

**CODE COMMITTEE'S RESPONSE TO SUBMISSION POINTS RAISED ON THE REVIEW OF THE EXPOSURE DRAFT OF THE
CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS RELEASED ON 28 OCTOBER 2015**

21 January 2016

The table in this paper summarises the submissions made on the exposure draft of the Code of Professional Conduct for Authorised Financial Advisers (Code) released on 28 October 2015, and the Code Committee's response to the issues raised in those submissions and through the consultation process.

14 formal submissions were received on some or all of the questions asked in the Committee's consultation document. In addition, a webinar on the proposed changes was facilitated by the Institute of Financial Advisers, with over 70 participants. Feedback from the webinar and related engagements with the tertiary education sector and other stakeholders has been considered and referenced in this table.

In determining its response to feedback received through the consultation process, the Code Committee noted the support shown for limiting the extent of any changes to the Code at this time. The Options Paper released by the Ministry of Business, Innovation & Employment in November 2015 as part of its review of the Financial Advisers Act 2008 (referred to in the table as the 'Options Paper') also influenced the Committee's thinking.

When updating the exposure draft of the Code in light of the above, the Committee was mindful of the need to ensure that any updated Code needed to continue to support the overarching purpose of the Financial Advisers Act 2008:

- Promote the sound and efficient delivery of financial adviser and broking services; and
- Encourage public confidence in the professionalism and integrity of financial advisers and brokers.

This document will help those considering the updated exposure draft version of the revised Code released on 21 January 2016.

CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS

This Table summarises issues identified in submissions received on the Consultation Paper and draft changes to the Code released by the Committee on 28 October 2015, and the Committee’s responses to those issues.

Issue raised	Response
Background and Introduction	
No issues were raised in relation to the background and introductory sections of the Code.	
Ethical Behaviour Standards	
Code Standard 3 – Independence	
<p>One submission provided substantive comment in support of the proposed changes to the Code’s constraints on when an AFA and an AFA’s financial adviser services are able to be described as ‘independent’. The balance either agreed with the proposed changes without comment, or expressed no view. No submissions were received that disagreed with the proposed changes.</p>	<p>The Committee will formally recommend that the changes proposed for this Standard in the Consultation Paper be incorporated into the Code.</p>
Code Standard 1 – 4	
No new issues were raised in relation to the Ethical Behaviour Standards of the Code.	

Issue raised	Response
Client Care Standards	
Code Standard 6 – Clarification of 6 (c)	
<p>Support was provided for the clarification provided under the previous review of the Code in relation to obligations when recommending financial products, and for the Committee’s proposal to retain the current wording of Code Standard 6(c). No contrary views were expressed.</p>	<p>No further changes are proposed for this Standard.</p>
Code Standard 8 – Suitability of Advice relief	
<p>A number of the submissions received were critical of the impact of FMA’s Guidance Note: Limited personalised Advice issued in 2014, commenting that it had impacted on the effectiveness of the relief intended to be provided by the ‘transactional advice’ mechanism introduced to the Code with effect from May 2014.</p>	<p>The FMA’s Guidance Notes are a matter for FMA, and not within the jurisdiction of the Code Committee to change. The Committee agreed with the concerns raised, and has referred them to FMA for consideration. However, the changes now proposed and discussed below will render aspects of the Guidance Note obsolete in any case. In particular, the Committee proposes specifying that an AFA is not required to determine whether or not limited advice is appropriate for the client.</p>
<p>A number of the submissions received, and the Options Paper, highlighted the issue of consumers being increasingly unable to access financial advice on the basis they wish to receive it, with personalised advice on discrete issues either proving costly to provide or not provided at all. Whilst some submitters felt there were no improvements that could appropriately be made to the relief mechanisms at this time, the overwhelming impression conveyed through the consultation process is that the transactional advice mechanism has not been effective in improving consumer access to personalised advice. One submitter commented that because FMA’s Guidance Note: Limited Personalised Financial Advice inhibited AFAs from relying upon this relief, the Committee should consider amending the wording to make its intentions more explicit.</p>	<p>The Committee’s conclusion from the submissions received is that the transactional advice suitability relief mechanism currently provided in the Code is not operating as intended. In order to remedy this, the Committee has proposed some fairly significant changes to the suitability relief mechanisms provided under Code Standard 8. We propose replacing the ‘transactional advice’ concept with a wider ‘limited advice’ concept, with suitability relief available where advice is requested on one or more particular financial products, without reference to a transactional element. The relief would not be available where financial advice is requested without specifying a particular financial product(s). The key limit to the scope of this relief is that the client must either initiate the identification of the financial products, or already hold them. The applicable conditions have been expanded, with AFAs being required</p>

Issue raised	Response
	<p>to satisfy themselves as to suitability of any financial product recommended to address any stated goal, meaning suitability relief under this heading is restricted to assessing suitability in light of a client’s financial position and circumstances. AFAs will also need to confirm to the client, in writing, that the financial advice provided may have been different had advice not been requested on a ‘limited advice’ basis. The confirmation as to the limitations on the suitability determination currently required to be given to the client is now required to be given in writing. The Committee feels this combination of elements provides a more effective balance between consumer protection and accessibility of advice than has been available under the transactional advice relief mechanism to date.</p> <p>With the expanded concept of limited advice and adjustments made, the distinction between the relief provided under Code Standard 8(b) and that provided under 8(c) became confused. Accordingly, a consequential change has been proposed for Code Standard 8(c), clarifying that the suitability relief provided under that paragraph relates to the scope of engagement, as opposed to relating to discrete pieces of advice.</p>
<p>One submitter queried the need for an AFA, when relying on the suitability relief provided, to expressly confirm that suitability had not been determined, and requested removal of that requirement.</p>	<p>The Committee felt that requiring such a confirmation was an important consumer protection safeguard, to ensure that clients receiving limited advice were as well placed as possible to make a fully informed decision as to whether or not to act upon the limited advice received. The requirement might be an inconvenience for AFAs to manage, but the Committee felt the inconvenience of needing to provide a confirmation was warranted in light of the relief provided. Given the widening of the scope of the relief now proposed, the Committee was concerned that the condition should in fact be strengthened, and has proposed that the confirmation should be required to be given in writing, consistent with the new ‘health warning’ proposed. The Committee is particularly interested in feedback on this change.</p>

Issue raised	Response
Client Care Code Standard 6-13	
No new issues were raised in relation to the balance of the Client Care Code Standards.	
Competence, Knowledge and Skills Standards	
Code Standard 14 – Overarching competence requirement	
No issues were raised in relation to the core obligation for an AFA to have the competence, knowledge, and skills to provide any financial adviser service offered.	
Code Standard 15 – Knowledge of Code, Act, and Laws	
Two submitters noted that while the original proposed wording for this Standard referred to an alternative qualification, there was in fact none recognised in the Competence Alternatives Schedule.	The Committee agreed that referring to a recognised alternative in this Code Standard was inappropriate. That reference has been removed. Unit 26360 is no longer included in the Competence Alternatives Schedule as a standalone component of the New Zealand Certificate in Financial Services (Level 5), which should remove some of the confusion that has occurred.
Some submitters queried the deconstruction of the financial advice strand of the New Zealand Certificate in Financial Services (Level 5) to focus on Unit 26360 alone, and proposed expanding the requirement under this Standard to include all units of the financial advice strand to incorporate application of relevant legal provisions as well as knowledge of them.	This Code Standard was only ever intended to operate as a simple assurance as to knowledge of applicable laws, not their application. Expanding the requirement to include all elements of the financial advice strand would result in a duplication of the prescribed requirements for most AFAs, and deny the pathway currently available for those seeking authorisation whose financial adviser services do not go beyond wholesale clients and class advice. The Committee does not support the expansion of the requirement under this Standard.
Comments were made to the effect that the changes proposed by the Committee rendered the intent of the Code Standard unclear. Specifying version 3 of Unit 26360 created undue practical complications.	The Committee agreed that specifying version 3 was unhelpful. AFAs have an obligation to keep up to date, so the added complexity was unnecessary. To help clarify the intended operation of the Standard, the prescribed requirements have been separated into two separate limbs.

Issue raised	Response
Code Standard 16 - Changes to qualifications framework and eligibility sunset	
<p>A number of concerns were raised about the complexity of this Standard, which had been further complicated through the proposed changes. Specific drafting changes were suggested.</p>	<p>The Committee agreed. The Code Standard has been largely rewritten, although retains much the same substantive elements. The headline Code Standard now just refers to the requirement to attain the relevant components of the New Zealand Certificate, with the additional wording then identifying which components are regarded as being relevant to particular types of financial adviser services for the purposes of the Code.</p>
<p>One submitter queried the reliance placed on referring to the specialist strands of the New Zealand Certificate.</p>	<p>The issue raised by this submitter resulted in the Committee adding a new alternative recognition mechanism for AFAs whose services are limited to category 2 products, namely allowing them to be authorised if they have attained one of the specified qualifications. This recognises the quality of the specialist diploma level offerings in this space, ensuring graduates with the specified qualifications who apply for AFA status do not need to pursue a lower level of learning in the form of attaining a specialist strand of the New Zealand Certificate in Financial Services (Level 5) in order to be authorised.</p>
<p>Two submitters argued that the sunset date for closing off applications relying on the old National Certificate was too far off, and the date should be brought forward. One argued the date should be pushed out to the end of 2018 to align with expiry date for the old National Certificate being awarded. One submitter expressed support for the proposed sunset date of 31 December 2017, the rest were silent.</p>	<p>The Committee proposes leaving the sunset date at 31 December 2017. This is still seen as the most appropriate compromise date to ensure those currently part way through a National Certificate will not be prejudiced by the change.</p>
Continuing Professional Training Standards	
Code Standards 17 and 18	
<p>During the course of the webinar on the proposed changes facilitated by the Institute of Financial Advisers, concern was expressed as to the extent to which AFAs who attained authorisation under competency pathways that will no longer be recognised will need to</p>	<p>The Committee is conscious of the concerns raised. However, no relief is proposed from the CPD requirements for affected AFAs. Adjustments to professional development plans to reflect the changes will not be required until the start of 2017, allowing time for AFAs to</p>

Issue raised	Response
<p>adjust their professional development plans to reflect any gaps in their learning. This is particularly challenging for those who have become authorised in reliance on a pre-2013 diploma qualification that is no longer going to be recognised.</p>	<p>identify any gaps in their learning, which in most cases are not expected to be significant. The Committee anticipates training providers stepping up with modules to cover any gaps. Mapping existing learnings against the relevant components of the New Zealand Certificate in Financial Services (Level 5) is unlikely to be unduly onerous, and is required to provide confidence that all AFAs have the same minimum levels of learning.</p>
<p>Outside of the set of formal submissions received, feedback was provided to the Committee that the exclusion of product training provided for the principal purpose of promoting a particular financial product from the definition of structured professional development was unduly restricting what could be counted. The example provided was of the CFO of a listed company briefing a sharebroker seminar on the prospects of the company. This limitation was resulting in some AFAs needing to undertake significantly more professional development in order to satisfy the minimum hours required, with the additional hours worked to satisfy the defined term being surplus to the AFA's actual learning needs in some cases.</p>	<p>The Committee has some sympathy with the concern expressed. With the paramountcy of the requirement for AFAs to act with integrity now embedded in the Code, it is questionable whether the added restriction on what can count as structured professional development is necessary. If it excludes expert third party training that has an identifiable aim and addresses a legitimate learning need identified in an AFA's professional development plan, then the outcome is unfortunate. The Committee's view, as a matter of principle and with the current CPD requirements having now been in place for a complete CPD period, is that such valuable training should be able to be counted. This could be achieved by deleting the exclusion from the defined term altogether. To reinforce the integrity of the training AFAs might then seek to include as structured professional development, a requirement for AFAs to include learning reflections in their CPD records, similar to the requirement currently imposed on lawyers, might then be included. The Committee is interested in receiving feedback on these possible adjustments to the minimum requirements under Code Standard 18.</p>

Competence Alternatives Schedule

Two submissions were received seeking retention of the recognition of the Chartered Accountant and Associate Chartered Accountant designations against the core components of the New Zealand Certificate in Financial Services (Level 5).

The Committee considered that the continued recognition of accounting degrees against the core components, coupled with the fact that qualified statutory accountants providing financial adviser services in the ordinary course of an accounting practice are exempt from the Act, meant that removal of the designation recognition was appropriate.

Issue raised	Response
<p>A range of submissions were received that queried the approach taken in recognising (or not recognising) various diploma-level or overseas qualifications against the components of the New Zealand Certificate in Financial Services (Level 5) and its specialist strands.</p>	<p>The Committee acknowledges this is a complex exercise, and is particularly mindful of the risk of dis-incentivising aspirants for AFA status from attaining levels of learning higher than level 5 on the NQF. As such, the Committee has locked in recognition of the two specified CPIT qualifications against the investment strand, as well as the Massey Diploma in Business Studies endorsed in Personal Financial Planning. In addition, provisional recognition has been given for all the specified diploma-level qualifications currently available against the financial advice strand. This recognition is subject to an external expert mapping exercise that has been commissioned to verify the appropriateness of that recognition.</p> <p>However, to provide the consistent level of assurance the Committee feels is required in relation to demonstrating knowledge of relevant legal obligations, recognition of any alternatives to Unit 26360 as a standalone requirement under Code Standard 15 will not be offered.</p>
<p>One submitter queried the removal of recognition for diplomas attained prior to 2013.</p>	<p>Those who attained a Diploma prior to 2013 who are seeking authorisation for the first time have effectively been out of the business of providing personalised services for retail clients in relation to category 1 products for over three years. Recognising old qualifications in those circumstances does not provide sufficient assurance as to the competence, knowledge, and skills of such an applicant beyond giving relief against the core components. Greater assurance as to the current academic ability of the applicant is required, given that likely break in delivering personalised services for retail clients. The 31 December 2012 cut-off date is relatively arbitrary, but no evidence to support an alternative has been produced.</p>
<p>One submitter neatly summarised a key option being considered by the Committee, by proposing that any tertiary provider who can provide adequate evidence that they can deliver the content of the requisite strands of the New Zealand Certificate in Financial Services (Level 5) within an academic pathway ought to be included within the Schedule.</p>	<p>The Committee has considerable sympathy with this idea, and has received the outcomes of a number of mapping exercises of various degree-level papers against the investment strand conducted by tertiary education providers. However, providing this form of recognition would add considerable complexity to the process. The Committee was also concerned that there</p>

Issue raised	Response
	<p>may not be sufficient focus on investment concepts in the retail client context to justify automatic recognition of any qualification that did not focus on personal financial planning. Documenting an 'in principle' recognition relief would add considerable uncertainty and complication to the processing of applications for authorisation.</p> <p>The Committee understands that to date, FMA has received no applications for exemption relief for university degrees. If an alternative qualification with learning outcomes with a retail client focus can be clearly mapped against the learning outcomes of the investment strand, the Committee would strongly support exemption relief being granted by FMA for any such alternative qualification. In the absence of any evidence of genuine demand for such recognition, anything further is not warranted at this stage.</p>

One submitter sought removal of the recognition currently given to degree-level qualifications as alternatives to the core components

With those relying on this recognition still needing to attain Unit 26360 and both the financial advice strand and the investment strand in order to deliver personalised services for retail clients on category 1 products, the Committee was comfortable that any learning gaps in replicating the core component through recognising degree qualifications would not undermine confidence in the competence, knowledge and skills of the applicants in question.

Definitions Schedule

A number of consequential adjustments have been made to the Definitions Schedule, the most substantive being the introduction of a specified qualification concept and replacement of 'transactional advice' with 'limited advice'.

LIST OF SUBMITTERS

Submissions on the Exposure Draft were received by the Committee by way of formal submission from the entities listed below. In addition, a range of feedback was received from a variety of industry participants through email correspondence, direct engagement, and in the course of a Code review webinar facilitated by the Institute of Financial Advisers. Mapping of qualifications and finance degree papers against the learning outcomes of the New Zealand Certificate in Financial Services (Level 5) was also provided by a number of tertiary institutions.

ANZ	Auckland University of Technology
Chartered Accountants, Australia and New Zealand	Chartered Accountants, Australia and New Zealand
Christchurch Polytechnic Institute of Technology	Forsyth Barr
Hassan & Associates	Institute of Financial Advisers
Massey University	The Open Polytechnic of New Zealand
Professional IQ College	Security Industries Association
SIFA Incorporated	Strategi Limited and Strategi Institute Limited