that the mere receipt of commission does not impact on independence.* | Commissions directly impact on independence in the eyes of the consumer, regardless of measures taken by the AFA to avoid being influenced in practice by commission received. It is the perception that is of main concern with the restrictions imposed under CS 3, with a high bar set if an AFA is to be held out as independent. |
| *Should the test for independence be an objective 'reasonable for a non-expert third party' test or a subjective one?* | The test in respect of independence has been narrowed to focus on a client's reasonable perception rather than that of an objective third party. |
| *Should the concept of 'related person' include 'ownership'?* | Ownership is an appropriate test as any form of ownership, and the potential for 'control' over the advice provided, will impact on the perception of independence. |

| Issue raised | Response |
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| *Should there be a minimum threshold under which certain 'benefits' are acceptable?* | The concept of a 'minimum threshold' would open up the Standard to possible gaming, and shades of grey. Any benefit received will taint the perception of independence, unless remote or insignificant. It was considered best to leave it to the AFA to decide what is 'remote or insignificant' in the context in which the AFA operates, without being prescriptive in this regard. However, the onus will be on the AFA to justify reliance on that 'de-minimus' exception. |
| *In respect of benefits that do not impact on the ability to describe services as independent, there is concern the description 'in part' is unclear, particularly in respect of 'volume or targets'* | The concept of 'volume' and 'targets', in restricting the benefits that can be received without comprising an AFA's ability to be described as independent, has been limited to volume or other targets relating to particular financial products and product providers. Having any part of an AFA's salary or wage determined by reference to these sorts of targets incentivises the AFA to prefer one product or provider over another. In those situations the AFA is unable to be described as independent. |
| *Platforms that are not exclusively aligned to particular products should not be caught* | Further qualification has been included. AFAs who use platforms that are based on 'independent choice' may still be referred to as 'independent', even if some limits may apply (for example, requirements to use a particular transaction or custody account). However, limits that are binding on the AFA that result in a wide range of products or providers not being available will result in the AFA being unable to be held out as independent. |
| **Code Standard 4** *now CS 7*<br>Provision of information to client | |
| *How is the cross over between disclosure requirements under the Act and the Code to be resolved?* | The new CS 7 provides a principles-based approach to determining what information ought to be disclosed to a client. The key focus under the Code relates to the provision of information necessary for a client to make an informed decision. This is different to the prescribed information that must be provided under the Act, which is not predicated with this objective.<br>Information required under the Act need not be replicated pursuant to this Code Standard. Irrespective of upfront disclosure obligations that may eventually be prescribed by regulation, the Committee felt it was important for the Code to capture all information that a professional financial adviser ought to be telling his or her clients in order for them to make properly informed decisions. If an AFA feels that the information required to be disclosed under the Act is adequate for a client to be able to make a fully informed decision, no additional disclosure will be required. |
| *Would disclosure requirements be more appropriately contained in the client care section?* | Disclosure requirements have been moved to the 'client care' section of the Code. CS 4 is now CS 7. |

| Issue raised | Response |
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| *Should the scope of disclosure requirements be limited to 'retail' and 'personalised' situations?* | The disclosure requirements under CS 7 only apply to retail clients. |
| *When must disclosure be made?* | The Key requirement of CS 7 is that the client must be given sufficient information to enable the client to make an informed decision. This requirement is the principal factor that determines timing requirements for the purposes of CS 7. Disclosure made after a client's decision has been implemented is unlikely to adequately discharge the obligations arising under CS 7.<br>In addition, CS 7 now requires information to be updated when the AFA's circumstances materially change. |
| *Should the disclosure be in writing?* | The disclosure, in order to be sufficient, must be in writing. This also offers additional protection to individual advisers should complaints arise, and is consistent with existing Securities Markets Act disclosure requirements. |
| **Code Standard 5** *now CS 4*<br>Borrowing from or lending to client | |
| *Concerns were raised that CS 5 places higher obligations on an AFA than a registered adviser.* | Placing higher standards on AFAs is entirely appropriate for the Code. AFAs are to be held to a higher standard, with the underlying aim being to foster professionalism. In keeping with changes to the Act, CS 4 is now limited to retail client transactions. |
| *Is an employer of an AFA still entitled to make borrowing arrangements between the employer and client?* | The Code does not prevent an AFA from taking employment with an employer who borrows from or lends to retail clients, so long as this is in the ordinary course of business. The restriction is intended to primarily operate at the personal level for the AFA, other than the ordinary course of business constraints. Relief has also been provided to avoid settlement arrangements being compromised |
| **Code Standard 6** *now CS 5*<br>Restrictions that apply where AFA is related person of provider | |
| *Should CS 6 be narrowed to provide greater certainty of application?* | CS 6 has been redrafted to clarify that it only applies in relation to non-public offerings of financial products to retail clients. The rationale for this is that public offerings have their own consumer protection rules (such as s 33 of the Securities Act in relation to securities offerings), and it would be inappropriate to restrict an AFA's ability to advise on public offerings by related parties – provided disclosure is made and other obligations under the Code are discharged. A new definition of 'offered to the public' has been added in the definitions schedule. |
| *When relying on the 'information' exception to CS 6, can the information be provided verbally?* | CS 6 is very limited in its scope. To provide adequate consumer protection in the context it was considered appropriate to retain the requirement that information be provided in writing if the exception is to be relied upon. |

| Issue raised | Response |
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| **Code Standard 7** *now deleted*<br>Obligation to report suspected non-compliance | |
| *Is CS 7 necessary* in light *of changes to be introduced under the Financial Service Providers (Pre-Implementation Adjustments) Bill?* | CS 7 has been removed from the Code as 'whistle blowing' provisions are now included in the Act. |
| **Client Care** | |
| **Code Standard 8** *now CS 6*<br>Obligation to behave professionally | |
| *Should the concept of 'behave professionally' be elaborated on and should the concept of 'competence' be removed as it doubles up on CS 17 (now CS 13)?* | Professionalism underpins the Code and the broad competence requirements reflect this. Attempting to define 'professionalism' in the context of the Code would be missing the point.<br>However, an obligation to transparently manage any conflicts of interest that may arise in providing services has been added, as managing conflicts of interest is an important aspect of professionalism. The Committee considered it would be best to leave it open to AFAs to determine how best to manage any conflict of interest in a transparent fashion in their particular circumstances, recognising that no amount of prescription could hope to cover all potential conflicts that might arise.<br>Limiting your services to only those you are competent to provide is an important aspect of behaving professionally. Retaining the requirement in CS 6 emphasises that levels of competence should not be considered solely for their own sake, but also from the perspective of client care. The terminology used has been changed to 'competence, knowledge, and skills' for consistency with the Act. |
| *Should the phrase 'in a timely way' be qualified?* | The assessment of whether advice was 'timely' will be left to the disciplinary committee to determine should the need arise. A professional AFA should be able to understand the concept of providing 'timely' advice without needing detailed direction from the Code itself. |
| *Is the requirement for 'effective' communication too subjective?* | Professional advisers must ensure their clients actually receive and understand their communications, and they themselves are best placed to make certain such communication has occurred and to assess the effectiveness of that communication. This is a core requirement. |
| **Code Standard 9** *now part of CS 8*<br>Basis for advice | |
| *Should CS 9 be combined with CS 10?* | CS 9 and CS 10 have been combined so that personalised services for retail clients are addressed in a single standard. |

| Issue raised | Response |
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| *Should the client be able to 'opt-in' rather than 'opt-out' of consumer protection?* | The Code is directed at adviser behaviour, not that of the client. The onus is on the adviser to provide all required information unless, after consultation with the client, the client opts-out. The Committee did not have confidence that New Zealand retail clients are sufficiently sophisticated for it to be appropriate to place the onus on the consumer to opt-in to the protection contemplated. |
| *Should a 'reasonableness' requirement be included regarding 'risk' explanations?* | Advisers should readily be able to explain the risks to clients. No qualification was considered necessary. |
| *Do advisers need to explain the basis of advice provided?* | The need to explain the 'basis' of advice is important in order to ensure the client is aware of the factors upon which the adviser has made a recommendation or provided an opinion, including the client's background situation. This also gives the client the chance to seek 'corrected' advice, or disregard the advice, should there be a misunderstanding about the client's situation or requirements. |
| **Code Standard 10** *now part of CS 8*<br>Suitability of personalised financial advice | |
| *Should the 'suitability' analysis in respect of advice provided be non-compulsory?* | Suitability analysis remains under new CS 8, as it is an inherent aspect to the professional provision of personalised services for a client, in line with the purposes underlying the regime.<br>In this respect, the Committee considered 'suitability' was the more appropriate term to use, as opposed to 'fit for purpose'. |
| *Should all the 'risks' to be disclosed to clients be expressly set out in the Code?* | This would be inappropriate, as risks will vary in respect of differing advice. It is left to individual advisers, as professionals, to determine, in their opinion, which risks apply to particular clients. |
| *Should Code Standard 10 only apply to personalised financial advice?* | The old CS 10 has been combined with the old CS 9 and incorporated into new CS 8. Its application has been limited to 'personalised service to a retail client'. The definition of 'personalised service' has also been aligned to that under the Act. Wholesale clients are therefore excluded from the application of this Code Standard. |
| *Can an AFA still act where a client fails to provide full information and the AFA is aware of this?* | The Code Standard now allows an AFA to provide advice only on information provided by the client or otherwise known by the AFA, although an AFA must make all enquiries reasonable in the circumstances to obtain the necessary information. |
| *Can a previous client suitability analysis remain relevant provided all new risks relevant to the specific advice are explained?* | The Code Standard requires an 'up to date' understanding of the client's position, thus the existence of a previous suitability analysis may not suffice, particularly where the advice relates to a different product or context or the clients circumstances have changed. |
| *Must all 'opting out' statements be in separate written documents?* | Opting out statements must be contained in a separate written document to avoid the situation where a client unwittingly renounces their rights either via contract or some other means. Written records also protect the adviser in the event of a complaint. |

| Issue raised | Response |
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| **Code Standard 11** *now CS 9*<br>Non-personalised financial advice | |
| *Should a statement as to the limitations of the advice be retained?* | The Committee had regard to the fact that regulations may eventually be passed outlining a warning statement to be included when class services are provided. However, given that class services may be provided by any registered financial service provider, the Committee considered it appropriate to retain a minimum standard where the person providing the class service is an AFA where higher standards should be expected. CS 9 is therefore couched in principled terms – regardless of what may or may not be included in regulations passed under the Act, the requirements of CS 9 are the minimum the Committee would expect of someone acting professionally. The obligation is consistent with CS 8, which also requires the basis of an AFA's services to be explained to retail clients when a personalised service is provided. The Committee considered that the Code would be left with a consumer protection hole if it failed to address this type of service that might be provided to a retail client. |
| **Code Standard 12** *now CS 10*<br>Complaints processes | |
| *Should internal dispute resolution process be limited in application only to financial adviser services?* | The internal complaints handling processes under CS 10 now only expressly apply to an AFA's financial adviser services.<br>An 'Internal dispute resolution process' is now referred to as 'internal complaints handling processes' to clearly distinguish this process from 'external dispute resolution processes' under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. |
| **Code Standard 13** *now deleted*<br>Protecting client's money, property, and information | |
| *Should CS 13 be deleted as the Act will cover this aspect regarding client money, property and information?* | CS 13 has been removed as the subject matter is broking services, for which a separate regime new exists. However, Privacy Act obligations in respect of client information have been moved to CS 11. |
| **Code Standard 14** *now deleted*<br>Keeping proper records | |
| *Should CS 14 also be deleted as these matters are now covered by the Act?* | CS 14 has been deleted for the same reason as the old CS 13 was deleted. |
| **Code Standard 15** *now CS 11*<br>Keeping information about services | |
| *Should CS 15 be deleted?* | The recording of information is an important aspect of professionalism. Even though 'recording' requirements appear throughout the Code, the new CS 11 was considered useful for emphasis. |

| Issue raised | Response |
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| *What financial adviser services does CS 15 apply to?* | CS 11 applies to all financial adviser services performed by an AFA, whether personalised or class, and whether for retail or wholesale clients. This is seen as an important element to being able to verify that an AFA has complied with an appropriate standard of professional behaviour and client care in dealings with any client. Relief has been provided for AFAs who are employees, so that they need only take reasonable steps to ensure that appropriate measures are taken by their employer. It was not considered appropriate to provide absolute relief in this regard. |
| **Code Standard 16** *now CS 12*<br>Record retention | |
| *What should the minimum period be for keeping client information? Is seven years too long?* | Seven years is an appropriate length of time given general record retention obligations at law. It is also important that advisers realise that seven years is a minimum only and that advisers should consider retaining client information for as long as it may be relevant. The retention of such information also protects advisers in the event of a dispute or complaint.<br>The seven year period is now clarified as applying from the date services are performed. |
| *What should an AFA be required to do with records if they sell their practice or retire?* | Where an AFA sells their practice or retires the AFA must take reasonable steps to ensure the new adviser retains the records as contemplated under the Code. |
| *Are electronic copies an acceptable form of record retention?* | New CS 12 now expressly allows for records to be retained in electronic form. |
| *What is an AFA required to do in respect of employer records?* | An AFA must 'ensure' that all client records are retained, this includes taking reasonable steps to ensure the AFA's employer retains client records. |
| **Competence, Knowledge, and Skills** | |
| **Code Standard 17** *now CS 13*<br>Overarching competence requirement | |
| *Should CS 17 be an objective test?* | The overarching principle of CS 13 has been tightened to become an objective test. There must also be a reasonable basis for an AFA to believe he or she has the competence to provide any financial adviser service provided. |

| Issue raised | Response |
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| **Code Standard 18** *now CS 14*<br>Requirement to have an adequate knowledge of Codes, Act, and laws | |
| *Is CS 18 necessary?* | The Committee considered that the retention of CS 14 was desirable. In addition to the substantive content of the Standard, its retention allows the Commissioner an option to more conveniently tailor exemptions from the competency requirements of the Code in appropriate circumstances, by only requiring applicants for authorisation to satisfy knowledge of the law requirements. The Standard has, however, been reworked in response to drafting comments received. |
| **Code Standard 19** *now CS 15*<br>National Certificate in Financial Services (Financial Advice) (Level 5) requirement and Alternative Qualifications | |
| *Are the CS 19 competence requirements stringent enough?* | The CS 19 requirements have been approved as being an appropriate base standard for the first incarnation of the Code. Future redrafts of the Code may impose higher standards, or may impose more tailored Standards for particular classes of AFAs. |
| *Should experience be a relevant factor?* | Providing for exemptions from CS 15 requirements based on experience, regardless of the existence of any underlying qualifications, would be inconsistent with the purposes underpinning the Act. |
| *Does CS 19 adequately cater for the new classes of financial adviser services under the Act?* | Specific relief options for class services, advice to wholesale clients, and discretionary investment management services have now been included.<br>For class services and wholesale clients, the relief provided at paragraph (a) effectively provides an 'opt in' pathway for financial advisers who do not need authorisation for the limited range of services provided. The relief recognises that in many situations, the services involved will be highly specialised and not necessarily client facing, so competencies under Standard Sets C and D may not be directly relevant in many situations. The overarching obligation provideD by CS 13 remains to ensure advisers relying on this relief have an appropriate skill set.<br>For those whose financial adviser services are limited to discretionary investment management decisions, the Committee was conscious that Standard Set C was not necessarily relevant, as such advisers may not be client facing. For AFAs who do directly engage with clients in relation to discretionary investment management services, competency in advisory processes will still be important. CS 13 then provides the safety net to ensure advisers relying on this relief have an appropriate skill set. |

| Issue raised | Response |
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| *Is the relief for 'non investment financial advice' regarding land appropriate?* | The broad concept of financial advice regarding land has been narrowed under the Act. The relief previously proposed has been removed from the Code as a consequence, noting that the exact extent to which 'land investment' is captured within the regime is still to be clarified by regulation. |
| *Are the competence requirements, as they apply to new advisers, sufficient and workable?* | Changes to the scope of the Act allow further pathways for new advisers or 'individuals training to be authorised financial advisers' to participate in the advisory process. The Committee's concern with granting specific relief for 'new' or 'supervised advisers in training' was that doing so may undermine perceptions of AFA professionalism, and give rise to AFA brand confusion. Providing different Standards for 'individuals in training' is something that future Code Committees might consider appropriate, but was not considered necessary for the first version of the Code. |
| *Should there be specific relief for non-client facing advisers?* | Specific relief was not considered appropriate in light of changes to the scope of authorisation requirements under the Act, which now focus on personalised advice for retail clients. However, the relief provided under paragraphs (a) and (b ) was in part prompted by a desire to cater for non-client facing advisers. |
| *Should CS 19 retain a separate pathway for AFAs whose financial adviser services do not include advice on category 1 product?* | The option of a pathway for financial advice not involving category 1 has been retained, given the proposed opt in mechanism in the Act, with Standard Set D recognised as not being relevant for that class of AFA. |
| **Continuing Professional Training** | |
| **Code Standard 20** *now CS 16*<br>Requirement for professional development plan | |
| *Is the word 'gaps' appropriate in respect of additional competence or knowledge required by an AFA?* | 'Gaps' has been replaced with the phrase 'areas for improvement'. |
| *Is the term 'development' more accurate than 'training'?* | Although the Act refers to 'training', 'development' is the more commonly used term. The relevant headings refer to 'training' in order to comply with the Act's requirements, however, the remainder of the Code refers to 'continuing professional development' or 'CPD'. |
| *Should AFAs keep and develop a 'plan' themselves or should this function be performed by an independent person?* | Independent assessment of adviser development needs would be unduly expensive, time consuming, and inappropriate given the limited level of CPD required. |
| **Code Standard 21** *now CS 17*<br>Obligation to undertake CPT training | |
| *Should record keeping requirements in respect of CPD be less prescriptive?* | The existing record keeping requirements do not require AFAs to keep any information that is superfluous. The list of required information is not onerous for AFAs to maintain. |

| Issue raised | Response |
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| *Should CS 20 and CS 21 be combined?* | The two CPD Standards have different aims. CS 20 is focused on professional development planning, whereas CS 21 is focused on CPD content and records regarding any CPD undertaken. |
| **Competence Alternatives Schedule** | |
| **General comment** | |
| *Should other tertiary degrees be recognised for relief against Standard Set A?* | Extension of relief for Set A for all relevant degree programmes has been granted, with a generic statement that New Zealand issued tertiary qualifications in certain subjects will suffice. |
| *Should the predecessor to the Graduate Diploma in Business Studies (Personal Financial Planning) from Massey be recognised for the same relief?* | For the purposes of consistency, relief from Set A was considered appropriate at the previous diploma level, allowing recognition for predecessor qualifications to the Graduate Diploma. |
| *Should a Diploma in Personal Financial Planning from Waikato University be recognised for the same relief as the Post-Graduate Diploma from Waikato?* | For the purposes of internal consistency, relief from Set A was considered appropriate at the previous diploma level. |
| *Should the certificate in investment analysis issued by University of Otago be recognised?* | Relief for this certificate was unable to be justified on the evidence presented. |
| *Should CFPs without the Massey or Waikato Diploma receive the same relief as CFPs with the Diploma?* | CFP attainment alone was not considered sufficient to warrant relief against Sets B, D or E. Based on evidence provided, relief against Sets A and C was considered appropriate. However, it is important to note that the Committee is not suggesting that CFP requirements are 'equivalent' to Set C. Rather, that designation provides an adequate level of comfort with respect to principles addressed in Set C. |
| *Should CLUs without the Massey or Waikato diploma receive the same relief as CLUs with the diploma?* | As a general rule, having an externally assessed academic qualification is seen as adding an important element. However, relief from Set C for all CLUs was considered appropriate. |
| *Should chartered secretaries receive relief under the Code?* | Requirements for chartered securities were considered too far removed from the Standard Set content to justify specific relief. |
| *Should members of INFINZ receive relief under the Code?* | Specific relief for certified INFINZ members was not was considered appropriate in light of changes to the scope of the Act. A number of certified INFINZ members will benefit from the increased flexibility provided through a non-prescriptive recognition of relevant degrees as an alternative to Set A. The focus of INFINZ on assuring quality in the wholesale space meant that reliance on its certified designation along with relief from Set A could not be supported, in contrast to other designations that had more of a focus on retail clients or that had compulsory qualification criteria. |

| Issue raised | Response |
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| *Should NZX Advisors receive more relief under the Code?* | Relief for NZX Advisors and NZX Associate Advisors in respect of Set A was considered appropriate. Based on evidence provided and to ensure greater consistency of requirements, relief from Set C for NZX Advisors was also considered appropriate. Further specific relief could be attained via exemptions if appropriate.<br>The breadth of NZX Advisor criteria, on their own, was considered insufficient to warrant further relief.<br>The proposed recognition of the combination of NZX Advisor status together with a relevant diploma for the purposes of relief from Set D was reconsidered and confirmed as appropriate.<br>Extending that relief to NZX Associate Advisors was not considered appropriate. |
| *Should alternative qualifications be accepted for AFAs wishing to provide futures derivatives advice, and for accredited NZFMA members?* | Specific relief for futures/derivatives advice was not considered appropriate in light of changes to the scope of the Act for advice to 'wholesale clients'. For similar reasons, the Committee felt that changes to the scope of the Act meant the accredited members of NZFMA had sufficient options available for their specialised services, and specific relief was not appropriate beyond recognition for Set A. |
| *Should primary industry participants only be required to attain standard set B, provided they possess one of the qualifications relevant to membership of the New Zealand Institute of Primary Industry Management? Should they receive relief from any of the Standard Sets?* | Specific relief for primary industry participants was not considered appropriate in light of changes to the scope of the Act, including the restricted extent to which advice regarding land will be caught.<br>Alternative qualifications proposed for recognition on behalf of these participants were not considered to be sufficiently close to the scope of the Standard Sets to warrant relief beyond the relief already granted. |
| *How is the sunset clause intended to operate? Can this be clarified?* | The sunset requirement has been retained, but has been clarified through a new definition of 'subject to the eligibility sunset' to make it clear that the clause applies only to qualifications being phased out, being those qualifications that will no longer be of relevance to competences in 3 years.<br>The 'sunset clause' is not intended to provide persons part-way through a qualification with an opportunity to become authorised and receive relief, based on that alternative qualifications.<br>The sunset requirement has been added to apply to designations recognised as alternatives for Set C. Further adjustment to the definition will be required. |
| *Is there to be any relief for advisers part way through recognised alternative qualifications?* | Relief for those part way through a qualification was not considered appropriate, in light of the range of pathways provided and the core requirement of encouraging public confidence. |

| Issue raised | Response |
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| *Why 'attainment' as opposed to 'maintenance' of qualifications and designations* | The requirement was considered appropriate on the basis that the advisers concerned have, at some stage, attained the relevant qualification or designation. A new provision has been added to CS 15 to require advisers relying on this recognition to have maintained membership of a Professional Body for at least 12 months prior to the date at which they first become AFAs. |
| *Should the Code cater for overseas qualifications, other than simply relying on mutual recognition or exemption powers?* | Relief from any Standard Sets for foreign qualifications was not considered appropriate, in light of the Securities Commission new exemption powers.<br>Requirements of the Standard Sets are in general too New Zealand specific to justify foreign relief without compromising the integrity of the required Standards. |
| **Unit Standard Set A**<br>Knowledge of the industry, financial markets, the advice process and products | |
| *Should accountants who are not members of NZICA receive some or all of the relief granted to members?* | No reliable basis for relief has been provided for accountants other than members of NZICA, where membership requires a relevant qualification above level 5 on the NQFE in any case. |
| *Should NZFMA accredited individuals receive relief from Standard Set A?* | Relief has been granted. |
| *Should holders of the New Zealand Diploma in Life Assurance receive relief from Standard Set A?* | Specific relief from Set A for holders of the New Zealand Diploma in Life Assurance was not considered appropriate. Note CLUs receive relief by virtue of their designation. |
| **Unit Standard Set B**<br>Knowledge of the Code and Consumer Protection laws | |
| *Should those with Bachelor of Management Studies, Bachelor of management Studies with Honours, Bachelor of Business Analysis (Financial) and holders of the Post-graduate Diploma in Personal Financial Planning (Waikato) receive relief from Standard Set B?* | There are no qualifications available that justify relief from proving knowledge of the Code and relevant laws. |
| **Unit Standard Set C**<br>Professional Practice Advice Process and Complying with legislation | |
| *Should CFAs, CFPs and CLUs receive relief for standard set C whether or not they have completed the Massey or Waikato Diploma?* | Relief from Set C in the absence of a diploma was considered appropriate for those holding these designations based on the rigour and retail client focus of their designation requirements.<br>No other designation on its own was considered to cover Set C with sufficient consistency of requirements to warrant relief. |
| *Should NZX Advisors without the NZX or NZSE Diploma receive relief in relation to Standard Set C?* | On the evidence provided and for the sake of greater consistency of requirements, relief from Set C for NZX Advisors (but not NZX Associate Advisors) was considered appropriate. |

| Issue raised | Response |
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| *Is it appropriate for Chartered Accountants and Associate Chartered Accountants to receive relief from Set C by virtue of their designation alone?* | The relief provided for ACAs and CAs in the first draft of the Code was reconsidered in light of submissions received, and based on the detailed matching of the designation requirements against Set C relief was confirmed as appropriate. Relief for Accounting Technicians and accountants who are not NZICA members was not supported. |
| *Should any relief granted be permanent?* | The Committee considers that attainment of Set C is the most robust way of validating competence in the advisory process. Relief granted by virtue of holding a designation should be considered as a transitional measure, with the expectation that relevant organisations will move their course content to a level equivalent to NQF level 5 or higher in due course. Therefore the eligibility sunset applies to this recognition. |
| **Unit Standard Set D**<br>Investment Standards | |
| *Should CLUs and CFPs be recognised for relief against Standard Set D without the Massey or Waikato diploma?* | Specific relief was not considered appropriate in the absence of the specified diploma. Only CFA charterholders were considered to have a sufficient level of investment specialisation in their designation requirements to warrant relief from Set D. |
| *Should new unit standard sets be created for the activities carried out by the likes of NZFMA accredited individuals* | The development of new unit standards could be considered by future code committees once the minimum standards for authorisation are entrenched. |
| *Should NZX Advisors without the NZX/NZSE Diploma receive relief in relation to Standard Set D?* | Recognition was not considered appropriate. |
| *Should those NZX Advisors who have not been required to complete the NZX Diploma (due to exemptions from the NZX based on experience or other qualifications) receive the same relief as NZX Advisors with the NZX Diploma?* | Specific relief from Set D for NZX Advisors who have been exempted from the diploma requirement was not considered appropriate. Exemptions might be available in appropriate cases. |
| *Should the Massey and Waikato Diplomas in Business Studies (Personal financial Planning) receive relief in relation to Standard Set D?* | Relief for the predecessor diploma qualification was considered appropriate. |
| *Should those who have completed Adviserlink courses on risk management, disability income insurance, business insurance and agent as a business person, receive relief in relation to Standard Set D?* | Recognition was not considered appropriate. The requirements for Set D have been enhanced, to the extent that only the specialist diplomas listed were considered adequate as an alternative. |

| Issue raised | Response |
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| *Should FINSA and Kaplan qualifications be recognised for relief in relation to Standard Set D?* | FINSIA and Kaplan qualifications provide some coverage of the various unit standards, but do not cover them in sufficient depth with sufficient crossover of content to be considered an appropriate basis for relief.<br>Set A and parts of Set C relate to knowledge and application of New Zealand legislation, regulations, taxation and superannuation. These areas are significantly different in the Australian context. |
| **Unit Standard Set E**<br>Insurance Standards and Residential Property Lending Standards | |
| *Should CFPs receive relief for Standard Set E?* | A number of submitters considered that it was anomalous that ALUs and AFPs and CLUs should receive relief but CFPs do not. Relief for CFPs, provided the risk management paper from the Massey Diploma had been passed, was considered appropriate in the context. |
| *Should the Graduate Diploma in Personal Financial Planning (Massey) receive relief in relation to Standard Set E?* | Relief was considered appropriate provided the risk management paper was included in the diploma. |
| *Should the New Zealand Diploma in Life Assurance receive relief in relation to Standard Set E?* | The Committee considered that in the circumstances the Diploma should be recognised. In granting this recognition, the Committee noted that granting recognition is not the same as saying that the Diploma is 'equivalent' to Set E. |
| *Should those who have completed Adviserlink courses on risk management, disability income insurance, business insurance, and agent as a business person, receive relief in relation to Standard Set E?* | These particular courses formed a part of the earlier IFA (FPIA and IIAA) Vocational Educational Pathway and were offered prior to Adviserlink having accreditation and course approval for their Certificate in Financial Services. While some of the content of the Adviserlink courses was migrated across to the Adviserlink Certificate and latterly the National Certificate, this was not considered to be sufficient to support relief.<br>The committee was conscious that the extension of relief arrangements to include individual courses opens the Code up to a very granular approach to relief it has sought to avoid to date. |
| *Should FINSIA and Kaplan qualifications receive relief in relation to Standard Set E?* | These qualifications may provide some coverage of the applicable unit standards but do not cover any of the other Insurance or Residential Property Lending Standards in sufficient depth to justify relief. |
| *Should relief for ALUs, AFPs, and CLUs be limited to the insurance unit standards only? Should it be made clear that such advisers will not receive relief in relation to the residential property unit standards?* | Code Standard 17 and the CPT requirements provide a sufficient basis for protection in the context of Set E (category 2 product advice) in order to minimise complications within the competence alternatives schedule. Breaking down Set E into its 2 focus areas for the purpose of providing multiple options for pathways to authorisation for those not advising on category 1 products was not considered appropriate. |

*The above table summarises a number of the major issues considered by the Committee in response to submissions made on the first draft of the Code released on 31 March 2010. The issues summarised reflect those where the Committee felt that some explanation may assist those considering the second draft of the Code, to place changes made in context. A number of additional issues were also considered in the course of reviewing the large number of submissions and other feedback received on the first draft. Those issues have been taken into account in revising the draft, but a specific explanation of the Committee's approach in relation to issues not mentioned in the above table was not considered to be warranted. A full summary of all submissions received will be available on the Code Committee's website.*

**6 July 2010**