

**CODE OF PROFESSIONAL CONDUCT  
FOR AUTHORISED FINANCIAL ADVISERS**

**EXPOSURE DRAFT**

**[NB: Marked up edits on this Exposure Draft of the Code incorporate changes made in light of submissions received on the Exposure Draft released for consultation on 21 January 2016, with all changes marked up for the sake of continuity. Comments arising from the Exposure Draft have been annotated on this draft]**

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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 scope 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 scope of service.

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 and 9**).

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*.

Where there are limitations on the scope of a *personalised service* agreed with a *retail client*, the *AFA* must take reasonable steps to ensure the *client* is aware of the extent of those limitations, 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 5-9**, 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 14** applies in addition to the requirements of **Code Standards 15 and 16** that relate to particular qualifications 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 *Components of the New Zealand Certificate in Financial Services (Level 5)* required to attain that qualification with 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 *Components of the New Zealand Certificate in Financial Services (Level 5)* required to attain that qualification with 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 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 2018.

## 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 the *Code*, 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* where the *person* has attained an alternative qualification or designation as specified in this Schedule

	Alternative Qualification	Alternative Designation
<b>New Zealand Certificate in Financial Services (Level 5) Component</b>	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>
<b>Core Component</b>  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"> <li>• 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)</li> <li>• Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*</li> <li>• Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)*</li> <li>• Postgraduate Diploma in Personal Financial Planning (Waikato University)*</li> <li>• Bachelor of Applied Management in Personal Financial Planning (Christchurch Polytechnic Institute of Technology)</li> <li>• Graduate Diploma in Personal Financial Planning (Christchurch Institute of Technology)</li> <li>• NZX Diploma</li> <li>• National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16</li> </ul> <p>* in each case, including their respective predecessor diploma qualifications</p>	<ul style="list-style-type: none"> <li>• <i>Certified Financial Planner</i></li> <li>• <i>CFA Charterholders</i></li> <li>• <i>Chartered Life Underwriter</i></li> <li>• <i>NZFMA Accredited individual</i></li> <li>• <i>NZX Advisor</i></li> <li>• <i>NZX Associate Advisor</i></li> </ul>

	<b>Alternative Qualification</b>	<b>Alternative Designation</b>
<b>New Zealand Certificate in Financial Services (Level 5) Component</b>	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>
<b>Financial advice strand</b>  (Comprising <i>units</i> 26360, 25650, 25651, 25652, and 25653)  Professional practice advice process and complying with legislation	<ul style="list-style-type: none"> <li>• Bachelor of Applied Management in Financial Planning (Christchurch Polytechnic Institute of Technology)</li> <li>• Graduate Diploma in Personal Financial Planning (Christchurch Institute of Technology)</li> <li>• Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*</li> <li>• Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)*</li> <li>• National Certificate in Financial Services (Financial Advice) (Level 5) , subject to the transition provisions of Code Standard 16</li> </ul> <p>*If attained after 30 June 2011</p>	No recognised alternative
<b>Investment strand</b>	<ul style="list-style-type: none"> <li>• Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*</li> <li>• Bachelor of Applied Management in Financial Planning (Christchurch Polytechnic Institute of Technology)</li> <li>• Graduate Diploma in Personal Financial Planning (Christchurch Institute of Technology)</li> <li>• <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.</li> </ul> <p>* If attained after 30 June 2011</p>	<ul style="list-style-type: none"> <li>• CFA Charterholder</li> </ul>

## 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"><li>(a) an <i>FMCA financial product</i> (other than a product that is a <i>category 2 product</i>); or</li><li>(b) a <i>DIMS facility</i> (other than a facility that is a <i>category 2 product</i>); or</li><li>(c) an investment-linked contract of insurance (as defined by regulations); or</li><li>(d) any other product specified by regulations made under the <i>Act</i>; or</li><li>(e) a renewal or variation of the terms and conditions of an existing category 1 product</li></ul>

category 2 product	<p>means any of the following products</p> <ul style="list-style-type: none"> <li>(a) a <i>bank</i> term deposit; or</li> <li>(b) any bonus bond; or</li> <li>(c) any call building society share; or</li> <li>(d) a call credit union share; or</li> <li>(e) a call debt security; or</li> <li>(f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or</li> <li>(g) a unit in a cash or term portfolio investment entity (as defined by regulations); or</li> <li>(h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or</li> <li>(i) a contract of insurance (other than an investment-linked contract of insurance); or</li> <li>(j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or</li> <li>(ja) a <i>DIMS facility</i>, if the investment authority covers only category 2 products; or</li> <li>(k) any other product specified by regulations made under the <i>Act</i>; or</li> <li>(l) a renewal or variation of the terms and conditions of any existing <i>category 2 product</i></li> </ul>
Certified Financial Planner	an individual who has been awarded this designation by the Institute of Financial Advisers Inc.
CFA Charterholder	an individual entitled to use the chartered financial analyst designation granted by the CFA Institute
Chartered Life Underwriter	means an individual who has been awarded this designation by the Institute of Financial Advisers Inc.
class service	a <i>financial adviser service</i> that is not a <i>personalised service</i>
client	<p>means, in relation to an <i>AFA</i>:</p> <ul style="list-style-type: none"> <li>(a) a <i>person</i> who receives a service from the <i>AFA</i> (whether or not on payment of a charge); but</li> <li>(b) does not include a <i>person</i> who receives any services from the <i>AFA</i> if the service is both provided and received in the course of, and for the purposes of: <ul style="list-style-type: none"> <li>(i) the same business; or</li> <li>(ii) the businesses of related bodies corporate; or</li> </ul> </li> </ul>

	(iii) the businesses of members of a QFE group, irrespective of whether the <i>person</i> providing or receiving the service is the <i>person</i> carrying on the business, a controlling owner, a director, an agent, or any other <i>person</i>
client information	information about a <i>client</i>
Code	the Code of Professional Conduct for Authorised Financial Advisers approved by the <i>Minister</i> and brought into force by <i>Gazette</i> notice under section 94 of the <i>Act</i>
Code Standard	a standard specified in the <i>Code</i>
Competence Alternatives Schedule	the schedule to this <i>Code</i> named as such
complaint	an expression of dissatisfaction by a <i>client</i> to an <i>AFA</i> about the <i>AFA's financial adviser services</i> provided to the <i>client</i> , other than an expression of dissatisfaction that is trivial or vexatious or that the <i>client</i> indicates is not intended to constitute a complaint for the purposes of the <i>Code</i>
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 <sup>st</sup> 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 service</i> 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	<p>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</p> <p>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</p>
financial advice strand	the <i>specialist strand</i> 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</i> 's internal process for handling and resolving <i>complaints</i> as described in <b>Code Standard 11</b>
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) <i>financial advice or an investment planning service:</i></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 account the <i>client's</i> particular financial situation or goals (or one or any more of them),</p> <p>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</p> <p>(b) a <i>personalised DIMS</i></p>
principal	a <i>person</i> who is the principal in an agency relationship
product provider	means: <p>(a) the issuer, in the case of an <i>FMCA financial product</i>; or</p> <p>(b) the creditor, in the case of a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003); or</p> <p>(c) the insurer, in the case of a contract of insurance (other than an investment-linked contract of insurance); or</p> <p>(d) the <i>person</i> specified by regulations or in any other case</p>

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	<p>(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</p> <p>(b) in relation to a body corporate A:</p> <p>(i) a <i>person</i> who</p> <ul style="list-style-type: none"> <li>▪ is also a body corporate; and</li> <li>▪ either has substantially the same shareholders as A; or</li> <li>▪ is under the control of the same <i>person</i> or <i>persons</i> as A; or</li> </ul> <p>(ii) a <i>person</i> who is able, directly or indirectly, to –</p> <ul style="list-style-type: none"> <li>▪ exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or</li> <li>▪ appoint or control 25% or more of a governing body of A: and</li> </ul> <p>(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.</p>
retail client	a <i>client</i> who is not a <i>wholesale client</i>
specified qualification	Diploma granted by Massey University, Waikato University, or the Christchurch Polytechnic Institute of Technology, specifically identified as an alternative to the <i>Core Component</i> in the Competence Alternatives Schedule, or the National Certificate in Financial Services (Financial Advice) (Level 5)
specialist strand	a strand forming part of the <i>New Zealand Certificate in Financial Services (Level 5)</i>
structured professional development	<p>training that has identifiable aims and with outcomes relevant to the learning needs identified in the <i>AFA's</i> professional development plan, and:</p> <p>(a) is provided by a qualified educator or relevant subject matter expert; and</p> <p>(b) provides for interaction and feedback; and</p>

(c) participation is verifiable by documentation.

*Structured professional development* may include technical product training but excludes training provided for the principal purpose of promoting a particular *financial product*

unit

a unit standard forming part of the National Certificate in Financial Services (Financial Advice) (Level 5) or the New Zealand Certificate in Financial Services (Level 5) on the National Qualifications Framework

wholesale client

a *client* classified as a *wholesale client* under section 5C of the *Act*

written or in writing

includes in electronic form