

**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]

CONTENTS

	Page
(a) BACKGROUND	3
(b) INTRODUCTION	4
(c) MINIMUM STANDARDS OF ETHICAL BEHAVIOUR	5
Standard 1 Placing client interests first and acting with integrity	5
Standard 2 Not bringing the financial advisory industry into disrepute	5
Standard 3 Using the term “independent”	6
Standard 4 Borrowing from or lending to a client	7
Standard 5 Conflicts of interest	8
(d) MINIMUM STANDARDS OF CLIENT CARE	9
Standard 6 Behaving professionally	9
Standard 7 Ensuring retail clients can make informed decisions about using an AFA	10
Standard 8 Agreeing the nature and scope of service	10
Standard 9 8 Suitability of personalised services for retail clients	10
Standard 10 9 Ensuring retail clients can make informed decisions about personalised services	11
Standard 10 Providing class services for retail clients	13
Standard 11 Complaints processes	13
Standard 12 Keeping information about personalised services for retail clients	14
Standard 13 Record retention	14
(e) MINIMUM STANDARDS OF COMPETENCE, KNOWLEDGE AND SKILLS	16
Standard 14 Overarching competence requirement	16
Standard 15 Requirement to have an adequate knowledge of Code, Act, and laws	16
Standard 16 National Certificate in Financial Services (Financial Advice) (Level 5) requirement and alternative qualifications	17
(f) MINIMUM STANDARDS FOR CONTINUING PROFESSIONAL TRAINING	19
Standard 17 Professional development plan requirement	19
Standard 18 Undertaking continuing professional training	19
(g) COMPETENCE ALTERNATIVES SCHEDULE	21
(h) DEFINITIONS SCHEDULE Part 1 and Part 2	23

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.

Comment [KS1]: All changes marked up to this Code Standard have been accepted, with all submissions received being either supportive or making no comment.

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.

Comment [KS2]: Minimal comment was made on this aspect of the Code Standard, despite a specific request for feedback by the Committee. Having asked the question, the Committee recommends no change be made to this provision.

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 scope-range of the AFA's financial adviser services, any limits on ~~that scope of~~ 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.

Comment [KS3]: Changes made to reduce the risk of confusion over the use of the word 'scope' in multiple contexts

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.

Comment [KS4]: On balance, the Committee felt that a principled approach to any health warning required in relation to limitations was the most appropriate option, with the extent of the warning provided determined by what is required to comply with Code Standard 1.

Comment [KS5]: A further requirement the Committee considered was requiring AFAs to alert the client to the availability of alternative service delivery options. On balance, this additional measure was not incorporated in the Code Standard, given the difficulty of designing principle-based wording that would be appropriate for every scenario. Existing protections and Code Standard 1 were considered adequate to prompt AFAs to offer alternatives where available and appropriate.

Comment [KS6]: This aspect replaces the old Code Standard 10. This formulation was seen as being necessary to avoid unduly restricting the provision of class services, whilst still ensuring clients would receive that form of service on an informed basis when dealing with an AFA.

Code Standard 98

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.

~~An AFA is only required to determine suitability under this Code Standard based on the information provided by the client and information otherwise known to the AFA. However, an AFA must make reasonable enquiries to ensure the AFA has an up-to-date understanding of the client's financial situation, financial needs, financial goals, and risk profile, having regard to the nature of the personalised service being provided.~~

~~Where a client:~~

~~(a) declines to provide some or all of the information required under this Code Standard, an AFA must take reasonable steps to ensure the client is aware that the personalised service is limited and specify those limitations; or~~

~~(b) is relieved from the obligation to determine suitability from determining instructions an AFA (or an AFA's employer or principal) to provide transactional advice without determining the suitability of the financial advice provided, the AFA is relieved from the obligation to determine suitability to the extent provided for in that instruction, provided the AFA expressly confirms to the client that the underlying transaction has been completed or advised upon without determining suitability, to that extent; or~~

~~(c) instructs an AFA (or an AFA's employer or principal) not to determine the suitability of the financial adviser service provided, the AFA is relieved from the obligation to determine suitability to the extent provided for in that instruction. However, this relief is only available if the instruction is provided in a document that is signed and dated by the client, and that includes a clear acknowledgement from the client as to the advantages of the AFA determining suitability based on the provision of all the information contemplated under this Code Standard.~~

~~An AFA must not direct or influence a client to instruct the AFA not to determine the suitability of a financial adviser service to be provided for the client, or direct or influence a client to decline to provide any of the information contemplated under this Code Standard. However, this restriction does not prevent an AFA:~~

- ~~• drawing the client's attention to the client's ability to opt out of having suitability determined as contemplated under this Code Standard; or~~
- ~~• quoting or estimating a reasonable fee for determining suitability under this Code Standard.~~

Comment [KS7]: The Committee considered this requirement was unduly prescriptive, dictating elements an AFA ought to be addressing irrespective of this being spelled out.

Comment [KS8]: Refer to the old Exposure Draft for the wording the Committee had previously proposed here. Given the range of submissions received, the Committee accepts that the wording proposed risked creating an additional range of challenges, and was overly prescriptive and narrowly focussed.

Comment [KS9]: Given the change to a more principle-based approach, this additional wording was considered superfluous.

If an instruction given by a *client* under paragraph (b) or (c) of this **Code Standard** is such that the *financial adviser service* provided by the AFA to the *client* is not or will no longer be a *personalised service*, the AFA will then need to comply with **Code Standard 10**.

Code Standard **109**

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 10

~~**When providing a class service to a retail client, an Authorised Financial Adviser must take reasonable steps to ensure the client is aware of the limitations of the service provided.**~~

Comment [KS10]: With the changes made to Code Standard 8, the old Code Standard 10 became redundant.

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 Standard Set B26360*, and

(b) be able to demonstrate the adequacy of the *AFA's* knowledge of relevant legislative obligations.

Comment [KS11]: Code Standard is simply a universal requirement for demonstrating a base level of knowledge, and is required for all AFAs, with no alternatives available. Demonstration of the ability to apply this knowledge in practice is a separate element of competence – this Code Standard is solely concerned with demonstrating a base level of knowledge.

Code Standard 16

To be an *Authorised Financial Adviser*, a *financial adviser* must attain the Components of the New Zealand Unit Standard Sets within the National Certificate in Financial Services (Financial Advice) (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 Unit Standard Set 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 Unit Standard Set Component as specified in the *Code's Competence Alternatives Schedule*.

An AFA who has attained ~~Unit Standard Sets A, B, C, and D~~ of the *National Certificate in Financial Services (Financial Advice) (Level 5)* is not restricted in the range of *financial adviser services* the AFA can provide or offer to provide, subject to ~~Code Standard 14~~ and the terms of the AFA's authorisation under the Act.

However, provided the AFA satisfies ~~Code Standard 14~~ an AFA:

- (a) — may provide a *class service* for any *client*, and any form of *financial adviser service* for a *wholesale client*, without having attained ~~Unit Standard Set C or Unit Standard Set D~~; and—
- — may provide *financial adviser services* for a *client* without having attained ~~Unit Standard Set D~~ if the AFA has attained ~~Unit Standard Set E~~ and the *financial products* that might be included within the scope of the *financial adviser services* provided for the *client* concerned do not include any *category 1 products*; and
 - — may provide *financial advice* in relation to withdrawing from a KiwiSaver scheme for the purpose of purchasing a first home, without having attained ~~Unit Standard Set D~~; and

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.

Comment [KS12]: Wording changed to incorporate reference to 'Components' to address a drafting concern raised in submissions.

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

(c) 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

(d) ~~A recognised alternative 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 provided the AFA satisfies ~~Code Standard 14~~ 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 qualification~~ alternative recognised in the Competence Alternatives Schedule or this **Code Standard** is in addition to the obligation to satisfy **Code Standard 14**. ~~If an AFA has attained Unit Standard Set D this **Code Standard** does not also require the AFA to attain Unit Standard Set E in order to provide financial adviser services that involve category 2 products, so long as the AFA satisfies **Code Standard 14**.~~

For the purposes of this **Code Standard**, an AFA will be deemed to have attained ~~Unit Standard Set E~~ if the AFA has either passed both of the residential property lending units (units 26286 and 26287), or the AFA has passed unit 25644 and at least one of units 25645, 25646, or and 25647 (being units relating to insurance).

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.

Comment [KS13]: Previous wording had proposed requiring a strand '...relevant to the AFA's financial adviser services'. This was removed as being unnecessarily restrictive, requiring FMA to make an assessment as to the relevance of a strand to the AFA's proposed scope of service at the time an application is made. Given Code Standard 14, this was seen as superfluous.

Comment [KS14]: Note extension to the defined term when compared with the Exposure Draft

Comment [KS15]: Terminology change to simplify cross referencing

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.

Comment [KS16]: Extension made for clarification in light of submissions received.

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**. ~~The records contemplated under this **Code Standard** include:~~

~~the name of the *CPD* activity; and~~

~~the date of completion; and~~

~~how many hours of *CPD* it involved; and~~

~~a brief description of the *CPD* content covered by it; and~~

~~in relation to *structured professional development*, documentation to verify the *AFA*'s undertaking of the *structured professional development*, such as confirmation by the training provider or by the *AFA*'s employer or *principal*.~~

Comment [KS17]: The prescribed record-keeping requirements have been deleted on the basis that the requirements were adequately addressed by the opening sentence.

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 Unit Standard Set Component of the New Zealand Certificate in Financial Services (Financial Advice) (Level 5) Component Unit Standard Sets where the person has attained an alternative qualification or designation as specified in this Schedule

	Alternative Qualification	Alternative Designation
<p>National New Zealand Certificate in Financial Services (Financial Advice) (Level 5) Component Unit Standard Sets</p>	<p>For the purposes of the Code, a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <u>Component Unit Standard Set</u></p>	<p>For the purposes of the Code, a person who has attained one of the following designations is treated as having satisfied the requirements of the specified <u>Unit Standard Set Component</u></p>
<p>Unit Standard Set A Core Component (Comprising units 24755, 25642, and 25643)</p> <p>Knowledge of the industry, financial markets, the advice process and products, financial services best practice, the regulatory environment for financial services, research and analysis processes, economic environment and financial system</p>	<ul style="list-style-type: none"> Any New Zealand issued tertiary qualification at degree level or above in or majoring in accountancy, business (including business administration and business analysis), commerce, economics, finance or management studies (including applied management) Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)* Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)* Postgraduate Diploma in Personal Financial Planning (Waikato University)* Certificate in Financial Services from Adviserlink Learning Limited <u>Bachelor of Applied Management in Personal Financial Planning (Christchurch Polytechnic Institute of Technology)</u> New Zealand Stock Exchange Diploma (NZSE Diploma) <u>Graduate Diploma in Personal Financial Planning (Christchurch Institute of</u> 	<ul style="list-style-type: none"> Associate Financial Planner Associate Life Underwriter Certified Financial Planner CFA Charterholders Chartered Life Underwriter Member of the New Zealand Institute of Chartered Accountants (Accounting Technician, Associate Chartered Accountant and Chartered Accountant) NZFMA Accredited individual NZX Advisor NZX Associate Advisor Registered Legal Executive

Comment [KS18]: No further changes to the alternative recognitions for the core Components are proposed, with previously recommended recognitions confirmed.

	Alternative Qualification	Alternative Designation
<p>National New Zealand Certificate in Financial Services (Financial Advice) (Level 5) Component Unit Standard Sets</p>	<p>For the purposes of the <i>Code</i>, a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <i>Component Unit Standard Set</i></p>	<p>For the purposes of the <i>Code</i>, a person who has attained one of the following designations is treated as having satisfied the requirements of the specified <i>Unit Standard Set</i><i>Component</i></p>
	<p><u>Technology</u>)</p> <ul style="list-style-type: none"> • <u>NZX Diploma</u> • <u>National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16</u> <p>* in each case, including their respective predecessor diploma qualifications</p>	
<p>Unit Standard Set B (Comprising <u>unit 26360</u>) Knowledge of the Code and consumer protection laws</p>	<p>No recognised alternative</p> <p><u>Bachelor of Applied Management in Financial Planning (Christchurch Polytechnic Institute of Technology)</u></p>	<p>No recognised alternative</p>
<p>Unit Standard Set C Financial advice strand (Comprising units <u>26360</u>, 25650, 25651, 25652, and 25653) Professional practice advice process and complying with legislation</p>	<p>No recognised alternative</p> <ul style="list-style-type: none"> • <u>Bachelor of Applied Management in Financial Planning (Christchurch Polytechnic Institute of Technology)</u> • <u>Graduate Diploma in Personal Financial Planning (Christchurch Institute of Technology)</u> • <u>Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*</u> • <u>Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)*</u> • <u>National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16</u> <p><u>*If attained after 30 June 2011</u></p>	<p>No recognised alternative</p>

Comment [KS19]: No alternatives are proposed. If alternate qualifications include the attainment of unit 26360 within their qualification, then the unit would not need to be re-assessed – but that is not an alternative qualification, as the required unit would have been attained.

Comment [KS20]: For each of these, the outcome of the mapping exercise commissioned by the Committee was inconclusive. However, in light of the analysis provided through that exercise, the Committee has determined to recommend the higher academic pathway of the specialist Diplomas be recognised as a legitimate alternative option to the vocational pathway of the Level 5 certificate. While there are gaps in the processes tested to verify competence in the practical application of the learnings, the Committee believes those gaps are overcome by the higher level of knowledge attained. This is seen as encouraging aspiring AFAs to continue to pursue higher levels of learning, and enable them to develop on the job experience with consumers protected through the need for all AFAs to adhere to the Code, and demonstrate compliance with Code Standard 14.

Comment [KS21]: Earlier date selected than previously proposed, to align with the last date before authorisation became compulsory for affected AFAs

	Alternative Qualification	Alternative Designation
National-New Zealand Certificate in Financial Services (Financial Advice) (Level 5) Component Unit Standard Sets	For the purposes of the <i>Code</i> , a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <i>Component Unit Standard Set</i>	For the purposes of the <i>Code</i> , a person who has attained one of the following designations is treated as having satisfied the requirements of the specified <i>Unit Standard Set</i> <i>Component</i>
Unit Standard Set D Investment strand (Comprising units 25648 and 25649) Investment Unit Standards	<ul style="list-style-type: none"> Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*, <u>Postgraduate Diploma in Personal Financial Planning (Waikato University),*</u> Bachelor of Applied Management in Financial Planning (Christchurch Polytechnic Institute of Technology) Graduate Diploma in Personal Financial Planning (Christchurch Institute of Technology) Units 25648 and 25649 of the National Certificate in Financial Services (Financial Advice) (Level 5), subject to the transition provisions of Code Standard 16. <p>* <u>if attained after 30 June 2011</u> in each case, including their respective predecessor diploma qualifications</p>	<ul style="list-style-type: none"> CFA Charterholder
Unit Standard Set E (Comprising either units 25644 and 25645, or units 25646 and 25647) Insurance Unit Standards OR Residential Property Lending Unit Standards	<ul style="list-style-type: none"> Graduate Diploma in Business Studies (Personal Risk Management OR Personal Financial Planning) (Massey University)*, provided the Diploma includes a paper on personal risk management <p>* in each case, including their respective predecessor diploma qualifications</p>	No recognised alternative

Comment [KS22]: Note new proposed caveat to recognition

Comment [KS23]: Given the proposed recognition sunset for old Massey Diplomas, there is a question as to whether the Code should be providing the same for the old Waikato Diploma. We do not have information as to when the last graduate attained a qualification from Waikato – if prior to 1 July 2011, both universities will be treated on an equal footing, and no change is required. Adjustment may be made if evidence of prejudice is produced through the submission process.

Comment [KS24]: Earlier date selected than previously proposed, to align with the last date before authorisation became compulsory for affected AFAs

H. DEFINITIONS SCHEDULE – Part 1

This Part of the Definitions Schedule applies up to, and excluding, the date that section 12 of the Financial Markets (Repeals and Amendments) Act 2013 comes into effect.

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.

Accounting Technician	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation accounting technician
Act	the Financial Advisers Act 2008
AFA	an <i>Authorised Financial Adviser</i>
Associate Chartered Accountant	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation Associate Chartered Accountant
Associate Financial Planner	an individual who has been awarded this designation by the Institute of Financial Advisers Inc
Associate Life Underwriter	an individual who has been awarded this designation by the Institute of Financial Advisers Inc
Authorised Financial Adviser	a <i>person</i> described in section 51 of the Act who is authorised by the Financial Markets Authority under section 55 of the Act
Bank	has the same meaning as the term ‘bank in New Zealand’ in section 5 of the Act
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 (other than a product that is a category 2 product): (a) — a <i>security</i> ; or (b) — a land investment product (as defined by regulations); or (c) — a futures contract; or (d) — an investment linked contract of insurance (as defined by regulations); or (e) — any other product specified by regulations made under

	the Act; or
	(f) a renewal or variation of the terms or conditions of an existing category 1 product
category 2 product	means any of the following products
	(a) a <i>bank</i> term deposit; or
	(b) any bonus bond; or
	(c) any call building society share; or
	(d) a call credit union share; or
	(e) a call debt security; or
	(f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or
	(g) a unit in a cash or term portfolio investment entity (as defined by regulations); or
	(h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or
	(i) a contract of insurance (other than an investment linked contract of insurance); or
	(j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or
	or
	(k) any other product specified by regulations made under the Act; or
	(l) a renewal or variation of the terms and conditions of any existing category 2 product
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 Accountant	has the same meaning as in Section 2 of the New Zealand Institute of Chartered Accountants Act 1996
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 AFA:</p> <p>(a) — a <i>person</i> who receives a service from the AFA (whether or not on payment of a charge); but</p> <p>(b) — does not include a <i>person</i> who receives any services from the AFA if the service is both provided and received in the course of, and for the purposes of:</p> <p style="margin-left: 40px;">(i) — the same business; or</p> <p style="margin-left: 40px;">(ii) — the businesses of related bodies corporate; or</p> <p style="margin-left: 40px;">(iii) — the businesses of members of a QFE group,</p> <p>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></p>
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 AFA about the AFA's <i>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>
CPD	continuing professional development or training relevant to the <i>financial adviser services</i> the AFA provides or intends to provide
CPD period	in respect of an AFA, a 12-month period from the day of the year specified for this purpose in the AFA's terms of authorisation or, in the absence of any such day being specified, a calendar year with the first such period commencing on the 1 st day of January following the AFA's authorisation
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 AFA, acting under an authority granted to the AFA (or to the AFA's employer or <i>principal</i>) manages all or some of the <i>client's</i> holdings of <i>financial products</i> , and decides which <i>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 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>
internal complaints handling process	an <i>AFA's</i> internal process for handling and resolving <i>complaints</i> as described in Code Standard 11
investment planning service	<p>a service provided by an <i>AFA</i> under which the <i>AFA</i> designs, or offers to design, a plan for an individual that:</p> <p>(a) — is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and</p> <p>(b) — includes 1 or more recommendations or opinions on how to realise these 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>
Minister	has the same meaning as in section 5 of the Act
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 service	<p>a <i>financial adviser service</i>:</p> <p>(a) — 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>(b) — 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</p>
principal	a <i>person</i> who is the principal in an agency relationship
product provider	<p>means:</p> <p>(a) — the issuer, in the case of a <i>security</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
Registered Legal Executive	an individual who is entitled, under the Rules of the New Zealand Institute of Legal Executives Inc, to use the designation registered legal executive
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 style="padding-left: 40px;">(i) — a <i>person</i> who</p>

	<ul style="list-style-type: none"> • is also a body corporate; and • either has substantially the same shareholders as A; or • is under the control of the same person or persons as A; or <p>(ii) a person who is able, directly or indirectly, to—</p> <ul style="list-style-type: none"> • exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or • appoint or control 25% or more of a governing body of A
retail client	a <i>client</i> who is not a <i>wholesale client</i>
security	has the same meaning as in section 5 of the Act
structured professional development	<p>training that has identifiable aims and with outcomes relevant to the learning needs identified in the AFA’s professional development plan, and:</p> <p>(a) is provided by a qualified educator or relevant subject matter expert; and</p> <p>(b) provides for interaction and feedback; and</p> <p>(c) is verifiable by documentation</p> <p>Structured professional development may include technical product training but excludes training provided for the principal purpose of promoting a particular <i>financial product</i></p>
transactional advice	<i>financial advice</i> relating to the undertaking of a transaction involving a single <i>financial product</i> , or a sale of one <i>financial product</i> and the purchase of another, where the <i>client</i> initiates the identification of the <i>financial product(s)</i> in question
unit	a unit standard forming part of the National Certificate in Financial Services (Financial Advice) (Level 5) on the National Qualifications Framework
Unit Standard Set	a set of <i>units</i> specified in the National Certificate in Financial Services (Financial Advice) Level 5, with Unit Standard Sets A, B, C, D and E comprising the respective <i>units</i> specified in the Competence Schedule
wholesale client	a <i>client</i> classified as a <i>wholesale client</i> under section 5C of the Act

written or in writing

includes in electronic form

H. DEFINITIONS SCHEDULE –Part 2

This Part of the Definitions Schedule applies from and including the date that section 12 of the Financial Markets (Repeals and Amendments) Act 2013 comes in to effect.

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.

Accounting Technician	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation accounting technician
Act	the Financial Advisers Act 2008
AFA	an <i>Authorised Financial Adviser</i>
Associate Chartered Accountant	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation Associate Chartered Accountant
Associate Financial Planner	an individual who has been awarded this designation by the Institute of Financial Advisers Inc
Associate Life Underwriter	an individual who has been awarded this designation by the Institute of Financial Advisers Inc.
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: (a) an <i>FMCA financial product</i> (other than a product that is a <i>category 2 product</i>); or (b) a <i>DIMS facility</i> (other than a facility that is a <i>category 2 product</i>); or (c) an investment-linked contract of insurance (as defined by regulations); or (d) any other product specified by regulations made under the

Act; or

- (e) a renewal or variation of the terms and conditions of an existing category 1 product

category 2 product

means any of the following products

- (a) a *bank* term deposit; or
- (b) any bonus bond; or
- (c) any call building society share; or
- (d) a call credit union share; or
- (e) a call debt security; or
- (f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or
- (g) a unit in a cash or term portfolio investment entity (as defined by regulations); or
- (h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or
- (i) a contract of insurance (other than an investment-linked contract of insurance); or
- (j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or
- (ja) a *DIMS facility*, if the investment authority covers only category 2 products; or
- (k) any other product specified by regulations made under the Act; or
- (l) a renewal or variation of the terms and conditions of any existing *category 2 product*

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 Accountant

has the same meaning as in Section 2 of the New Zealand Institute of Chartered Accountants Act 1996

Chartered Life Underwriter

means an individual who has been awarded this designation by the Institute of Financial Advisers Inc.

class service

a *financial adviser service* that is not a *personalised service*

client	means, in relation to an <i>AFA</i> : <ul style="list-style-type: none"> (a) a <i>person</i> who receives a service from the <i>AFA</i> (whether or not on payment of a charge); but (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"> (i) the same business; or (ii) the businesses of related bodies corporate; or (iii) the businesses of members of a QFE group, <p>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></p>
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>
C ompetence A lternatives S chedule	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>
<u>Component</u>	<u>a Unit 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 Competence Alternatives Schedule</u>
<u>Core Component</u>	<u>the core compulsory Component of the New Zealand Certificate in Financial Services (Level 5) that all certificate holders are required to have attained</u>
CPD	continuing professional development or training relevant to the <i>financial adviser services</i> the <i>AFA</i> provides or intends to provide
CPD period	in respect of an <i>AFA</i> , a 12-month period from the day of the year specified for this purpose in the <i>AFA's</i> terms of authorisation or, in the absence of any such day being specified, a calendar year with the first such period commencing on the 1 st day of January following the <i>AFA's</i> authorisation
DIMS facility	means an agreement, arrangement, or understanding for the provision of a <i>discretionary investment management service</i> under

Comment [KS25]: One submitter on the Exposure Draft wanted these words removed as they diminish the extent of complaints referred to a dispute resolution scheme who can make this call. With respect, that was the point. Over-reporting of complaints would be contrary to the objectives of the Act. It is simply something for the FMA monitoring team to pick up if an *AFA* is inappropriately suppressing the reporting of complaints

	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</i> 's employer or <i>principal</i>) manages all or some of the <i>client</i> 's holdings of <i>FMCA financial products</i> , and decides which <i>FMCA financial products</i> to acquire or dispose of on behalf of the <i>client</i>
external dispute resolution scheme	in respect of an <i>AFA</i> , the scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to which any complaint concerning the <i>AFA</i> must be referred
financial advice	making a recommendation or giving an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a <i>financial product</i> , noting that whether or not advice is financial advice is not affected by how the advice is given or communicated The mere provision of information, or making a recommendation or giving an opinion relating to a class of <i>financial products</i> , or making a recommendation or giving an opinion about the procedure for acquiring or disposing of a <i>financial product</i> , or transmitting the financial advice of another or recommending that a <i>person</i> consult a <i>financial adviser</i> , does not amount to financial advice
<u>financial advice strand</u>	<u>the specialist strand of that name within the New Zealand Certificate in Financial Services (Level 5)</u>
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 Act
internal complaints handling process	an <i>AFA</i> 's internal process for handling and resolving <i>complaints</i> as described in Code Standard 11

investment planning service	<p>a service provided by an AFA under which the AFA 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>
<u>investment strand</u>	<u>the specialist strand of that name within the New Zealand Certificate in Financial Services (Level 5)</u>
<u>transactional advice</u>	<u>financial advice relating to the undertaking of a transaction involving a single financial product, or a sale of one financial product and the purchase of another, in each case not being a DIMS facility, where the client initiates the identification of the financial product(s) in question comprehensively</u>
Minister	has the same meaning as in section 5 of the Act
<u>National Certificate in Financial Services (Financial Advice) (Level 5)</u>	<u>the qualification of that name that has been approved by the New Zealand Qualifications Authority (NZQA reference 1476 5)</u>
<u>New Zealand Certificate in Financial Services (Level 5)</u>	<u>the qualification of that name that has been approved by the New Zealand Qualifications Authority (NZQA reference 2315)</u>
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 Act
personalised service	<p>(a) <i>financial advice</i> or an <i>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 AFA; and</p> <p>(ii) the AFA 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</p>

Comment [KS26]: See Exposure draft for proposed 'limited advice' wording, which is no longer recommended in light of submissions received. The old 'transactional advice' definition is now redundant as well.

	<p>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	<p>means:</p> <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
Registered Legal Executive	an individual who is entitled, under the Rules of the New Zealand Institute of Legal Executives Inc, to use the designation registered legal executive
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"> ▪ is also a body corporate; and ▪ either has substantially the same shareholders as A; or ▪ is under the control of the same <i>person</i> or <i>persons</i> as A; or <p>(ii) a <i>person</i> who is able, directly or indirectly, to –</p> <ul style="list-style-type: none"> ▪ exercise, or control the exercise, of 25% or more

	of the voting at a meeting of the shareholders of A; or
	<ul style="list-style-type: none"> ▪ appoint or control 25% or more of a governing body of A: and
	(c) in any case, includes an associated person or a related body corporate, as those terms are defined under section 12 of the Financial Markets Conduct Act 2013.
retail client	a <i>client</i> who is not a <i>wholesale client</i>
<u>specialist strand</u>	<u>a strand forming part of the <i>New Zealand Certificate in Financial Services (Level 5)</i></u>
<u>recognised alternatives specified qualification</u>	<u>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 <i>Competence Alternatives Schedule</i>, or the <i>National Certificate in Financial Services (Financial Advice) (Level 5)</i></u>
structured professional development	<p>training that has identifiable aims and with outcomes relevant to the learning needs identified in the AFA’s professional development plan, and:</p> <ul style="list-style-type: none"> (a) is provided by a qualified educator or relevant subject matter expert; and (b) provides for interaction and feedback; and (c) participation is verifiable by documentation. <p><u>Structured professional development may include technical product training but excludes training provided for the principal purpose of promoting a particular <i>financial product</i></u></p>
unit	a unit standard forming part of the National Certificate in Financial Services (Financial Advice) (Level 5) <u>or the <i>New Zealand Certificate in Financial Services (Level 5)</i></u> on the National Qualifications Framework
<u>Unit Standard Set</u>	<u>a set of <i>units</i> specified in the <i>National Certificate in Financial Services (Financial Advice) Level 5</i>, with <i>Unit Standard Sets A, B, C, D and E</i> comprising the respective <i>units</i> specified in the <i>Competence Schedule</i></u>
wholesale client	a <i>client</i> classified as a <i>wholesale client</i> under section 5C of the Act
written or in writing	includes in electronic form

Comment [KS27]: On balance, the Committee determined to retain the existing wording, in light of submissions both supporting its removal and those strongly supporting its retention. It is a question of professional judgement for AFAs to make in each case, having regard to their Code Standard 1 obligations, as to whether any training received ought properly to be excluded from recognition on the basis that it was provided for the principal purpose of product promotion. The Committee’s view is that technical information about a company or financial product would only fall within the exclusion if the objective of the training was to encourage the audience to ‘sell’ more of the relevant product.