

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

24 August 2010

The table in this paper summarises a number of the major issues considered by the Committee in response to submissions made on the second draft of the Code of Professional Conduct for Authorised Financial Advisers (Code) released on 2 July 2010. The issues summarised reflect those where the Committee felt that some explanation may assist those considering the final version of the Code submitted to the Commissioner for Financial Advisers on 20 August 2010, and provide context to the changes made (and changes not made) since the second draft. A number of additional issues that arose in the course of reviewing the submissions were also considered, along with other feedback received in the course of the Code Committee's extensive consultation process.

The responses in this paper also address matters raised by the Commissioner for Financial Advisers (Commissioner) in his Direction dated 17 August 2010.

All issues raised with the Committee have been taken into account in finalising the Code. However, a specific explanation of the Committee's approach in relation to certain issues not mentioned in the table was not considered to be warranted. Public submissions received in response to the second draft of the Code, along with the Committee's summary of issues raised in the course of its final consultation process conducted in July 2010 and related feedback received separately, are available on the Code Committee's website www.financialadviser.govt.nz

The second draft of the Code proposed 17 Code Standards. Code Standard 8 of the second draft was separated into two separate Code Standards in response to submissions received. (Please see our coverage of Code Standard 8 for more detail.) For clarity of reference, this paper recognises the structure of the final form of the Code as submitted to the Commissioner on 20 August 2010 in the heading for each Code Standard.

This issues paper is intended to explain the reasons underlying the Code Committee's work in relation to the Code and does not reflect the views of any other party as to the interpretation of the Code.

CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS

Table summarising major submission points raised on the second draft of the Code and the Committee’s responses to those issues

Issue raised	Response
Background, Introduction and General	
<p>A more prescriptive approach was suggested for the overall style of the Code, along with a further break down of paragraphs with more extensive numbering for ease of reference.</p>	<p>The overwhelming feedback received was supportive of the principles-based approach adopted. However, a number of the Code Standards have been expanded with further guidance provided where it was felt this may assist in applying the relevant principle, or where further clarity was required. Whilst the Committee acknowledges that more extensive use of numbering would assist legal advisers and others when referring to specific provisions of the Code, it was felt that a minimal use of paragraph numbering in the body of each Code Standard rendered the Code more approachable for the benefit of both financial advisers and consumers.</p>
<p>Should insurance advisers and mortgage brokers be required to be authorised under the Code in order to ‘raise the bar’ across the entire industry?</p>	<p>Insisting on insurance advisers and mortgage brokers becoming authorised, and crafting the Code accordingly, is beyond the powers of the Code Committee. A policy decision has been made at the legislative level to allow those solely involved with category 2 products to</p>

Issue raised	Response
<p>Should a distinction be made in terms of client care requirements between different categories of products? In particular, should AFAs be given the discretion to determine for themselves what is appropriate in terms of client care requirements for category 2 products?</p>	<p>operate without being authorised, outside of the Code. However, the Committee has approached its task on the assumption that those solely involved with advising on category 2 products will be able to apply for an appropriate level of authorisation.</p> <p>Code Standard 9 (explaining the basis of personalised advice for retail clients) has been limited to investment planning services and services involving category 1 products, to ensure an appropriate balance is struck and that the obligations placed on AFAs when advising on category 2 products are not unduly onerous when compared with the obligations on RFAs. For all other Code Standards it seemed inconsistent with the objectives of the Act to prescribe different standards of client care based on product categorisation.</p>
<p>It was suggested that the first paragraph of the introduction should be amended to read: 'The Code sets out Code Standards. Each Code Standard is followed by additional provisions. These comprise part of the Code and relate to the application of the Code Standards'.</p>	<p>The Committee disagreed. This suggestion misconstrues the structure of the Code. The 'additional provisions' were also intended to form part of the relevant Code Standard, and this has been expressly stated in the Introduction. The use of an 'overarching principle' approach allows each Code Standard to be succinctly summarised, with the additional provisions of the Code Standard providing further detail as to how the overarching principle is to be applied in practice.</p>
<p>It was also suggested that reference to compliance with legal obligations be deleted from Background section A, and reference to additional provisions not limiting the application of the relevant overarching principle be deleted from Introduction section B.</p>	<p>The Committee considered that the references identified were helpful in terms of reminding financial advisers that the Code should not be their sole source of reference for identifying their legal obligations. The guidance note in the Introduction ensures that the additional provisions within each Code Standard are placed in their proper context.</p>
<p>Support was expressed for specific provisions to be included in the Code in respect of trainee advisers. In particular, it was suggested that a separate designation should be included in the Code for trainee advisers such as a 'provisional AFA' or 'restricted AFA', with specific relief from various Unit Standard Sets where the trainee operated under the supervision of an AFA</p>	<p>The Committee considered this issue at length, both within the Committee itself and with various external stakeholders who raised the issue as being of concern to them. The Committee considered the limitations placed on the scope of activities that will constitute 'financial advice' when the Act was finalised at the end of June. On balance, it was felt that</p>

Issue raised	Response
<p>who took responsibility for their work and specific standards were imposed on AFA's acting in a supervisory role. The concern raised was that otherwise it will be very difficult to bring through new advisers, as Unit Standard Set C will be unattainable. Full AFAs may struggle to justify operating a true apprenticeship model in the face of regulatory restrictions on what the apprentice can say.</p>	<p>these limitations provided a sufficient opportunity for apprentice advisers to operate without needing a separate classification. Regardless, if a 'provisional' class of AFA were created, the Committee considered that extensive disclosures would need to be imposed in order to ensure the objectives of the Act were not undermined through such a classification. It seemed likely that the extent of those disclosures would render the classification unattractive. The Committee decided that on balance a 'provisional' classification should not be incorporated in the first version of the Code.</p> <p>The Committee understands that ETITO will shortly be issuing guidelines as to how new advisers entering the industry after June 2011 may satisfy the requirement to provide valid evidence to meet the standards in Standard Set C. The Committee notes that from 1 July 2011, individuals who have yet to attain authorisation will be unable to make a recommendation or give an opinion to a retail client in relation to acquiring or disposing of a category 1 product, although they will be able to provide guidance and pass on information and financial advice from an AFA.</p>
<p>Concern was expressed that including 'reasonableness' tests may open the Code up to differing interpretations as to what is 'reasonable' in any particular situation.</p>	<p>The concept of 'reasonable' is the subject of an extensive case law, and is one with which most New Zealanders are familiar. The overwhelming feedback received was that the Code would be enhanced by introducing more references to conduct that is 'reasonable' in the particular circumstances, and the Committee has taken that feedback on board. With the Code Standards as finalised, the Committee is confident that a measured approach will be able to be taken in relation to their application. The version recommended to the Commissioner strikes a good balance between the risk of placing advisers in impossible situations where they are constantly at risk of being judged with the benefit of hindsight, and the risk of allowing advisers to 'get away' with acting inappropriately.</p>

Issue raised	Response
<p>Should the Code include specific obligations in relation to money handling/broking service?</p>	<p>Conduct obligations in relation to broking services are clearly spelled out in the Act. With ‘investment transactions’ no longer falling within the definition of ‘financial adviser services’ the Committee determined that it would be inappropriate for the Code to devise specific standards governing money handling and other broking services. The Committee saw no reason to change from the approach taken in the second draft of the Code.</p>
<p>Should the Code require AFAs to point out the opportunity for wholesale clients to opt out of that classification? Concern was also expressed that advisers may pressure clients to opt into a wholesale client classification.</p>	<p>The Committee agreed that ensuring clients were aware of how they were classified under the Act is an important element of client care, and an appropriate provision has been included at the end of Code Standard 6. Given that any adviser can encourage a client to opt in to becoming a ‘wholesale client’, it was not considered appropriate to impose a specific code standard provision in that regard. However, Code Standard 1 will apply to ensure AFAs do not act inappropriately in this regard.</p>
<p>The Commissioner for Financial Advisers directed the Committee to amend the description of <i>financial adviser services</i> requiring authorisation to accord with changes to the Act that came into force on 1 July 2010.</p>	<p>The Committee has updated the Code to more closely reflect the final form of the Act.</p>

Issue raised	Response
Ethical Behaviour Standards	
Code Standard 1 – Placing clients interests first and acting with integrity	
<p>A number of submissions were received in relation to the term ‘client first’ and clarification has been sought as to its meaning. The most frequently suggested amendment was that a reasonableness qualification be introduced into CS 1.</p>	<p>Code Standard 1 is seen as the most important of the Code Standards, with most of the other Code Standards covering specific instances of what an AFA must do in order to place the interests of the client first and act with integrity. Watering down the Code Standard risks defeating its effectiveness. However, the Committee accepts that it is important that the Code Standard is able to be applied practically, based on what is reasonable in the circumstances. An additional provision has been included to this effect.</p> <p>The Committee also considered adding a provision to clarify that the Code Standard prevents an AFA from preferring the interests of the AFA or any other party ahead of the interests of the client. On balance, it was considered that such an addition was superfluous, with the reasonableness qualification providing a more effective solution to problems identified in relation to the practical application of the Code Standard.</p>
<p>Should the ‘client first’ obligation be qualified so that competing contractual or professional obligations owed to the AFA’s employer can be recognised?</p>	<p>The reasonableness qualification discussed above includes express reference to any regulatory obligations binding on the AFA in addition to the Code. However, the Committee was strongly of the view that providing express relief for an AFA to prefer the interests or place obligations owed to the AFA’s employer ahead of obligations owed to the client was inappropriate, and would significantly undermine the benefit of the Code Standard.</p>
<p>Should the ‘client first’ obligation be reworked to allow the AFA to take into account other clients’ interests?</p>	<p>The Committee considered that having regard to other clients’ interests was adequately accommodated by the new provision confirming that the requirement is determined by what is reasonable in the circumstances.</p>

Issue raised	Response
<p>Should an additional provision be inserted into CS 1 to state that AFAs are not required to take unreasonable steps to discharge their duty under CS 1?</p>	<p>The fact that an AFA is not required to take unreasonable steps to discharge duties under the Code Standard is now addressed through the reference to requirements being determined by what is 'reasonable in the circumstances'.</p>
<p>Concern was expressed that requiring AFAs to place the client's interests 'first' is colloquial and imprecise. It was suggested that CS 1 be amended to read: 'An Authorised Financial Adviser must provide financial adviser services within the bounds of the law and the professional obligations of the AFA solely for the benefit of the client'.</p>	<p>The Committee disagreed. The formulation embodied in the Code was preferred over that suggested. The Committee was confident that the concept of placing a client's interests 'first' was clear, and with the reasonableness qualification incorporated within the Code Standard, would be capable of practical application.</p>
<p>Code Standard 2 – Not bringing the financial advisory industry into disrepute</p>	
<p>Should CS 2 be amended to read: 'An Authorised Financial Adviser must not do or omit to do anything that would undermine public confidence in the professionalism and integrity of financial advisers'?</p>	<p>The Committee preferred the existing formulation of the Code Standard. The key principle of not bringing the financial advisory industry into disrepute has been retained. The Committee has, however, adjusted the additional provisions forming part of the Code Standard so as to clarify that the Code Standard does not prevent good faith commentary on the actions etc of any other 'person'. The reference to person, in turn, has been expanded to pick up reference to industry body, for the avoidance of any doubt. What this is intended to reflect is that properly researched comments made in good faith on what another adviser or financial group has done should not be problematic under the Code Standard. However, an AFA who publicises wide ranging generalisations about the financial advisory industry as a whole, or who fails to research before criticising others or who uses media criticism of others to self promote, is likely to be regarded as acting unethically and in breach of this Code Standard.</p>

Issue raised	Response
<p>Can guidance and clarification be provided in relation to the words 'likely to bring' in order to provide certainty?</p>	<p>The Committee did not consider that it was necessary to provide any further clarification in relation to 'likely to bring'. If an AFA is in doubt as to whether or not any wide sweeping comment they are about to make would be 'likely' to bring the financial advisory industry into disrepute, the best approach, to remove the doubt, would be for that AFA to temper the comments contemplated.</p>

Code Standard 3 - Using the term 'independent'

<p>Should the words 'in the position of a client' be deleted to maintain objectivity in relation to CS 3?</p>	<p>The perspective of a client is critical for determining whether or not it is appropriate for an AFA to hold themselves out as being independent. Accordingly, the reference to a reasonable person in the position of a client considering the independence of the AFA has been retained.</p>
<p>Should the reference to 'salary or wages' be extended to include fees paid to a contractor that are not determined by volume or targets?</p>	<p>The Committee agreed that such an extension would be appropriate.</p>
<p>Doesn't the relief provided for benefits received in the form of salary or wages undermine the Standard? Independence should still be reported as being impaired where the AFA's employer receives commissions or is otherwise influenced, even if the AFA is on a straight salary.</p>	<p>The relief provided at Code Standard 3 in relation to benefits received in the form of salary or wages as an employee is limited. The relief cannot sensibly be interpreted as meaning that if you receive benefits in the form of salary or wages, anything goes – all it means is that on its own, such a receipt will not be regarded as tainting a reasonable client's perception of your independence for the purposes of this Code Standard. If a 'related person' of the AFA (such as the AFA's employer) directly or indirectly receives a benefit from a person other than the client, the fact that the AFA himself or herself only benefits in the form of salary or wages (that are not determined in whole or in part by reference to volume or other targets) will not support a claim of independence by the AFA. The third party benefit received at the employer level will be fatal to any such claim.</p>

Issue raised	Response
<p>It was suggested that under (b) the words ‘and the AFAs arrangements with any third party’ should be deleted, on the basis that the words are superfluous.</p>	<p>The words identified are important to ensure that the relief provided has practical effect. Otherwise, an AFA who utilises a restricted platform, but is able to compensate for the restrictions on the platform through other arrangements so that the clients of the AFA are able to access a wide range of financial products and product providers, would be unable to claim independence. This was considered inappropriate by the Committee. Provided the outcome of being able to provide clients with access to a wide range of financial products and product providers is achieved, the mechanisms in place by which that is achieved should not be determinative of the issue of independence.</p>
<p>Further guidance was requested at paragraph (c) to clarify what is required for a benefit to be considered remote or insignificant. If it relates to benefits that a reasonable person would not expect to influence an AFA, this should be stated.</p>	<p>If an AFA is uncertain as to whether or not a particular benefit should be regarded as ‘remote or insignificant’ it seems to be a pretty good steer that receipt of the benefit would taint a reasonable client’s perception of the AFA’s independence. The Committee did not consider that any clarification was warranted.</p>
<p>Code Standard 4 – Borrowing from or lending to a client</p>	
<p>It has been submitted that CS 4 should be extended beyond the borrowing and lending of money to encompass any business transactions beyond those associated with the giving and receiving of financial advice that takes place between an AFA and their client.</p>	<p>This Code Standard deliberately targets borrowing and lending activities. Given the complexity and variety of client relationships that occur within the financial advisory industry, the Committee did not wish to extend the scope of this specific limitation beyond the activity specified. The Committee was comfortable that reliance could be placed on other Code Standards to ensure AFAs were subject to appropriate professional obligations in relation to other client dealings.</p>
<p>Should the words ‘money or valuable property’ be reinserted, especially given that the final provision of this Code Standard retains reference to ‘valuable property’?</p>	<p>Reference to ‘money or valuable property’ has been removed from the final additional provision of this Code Standard. The Committee preferred the generic constraint placed on borrowing and lending, without specifying what might be borrowed or lent.</p>

Issue raised	Response
Code Standard 5 – Restrictions that apply where AFA is related person of product provider	
Should the words ‘in relation to a financial product that is not offered to the public’ be deleted and the wording from the previous version of CS 6 reinstated?	This Code Standard is deliberately targeted towards non-public offerings, where the product in question is not subject to normal regulatory constraints that would otherwise apply in respect of a public offering.
Should the requirement for the explanation referred to in CS 5 to be in writing be removed, or limited to a one-off disclosure of interest?	Given the very limited scope to this Code Standard, the Committee did not consider that any relaxation to the protection contemplated would be appropriate. The Code Standard does not, of itself, require the same explanation to be given on multiple occasions where an explanation previously provided is adequate to cover future engagements, although the AFA will need to determine on each occasion whether an explanation previously given remains adequate or appropriate.
Should an AFA be permitted to advise in relation to the AFA’s employer’s products where such advice is reasonable and appropriate?	Relief for such advice is already provided at paragraph (b). However, the written explanation specified at paragraph (b), together with a recommendation that the client takes financial advice from another AFA who is not related, will need to be provided.
The Code should include a definition of ‘conflict of interest’ to help clarify what is required.	Defining ‘conflict of interest’ in this context would have risked exposing the Code to taking a prescriptive approach. The Committee considered that a definition for this term was not required or appropriate.
The Commissioner for Financial Advisers directed that the limited scope of this Code Standard be clarified, along with the fact that an AFA may not provide financial advice to a retail client in relation to the acquisition of a financial product that is not able to be lawfully offered to the client.	The Committee has updated the Code Standard by adding an explanatory note to clarify its scope and effect.

Issue raised	Response
Client Care Standards	
Code Standard 6 - Behaving professionally	
<p>Guidelines of what is required in order for a communication to be considered ‘effective’ were requested. Concern was expressed that the effectiveness requirement was too subjective.</p>	<p>The Committee acknowledged the risk inherent in failing to qualify the ‘effective’ requirement. An additional provision has been included in Code Standard 6 to confirm that communicating ‘effectively’ requires an AFA to take reasonable steps to ensure the client understands the communication.</p>
<p>Can the obligation imposed by the words ‘analysed properly’ in CS 6(d) be clarified or the word ‘properly’ removed?</p>	<p>Paragraph (d) has been reworded to address this concern by replacing the reference to ‘properly’ analysed. The reworded obligation restricts AFAs to making recommendations only in relation to financial products that have been analysed by the AFA to a level that provides a reasonable basis for any such recommendation, or analysed by another person upon whose analysis it is reasonable, in all the circumstances, for the AFA to rely.</p>
<p>Can it be clarified whether an AFA can rely on information contained in prospectuses and investment statements in this regard?</p>	<p>The Code Committee did not consider that any further clarification was warranted in relation to the appropriateness of an AFA relying on information contained in a prospectus or investment statement. A consideration of the content of public disclosure documentation would form a part of the analysis contemplated under this Code Standard in relation to securities offered to the public, but whether such an analysis would provide an AFA with a reasonable basis for a recommendation in relation to the securities in question can only be determined by reference to the particular circumstances.</p>

Issue raised	Response
<p>Should the requirement under CS 6 to 'analyse properly' provide an exception for where there is no analysis available in relation to the financial product in question?</p>	<p>Paragraph (d) of Code Standard 6 is limited to a situation where an AFA makes recommendations. The Code Committee considered that if an AFA goes so far as to make a recommendation (as opposed to merely expressing an opinion or providing information about a financial product) then it is entirely appropriate to insist on an appropriate level of analysis to have been carried out, without exception. In situations where no analysis is available, and the AFA is unable to properly analyse the product themselves, Code Standard 6 would not prevent the AFA from expressing an opinion about the product, and clarifying that the lack of proper analysis available means that the AFA is unable to provide a recommendation.</p>

It was suggested that the term 'third party' in relation to reliance being placed on analysis of a financial product be defined and/or amended to read 'another person or entity'?

Paragraph (d) has been reworded so as to refer to reliance being placed upon the analysis of 'another person'.

Code Standard 7 – Ensuring retail clients are able to make informed decisions

<p>How is the cross over between disclosure requirements under the Act and the Code to be resolved?</p>	<p>Code Standard 7 has been substantially revised. The focus of this Code Standard is on the outcome of informed decision-making. The disclosure obligations under the Act are concerned with the process of providing information. Consistent with the purposes of the Act, the Committee considered it important to provide for a specific obligation to be placed on AFAs to ensure clients have sufficient information to be able to make an informed decision.</p>
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It was suggested that the Code Committee liaise with the Ministry of Economic Development in relation to CS 7

The Code Committee has extensively engaged with the MED and other government agencies throughout the course of its deliberations. The Committee is comfortable that the approach complements the approach taken by the MED in this regard.

<p>Should disclosure be limited to services that only an AFA can provide?</p>	<p>Ensuring clients are able to make informed decisions is an appropriate obligation to impose universally, without having regard to the classification of the financial product in question.</p>
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Issue raised	Response
<p>Should CS 7 impose an objective standard, by referring to information which would inform a reasonable client, and be limited to allow the AFA to determine what is reasonable in the circumstances?</p>	<p>The Code Committee did not consider that it would be appropriate to relax the standard required, noting the importance of ensuring that clients should be considered based on their own particular characteristics, and not by reference to some reasonable ideal. This means that the extent of information that one client requires in order to make an informed decision may well differ from the extent of information that another might require. The Committee considered that this outcome was appropriate.</p>
<p>It was suggested that the explanatory detail should clarify that the information required in a disclosure statement pursuant to the Act need not be repeated if that information is adequate for a client to make a fully informed decision. The fact that additional disclosure is not required if disclosure required by regulation is sufficient, and that disclosure in relation to the AFA generally need not be repeated for every piece of advice should be expressly stated.</p>	<p>Clarification has been included to confirm that compliance with disclosure obligations under the Act may satisfy the requirements of the Code Standard. However, it has also been clarified that in some circumstances disclosure under the Act may not be sufficient of itself.</p>
<p>Should CS 7 also refer to the client’s right of complaint to the Commission as per section 96(1) of the Act?</p>	<p>The Code Committee did not consider that reference to a right of complaint was strictly necessary in order for clients to make informed decisions. References to complaints processes have therefore been removed from the scope of the principle.</p>
<p style="text-align: center;">Code Standard 8 (now CS 8 and 9) – Suitability of personalised services for retail clients and explaining the basis of personalised services for retail clients</p>	
<p>CS 8 should be divided back out into two separate code standards: the first dealing with suitability analysis and the other setting out the requirements for a written explanation.</p>	<p>The Committee agreed that combining the Code Standard on suitability analysis with the Code Standard relating to the provision of written explanations was problematic. The previous Code Standard 8 as it appeared under the second draft of the Code, has been separated out into two separate standards in the final form of the Code recommended to the Commissioner.</p>
<p>Should AFAs be able to quote a fee for providing an explanation and/or suitability analysis on the basis that the fee is waived if the client opts out?</p>	<p>The Committee considered that the wording of the Code Standard was sufficient to cover reasonable fee estimating practices of AFAs.</p>

Issue raised	Response
Should the explanation required under CS 8 be required to be given in writing?	The Committee considered that the presumption should be for a written explanation to be provided. However, the additional provisions of Code Standard 9 provide an appropriate opt out option that is able to be utilised without unduly compromising the consumer protection provided by this Code Standard.
Should <i>both</i> parts of CS 8 state that they relate to retail clients only?	Both Code Standard 8 and 9 are limited to personalised services provided to retail clients.
Should the requirement for an explanation for the basis of the advice provided be removed? Can the purpose of this required written explanation be clarified?	The Committee considered that the consumer protection objectives of the Act were best achieved by requiring such an explanation to be provided. Otherwise, clients may not be aware of key factors impacting on personalised services provided for them, which may undermine the quality of the services provided and undermine confidence in financial advisers. The opt out mechanism in Code Standard 9 provides an appropriate work around, provided the client is fully aware of what they are opting out of.
Should the written explanation required under CS 8 be confined in its application to advice provided in relation to category 1 products?	The written explanation required under Code Standard 9 is now limited to personalised services given to a retail client that either constitute an investment planning service, or relate to a category 1 product. This ensures that obligations placed on AFAs are not unduly burdensome when providing personalised services in relation to products that do not require the adviser to be authorised. The Committee considered this distinction was important in relation to this Code Standard in order to ensure consistency with distinctions made in the Act.
Should the suitability analysis required under CS 8 be confined in its application to advice provided in relation to category 1 products and investment planning services?	The Code Committee considered that ensuring suitability of a personalised service was an essential obligation in every situation, regardless of the categorisation of the financial product to which the service relates. This approach complements s33 of the Act.
Where an AFA is engaged by a QFE, the obligations under CS 8 should not extend to cover services that a QFE adviser could perform without being an AFA.	The Committee did not consider that it was appropriate for the Code to specify differing standards for AFAs engaged by QFEs. Code Standard 9 has been limited in its application, as

Issue raised	Response
<p>Where an AFA is relieved of the obligation to provide a suitability analysis due to an instruction from the client, should that instruction have to be recorded in a separate document? It was suggested that it would be more workable if the client instead were able to acknowledge a waiver in a client service agreement, provided it is clearly brought to the attention of the client.</p>	<p>discussed above.</p> <p>The wording around the opt out option under Code Standard 8 has been reworked so as to refer to a document that includes a clear acknowledgment from the client as to the advantages of a suitability analysis. No restriction has been placed on the form of document that might be used for this purpose.</p>
<p>Should the obligation to provide written explanations be confined to only requiring such an explanation when requested by a client?</p>	<p>The Committee considered that it would be unreasonable to expect a retail client to be sufficiently aware of their rights to expect them to request a written explanation as to the basis of any financial advice provided. The onus has been left with the AFA in this regard.</p>
<p>Should the obligation to take reasonable steps to ensure suitability for the client under CS 8 be limited to enquiry of the client, with the suitability obligation based on information provided by the client?</p>	<p>The Committee did not consider any wording change was warranted in response to this query.</p>
<p>Should the ability for a client to opt out under CS 8 be able to be relied on by every employee employed by an employer that receives the opt out notice?</p>	<p>Code Standard 8 and Code Standard 9 now both provide relief for opt outs that have been received by the AFA, the AFA's employer or the AFA's principal.</p>
<p>The Commissioner for Financial Advisers directed that this Code Standard be revised so as to clarify that where a client has sought personalised advice from an AFA, but has opted out of receiving a suitability assessment such that the service becomes a class service, then the AFA must comply with Code Standard 10.</p>	<p>The Committee has amended the Code by adding an additional explanatory note. In addition, references to 'personalised service' in relation to the opt out mechanism have been replaced with the wider concept of 'financial adviser services' to address the Commissioner's point.</p>

Issue raised	Response
Code Standard 9 (now CS 10) – Providing class services for retail clients	
<p>A number of submitters suggested that the ‘appropriate statement’ should be able to be provided orally as an alternative to being in writing</p>	<p>The redrafted Code Standard 10 is now simply stated as an overarching principle, requiring the AFA to take reasonable steps to ensure clients are aware of the limitations of any class service provided. The Code Standard itself does not require those steps to include written notification of those limitations, although regulations prescribed under the Act may well do so.</p>
<p>The requirement to provide the ‘appropriate statement’ should only be made to apply once to each client, and the AFA should be able to rely upon any ‘appropriate statement’ previously given.</p>	<p>The new Code Standard 10 only requires an AFA to have taken reasonable steps to ensure clients are aware of the limitations of class services provided. It will be up to the AFA to determine whether or not steps taken in the past are sufficient to cover a new class service provided.</p>
<p>Should CS 9 be amended to reflect the fact that class services provided by an AFA may take into account customers’ financial situations, in particular where the class service involves generic risk calculators used by financial service providers in relation to category 1 products?</p>	<p>This query has been addressed in the reworded Code Standard 10.</p>
Code Standard 10 (now CS 11) – Complaints processes	
<p>Should the definition of ‘complaint,’ in particular the reference to ‘dissatisfaction,’ in relation to CS 10 be limited to ensure it only captures statements intended to be complaints?</p>	<p>The definition of ‘complaint’ has been reworked to address this concern, with an option provided for AFAs to seek clarification as to whether or not an expression of dissatisfaction is intended to constitute a complaint for the purposes of the Code. Having regard to consumer interests, the Committee considered that this was the most appropriate balance to strike.</p>
<p>A number of submitters suggested that complaints should be required to be made in writing to avoid uncertainty as to what is a ‘complaint’.</p>	<p>Requiring complaints to be expressed in writing can serve to discourage consumers from pursuing complaints. The Committee considered that the appropriate approach to take was to place the onus on the AFA to follow up expressions of dissatisfaction to ensure they are dealt with appropriately, and establish whether they were intended to constitute actual</p>

Issue raised	Response
<p>Should the definition of ‘complaint’ be removed as it has an existing sufficiently understood meaning? It was suggested this would help to maintain consistency with the Act in which the term is not defined.</p>	<p>complaints.</p> <p>Given the extent of feedback around what or what may not constitute a complaint, the Committee was not prepared to delete the definition altogether.</p>
<p>Does the definition of ‘complaint’ include expressions of dissatisfaction made in relation to a fee rendered by an AFA? If it is intended to do so, the definition should be amended to reflect this fact.</p>	<p>Where a client expresses dissatisfaction regarding a fee charged, that expression would not normally be categorised as an expression of dissatisfaction ‘about the AFA’s financial adviser services’. If in doubt, the AFA should seek clarification from the client as to whether or not the dissatisfaction is so significant that the client wishes it to be treated as a complaint under the Code.</p>
<p>Should CS 10 be limited to complaints by retail clients only?</p>	<p>The Code Committee considered that it was appropriate for obligations relating to client complaints to extend to both wholesale and retail clients.</p>
<p>Code Standard 11 (now CS 12) – Keeping information about personalised services for retail clients</p>	
<p>Should the provision of class advice which is provided verbally be excluded from the scope of CS11?</p>	<p>Code Standard 12 is now limited to personalised services provided to retail clients.</p>
<p>Should CS 11 be confined in its application to retail clients?</p>	<p>Code Standard 12 is now limited to personalised services provided to retail clients.</p>
<p>Should relief under CS 11 be extended beyond AFAs who are employees, to encompass AFAs who look to another group company rather than their immediate employer to take appropriate measures?</p>	<p>Providing relief beyond employee AFAs was not considered warranted.</p>

Issue raised	Response
Code Standard 12 (now CS 13) – Record retention	
<p>What is an AFA required to do in respect of employer records? In particular, should the AFA who is leaving employment be able to rely on the assurances of the employer as to the record keeping?</p>	<p>The additional provisions of this Code Standard now refer to appropriate measures being taken by an AFA’s previous employer, where applicable.</p>
<p>Can it be clarified whether CS 12 is intended to apply retrospectively to records created before the Code comes into force?</p>	<p>Code Standard 13 is quite explicit that it only applies to information and documents ‘required under this Code’. As a consequence, it is clear that the Code Standard does not apply to any information previously gathered prior to an AFA becoming authorised, although there is nothing to prevent an AFA observing the standards under Code Standard 13 in respect of information gathered in the past.</p>
<p>The blanket obligation to retain records for 7 years beyond the end of the client relationship was seen by some as being inappropriate for information that is confined to a particular transaction.</p>	<p>Additional wording has been included to clarify the commencement of the 7 year minimum period in response to this issue raised.</p>

Issue raised	Response
Competence, Knowledge, and Skills Standards	
Code Standard 13 (now CS 14) – Overarching competence requirement	
<p>No substantive issues were raised, other than queries as to how compliance with the obligation will be assessed.</p>	<p>The Code Committee was satisfied that no additional guidance was required in relation to this Code Standard.</p>
Code Standard 14 (now CS 15) – Requirement to have an adequate knowledge of Code, Act, and laws	
<p>Is CS 14 necessary? If retained, shouldn't it just state a requirement to comply with Standard Set B?</p>	<p>Code Standard 15 was considered by the Committee to provide an important standalone knowledge standard. Whilst Standard Set B is the mechanism by which Code Standard 15 is satisfied, the overarching principle is what is primarily of concern. Expressed in this manner, the Code Standard provides a convenient option for the Securities Commission to grant exemptions from Code Standard 16 in appropriate circumstances, knowing that the AFA will still need to comply with the requirement to know the Code and relevant consumer protection laws.</p>
<p>Is CS 14 appropriate, given that no other profession requires its members to prove knowledge of the laws that govern their practice and they will need to comply with the law regardless?</p>	<p>Given the requirement under the Act to specify minimum standards of competence, knowledge and skills, the Committee was satisfied that insisting on a knowledge of the Code and relevant legal obligations was appropriate.</p>
<p>Should CS 14 and CS 15 be combined?</p>	<p>The Committee considered that it was desirable for knowledge of the Code and relevant legal obligations to be expressed as a standalone standard.</p>

Issue raised	Response
Code Standard 15 (now CS 16) – National Certificate in Financial Services (Financial Advice) (Level 5) requirement and alternative qualifications	
<p>Should an AFA also be required to prove that they have achieved a minimum CPD requirement over the 12 month professional body membership period set out in CS 15?</p>	<p>The requirement for CPD has been revised so as to remove reference to belonging to a professional body. The Committee understands that when individuals are applying for authorisation to the Securities Commission and the applicant is relying on a designation previously attained that has not been retained at the time, evidence of completion of CPD in the previous 12 months will be sought.</p>
<p>Should the requirement for an AFA to have been a member of a professional body for a continuous period of 12 months to fall within the exception set out in CS 15 be removed, or reduced to say 6 months? It was suggested that it was unfair to impose such a requirement less than 12 months prior to it needing to be observed.</p>	<p>See previous response – reference to membership of a professional body has been removed. The focus is on applicants having retained an ongoing involvement in the industry, and having kept their knowledge up to date. The Committee considered this would be adequately demonstrated through a requirement to have completed at least 20 hours of CPD in the 12 months preceding their application.</p>
<p>By failing to recognise experience, is CS 15 inconsistent with the purpose of the Act of encouraging public confidence in professionalism? It was suggested that common sense and fairness dictate that full relief should be given to all CFP's, irrespective of diploma qualifications.</p>	<p>The fundamental difficulty in recognising experience is that it cannot be assumed that all experience is good experience, or that a blemish-free record necessarily implies that the person is competent to an appropriate minimum level. Recognition of the quality of the professional programmes undertaken by those holding a CFP, CLU, CFA, CA or ACA designation has been provided by granting holders of those designations full relief against Standard Set C, as well as recognition against Standard Set A. The Committee did not consider that recognition of experience alone could be justified.</p>
<p>Should the Code specify a non-exhaustive list of existing bodies that are deemed to fall within the definition of 'professional body' in order to provide greater certainty? If so, one submitter noted they would like SIFA to be included on that list.</p>	<p>Consistent with the approach taken elsewhere in the Code, no list has been provided. Any organisation that satisfies the definition stated in the definitions scheme will qualify by virtue of that definition, i.e. it is a membership organisation, where ongoing membership requires compliance with continuing professional development or training requirements specified by that organisation. In particular, note that whilst it would not be regarded as a 'professional</p>

Issue raised	Response
<p>Should CS 15 be reworked so that category 1 advisers who have completed any of the Diplomas set out in Standard Set D are not permitted to act in relation to category 2 without an additional formal relevant qualification?</p>	<p>body' in ordinary parlance, NZX will fall within the concept of a professional body for the purposes of the Code.</p> <p>Code Standard 14 provides an appropriate level of assurance that an AFA who is not competent in matters covered by any of the units in Standard Set E is prevented from advising on such matters, as doing so would result in a breach of Code Standard 14. Whilst attaining Standard Set D will be sufficient to enable a person to apply for authorisation (provided Standard Sets A, B and C have been satisfied or the person has other qualifications or designations that are able to be recognised in their place), all AFAs must still restrict their financial adviser services to matters in respect of which they are able to demonstrate that they have a reasonable basis for believing they have the level of competence, knowledge, and skills required. Attaining relevant units in Standard Set E will provide AFAs with something of a safe harbour if challenged on their competence to advise on matters covered by those units.</p>
<p>Should NZX advisors be granted relief from CS 15?</p>	<p>The NZX Advisor designation is recognised as an alternative to Standard Set A and Standard Set C. In addition, those with an NZSE or NZX diploma get recognition against Standard Set D. In the absence of the diploma, the Committee did not consider that relief against Standard Set D was warranted by virtue of NZX advisor designation alone. No relief is provided against Standard Set B.</p>
<p>Should CS 15 be extended to include express reference to relief for those granted exemptions by the Securities Commission?</p>	<p>The Committee did not consider it would be appropriate to include express reference to exemptions granted by the Securities Commission in the Code itself. Exemptions are operative as a matter of law, irrespective of what may be included in the Code.</p>

Issue raised	Response
<p>Should ETITO or any other such body authorised by the Commissioner be able to specify an alternative qualification or designation as being equivalent to the National Certificate in Financial Services on a case-by-case basis?</p>	<p>The Committee received advice to the effect that it would be outside of their powers to effectively delegate their functions to a third party to recognise alternative qualifications. The Committee’s only statutory power is to prescribe minimum standards. Where such recognition leads to an award of a qualification or unit standard, the Committee understand the education system possesses mechanisms for recognition on a case-by-case basis where there is sufficient evidence that the individual meets all of the requirements of the relevant unit standards.</p> <p>These mechanisms place an onus on the individual to demonstrate how such qualifications or designations meet the required standards. The Code itself cannot describe how such an assessment will occur.</p>

The eligibility sunset mechanism is still causing confusion, despite attempts to clarify the meaning in the latest draft.

The eligibility sunset mechanism has again been clarified. The meaning of the term has now been spelled out as a final bullet point to Code Standard 16 and cross referenced in the heading to the Competence Alternatives Schedule. The overall impact of the eligibility sunset mechanism has not changed over the course of the various drafts of the Code. On each occasion, the mechanism has required the qualification, paper or designation in question to have been fully attained at the time the person seeks authorisation, although the Committee notes that a number of submitters still misinterpret the mechanism as contemplated in the first draft of the Code. To provide further clarity, in the final draft of the Code, the sunset date has been specified as 1 January 2014 in the body of the Code itself, as opposed to referring to an unspecified date three years in the future.

Issue raised	Response
Continuing Professional Training Standards	
Code Standard 16 (now CS 17) – Professional development plan requirement	
<p>Should CS 16 and CS 17 be combined?</p>	<p>The two continuing professional training standards cover two distinct concepts. One is the obligation to maintain a professional development plan, the other is the detail of the training required. The Committee is satisfied that it is appropriate to keep the two standards separate. Minor adjustments in terminology across the two Standards have been included, primarily in respect of the use of the word ‘development’ where appropriate, as opposed to ‘training’. Given the statutory reference to ‘continuing professional training’, the Committee was compelled to use that term, despite the more appropriate term used throughout the financial advisory industry of ‘continuing professional development’.</p>
<p>It has been suggested that the word ‘planned’ be inserted into CS 16(c) to read: ‘...where available, include details of courses, seminars, workshops and any other training or professional development <i>planned</i> to be undertaken’</p>	<p>The Committee agreed with this suggestion.</p>
Code Standard 17 (now CS 18) – Undertaking continuing professional training	
<p>Should the definitions of ‘professional body’ and ‘structured training’ be reconsidered in relation to CS 17? In order for an organisation to qualify as a ‘professional body’, it was suggested that more rigorous requirements be imposed.</p>	<p>For the purposes of Code Standard 18, the only requirement the Committee considered to be of relevance was insistence by the relevant body that its members comply with a CPD programme. The Committee considered the approach taken was appropriate.</p>

Issue raised	Response
<p>Should the requirement to keep records under CS 17 instead be expressed in a generic fashion in order to avoid capturing inadvertent administrative breaches that are of no consequence?</p>	<p>The Committee agreed that it was appropriate to provide more flexibility in the manner in which records needed to be kept under Code Standard 18, in order to avoid the prospect of non-substantive technical breaches occurring. The key principle for AFAs to abide by is that records must be in the form suitable for demonstrating compliance with the Code Standard, and this is now reflected in Code Standard 18.</p>
<p>It was suggested that CS 17 should not impose continuing education requirements for services an AFA intends to provide. Rather, it should only apply on commencing to provide those services.</p>	<p>Code Standard 18 allows AFAs the flexibility to undertake continuing professional development in relation to services the AFA either currently provides, or intends to provide. It would be unduly restrictive if training undertaken by AFAs were only able to count towards satisfying the requirements of Code Standard 18 if their training related to services the AFA was currently providing. The Committee felt it was more appropriate to encourage AFAs to undertake training in relation to services they intend to provide, without that training needing to be undertaken in addition to the minimum requirements of Code Standard 18.</p>

Issue raised	Response
Competence Alternatives Schedule	
Competence Alternative Schedule: General Comments	
<p>Should Chartered Secretaries receive relief under the Code?</p>	<p>Given the focus of the Act’s restrictions on financial adviser services provided to retail clients, the Committee did not consider it appropriate to grant specific recognition to chartered secretaries. Whilst strong submissions were made on behalf of that designation, and the Committee had no doubt as to the quality of the requirements for becoming a chartered secretary, the Committee was not satisfied there was a sufficient correlation between those requirements, and the skill set necessary to provide personalised services for retail clients, to warrant relief.</p>
<p>Should the Code cater for overseas qualifications, other than simply relying on mutual recognition or exemption powers? Should a body such as ETITO be given express authority to recognise overseas qualifications for the purpose of recognition for authorisation purposes?</p>	<p>The Committee had considerable sympathy for those arguing that overseas qualifications should be given some recognition under the Code. In many cases, the Committee accepts that overseas qualifications will have been attained at a much higher level than the Level 5 National Certificate. However, the diplomas already recognised in the Competence Alternatives Schedule, and the Level 5 National Certificate Unit Standards, are very New Zealand specific. The Committee was not confident any overseas qualifications would provide a sufficient grounding in New Zealand’s tax system, superannuation and KiwiSaver arrangements and general regulatory environment impacting on financial products to warrant recognition being given in the Code against any of the Standard Sets. Providing recognition would risk compromising the integrity of the standards imposed as a consequence. However, the Committee understands that there are mutual recognition options available and ETITO itself is able to directly recognise relevant standards set by international counterparts (such as the IBSA in Australia).</p> <p>The Committee understands that ETITO is currently working towards identifying appropriate</p>

Issue raised	Response
	<p>mechanisms for some recognition being given to qualifications from other jurisdictions. These mechanisms would enable those qualifications to at least be recognised in part against components of the Unit Standards comprising the Level 5 National Certificate. However, any changes are unlikely to be effected prior to 1 July 2011.</p>
<p>Should there be an avenue for appeal where particular qualifications have been obtained overseas to avoid the need for additional study and the associated cost in time and money?</p>	<p>Providing an avenue for appeal is beyond the powers of the Committee to include in the Code. The option available for applicants is to seek an exemption from the Securities Commission.</p>
<p>Is there to be any relief for advisers part way through recognised alternative qualifications?</p>	<p>The Committee was unable to identify a suitably robust approach to recognising achievements of those part way through attaining any of the alternative qualifications specified. Those who are part way through may be able to seek exemption relief from the Securities Commission, where the components of the qualification that they have already attained are sufficient to cover all of the material specified in the relevant Standard Set. It was not considered appropriate to adopt a more granular approach to recognising specific papers forming part of various qualifications, beyond the limited extent provided for in the alternative qualifications and designations set out in the Competence Alternatives Schedule in relation to Standard Set E.</p>
<p>Should the Code allow for a class of provisional AFAs to cover those in training who can provide retail personalised adviser services provided they have: attained Unit Set Standards A and B, are employees or nominated representatives of QFEs, are supervised/mentored by an AFA, and who attain Unit Standard Sets C and D within one year of attaining their professional authorisation?</p>	<p>The Committee considered this issue at length, both within the Committee itself and with various external stakeholders who raised the issue as being of concern to them. The Committee also considered the limitations placed on the scope of activities that will constitute 'financial advice' when the Act was finalised at the end of June. On balance, it was felt that these limitations provide a sufficient opportunity for apprentice advisers to operate without needing a separate classification. Regardless, if a 'provisional' class of AFA were created, the Committee considered that extensive disclosures would need to be imposed in order to ensure the objectives of the Act were not undermined through such a classification.</p>

Issue raised	Response
	<p>It seemed likely that the extent of those disclosures would render the classification unattractive. The Committee determined on balance not to pursue a ‘provisional’ classification in the Code, at least in the initial version.</p> <p>The Committee understands that ETITO will shortly be issuing guidelines as to how new advisers entering the industry after June 2011 may satisfy the requirement to provide valid evidence to meet the standards in Standard Set C. The Committee notes that from 1 July 2011, individuals who have yet to attain authorisation will be unable to make a recommendation or give an opinion to a retail client in relation to acquiring or disposing of a category 1 product, although they will be able to provide guidance and pass on information and financial advice from an AFA.</p>
<p>Should the Competence Alternatives Schedule instead break down the currently recognised qualifications into the papers relevant to each Standard Set? This would allow for more targeted relief, and give recognition for some elements of alternative education paths which otherwise count for nothing under the Code.</p>	<p>The Committee considered that that integrity of the recognition approach taken would be compromised by adopting the granular approach suggested. The Standard Sets comprising the Level 5 National Certificate were largely viewed as a package, rendering such a granular approach inappropriate.</p>
<p>A number of submitters have expressed concern or disappointment with the fact that experience is not taken into account</p>	<p>The Committee was unable to identify a reliable basis for recognising past experience without compromising the integrity of the approach taken. The Committee’s expectation is that those with experience who are competent in all that they do and with a good knowledge base, who do not possess qualifications or designations that provide them with full recognition relief under the Competence Alternatives Schedule, should be well placed to pass the relevant Units in the Level 5 National Certificate. However, the Code itself cannot assume this will be the case.</p>

Issue raised	Response
<p>Should CFPs without the Massey or Waikato Diploma receive the same relief as CFPs with the Diploma?</p>	<p>All CFPs have been granted relief against Standard Set A and Standard Set C, recognising the quality of the CFP programme. Standard Set D, however, is a knowledge based Standard Set, for which the Committee considered (on advice) that possession of the CFP designation alone was insufficient to warrant relief.</p>
<p>Is the inclusion of the alternative qualification: 'Certificate in Financial Services from Adviserlink Learning Limited' providing AFAs with the opportunity for a short cut in terms of compliance?</p>	<p>The Committee was comfortable with the appropriateness of the limited relief provided for the Adviserlink Certificate.</p>
<p>Can the 'eligibility sunset' mechanism be further defined and explained?</p>	<p>The eligibility sunset mechanism has again been clarified. The meaning of the term has now been spelled out as a final bullet point to Code Standard 16 and cross referenced in the heading to the Competence Alternatives Schedule. The overall impact of the eligibility sunset mechanism has not changed over the course of the various drafts of the Code. On each occasion, the mechanism has required the qualification, paper or designation in question to have been fully attained at the time the person seeks authorisation, although the Committee notes that a number of submitters still misinterpret the mechanism as contemplated in the first draft of the Code. To provide further clarity, in the final draft of the Code, the sunset date has been specified as 1 January 2014 in the body of the Code itself, as opposed to referring to an unspecified date three years in the future.</p>
<p>What proof is required in relation to attainment of the alternative qualifications and designations listed in the competence alternatives schedule? Should 'attainment' be further defined?</p>	<p>This is an administrative query, that will be handled at the time a person applies for authorisation. The Committee's understanding is that some form of documentary evidence will need to be uploaded in order to verify an applicant's credentials.</p>

Issue raised	Response
Unit Standard Set A	
Should those who have received overseas qualifications be granted relief from Standard Set A?	Standard Set A is concerned with the New Zealand financial services and advice environment. Recognition of overseas qualifications would be inappropriate.
Should those who are members of the Fellow of New Zealand Society of Actuaries (FNZSA) be granted relief from Standard Set A?	The Committee anticipates that most fellows of the New Zealand Society of Actuaries will possess a qualification that will enable them to gain relief from Standard Set A regardless. The Committee could see no basis for recognising the designation on its own, notwithstanding the high regard in which that designation is held.
Should FINSIA and/or Kaplan qualifications be recognised for relief under Standard Set A?	Please refer to our earlier responses in relation to overseas qualifications.
Should any/all of the following papers be included for relief under Standard Set A: 405N The New Zealand Stockmarkets, 508N Securities Law, Stock Exchange and Market Regulation in New Zealand and FIN229 Futures and Options Markets and Trading?	NZFMA accredited individuals, NZX Advisors, NZX Associate Advisors and holders of the NZSE diploma or NZX diploma already get recognition against Standard Set A. Recognition of the specified set of papers was not considered appropriate given the broad coverage of Standard Set A.
Unit Standard Set B	
Should CLUs and CFPs who are IFA members receive relief from Standard Set B?	The Committee did not consider it appropriate to grant relief for any person against Standard Set B. The Committee sees it as an essential base minimum standard for anyone holding an AFA designation to have adequately demonstrated knowledge of both the Code and relevant consumer protection legislation.
Does Standard Set B set a standard for compliance by AFAs that is too high or outside the Code Committee's powers in relation to the equivalent standards of other professions?	The Committee was comfortable that it was entirely appropriate to assist on all AFAs having a minimum acceptable standard of knowledge of the Code of Professional Conduct under which they must operate, as well as relevant consumer protection legislation. To do otherwise would have been to leave a significant gap in the consumer protection afforded by the Code, and risked undermining the objective of encouraging consumer confidence in the

Issue raised	Response
professionalism and integrity of financial advisers.	
Unit Standard Set C	
Should AFPs and ALUs, who have a minimum of 10 years industry experience, who have completed the Graduate Diploma in Business Studies (Personal Financial Planning or Personal Risk Management) and the two year mentoring period, subject to the eligibility sunset, be exempt from Standard Set C?	The Committee did not consider any level of attainment below CFP or CLU status should be regarded as sufficient to grant recognition against Standard Set C.
Should those who have gone through the process required to become CFPs receive relief from Standard Set C, even if they chose not to pursue the designation?	The Committee did not see that there was any reliable basis for recognising the achievements of those who had not actually attained a designation specified in the Competence Alternatives Schedule, be it CFP or otherwise. The only reliable basis for being confident that an individual has gone through the processes required with sufficient rigour to be able to attain the relevant designation is for the designation to have actually been attained.
Should those who are members of the Fellow of New Zealand Society of Actuaries (FNZSA) be granted relief from Standard Set C?	The Committee was not satisfied that there was anything inherent in the requirements to attain FNZSA status to provide confidence that every holder of that designation would have gone through a process that was appropriate to warrant recognition against this Standard Set.
Should Chartered Secretaries receive relief under Standard Set C?	Given the focus of the Act's restrictions on financial adviser services provided to retail clients, the Committee did not consider it appropriate to grant specific recognition to chartered secretaries. Whilst strong submissions were made on behalf of that designation, and the Committee had no doubt as to the quality of the requirements for becoming a chartered secretary, the Committee was not satisfied there was a sufficient correlation between those requirements and the skill set necessary to provide personalised services for retail clients to warrant relief.

Issue raised	Response
Should the requirements of Standard Set C be reduced in order to make its attainment available to a wider range of advisers?	The Committee understands that ETITO will shortly be issuing guidelines as to how non-client-facing individuals may satisfy the requirement to provide valid evidence to meet the standards in Standard Set C.
Can the requirement to submit three client files to evaluation under Standard Set C be clarified in relation to how this is to occur in relation to corporate structures which utilise a paraplanning unit where paraplanners have no contact with the client?	See previous response.
Should relief for NZX Advisors under Standard Set C be increased beyond those who hold the NZX Diploma?	The NZX diploma is an academic qualification. Standard Set C involves practical demonstration of competence to deliver financial adviser services. The Committee did not consider it would be appropriate to extend recognition to include holders of the qualification alone, without the relevant designation.
Should those who have completed the mortgage broking course provided by Adviserlink, Sovereign, Mike Pero and Allied Kiwi, and who have more than two years of practical experience be granted relief from Standard Set C?	The Committee did not consider that relief on this basis could be warranted without compromising the integrity of the minimum standard specified.
Should those who have completed the Diploma in Personal Financial Planning (Waikato or Massey) be granted relief under Standard Set C?	The Diploma is an academic qualification. Standard Set C involves practical demonstration of competence to deliver financial adviser services. The Committee did not consider it would be appropriate to extend recognition to include holders of the qualification alone, without the relevant designation.

Issue raised	Response
<p>Can those individuals engaged by financial service providers who are solely concerned with workplace savings arrangements be given relief against Standard Set Set?</p> <p>The concern was raised that such individuals may be unable to build up the client file evidence sufficient to enable them to satisfy Standard Set C.</p>	<p>The mechanics of attaining Standard Set C is something that is beyond the powers of the Code Committee. As mentioned earlier in this issues paper, the Committee understands that ETITO will make available guidance to support such individuals to identify appropriate sources of evidence.</p> <p>Given the specific limited exemption given under the Act, the Committee did not consider it appropriate to provide targeted relief in relation to specific categories of financial product. If relief is required as a matter of practice, the appropriate mechanism in the Act would be for the applicant organisation to seek an exemption from the Securities Commission.</p>

Unit Standard Set D

<p>Should CFPs be granted relief under Standard Set D, where they have experience and a good performance record, but have not completed any of the alternative qualifications currently listed, given that CFP is an internationally recognised designation overseen by the International Financial Planning Standards Board?</p> <p>Submitters are concerned that some CFPs may simply retire if they are required to complete further studies to prove competence.</p>	<p>Standard Set D is an academic skill set. The only basis for granting relief against Standard Set D is accordingly a specified qualification, with a designation on its own being inadequate to demonstrate a sufficient level of knowledge in this regard. The only designation that the Committee considered provided an adequate assurance as to academic competence was the CFA Charterholder designation.</p>
<p>Should those who have obtained CFP status overseas be granted relief under Standard Set D?</p>	<p>The Committee saw no basis for granting relief against Standard Set D for those who have attained CFP status overseas.</p>
<p>Should those who have completed the Certificate in Financial Services from Adviserlink Learning Limited receive relief in relation to Standard Set D?</p>	<p>The Committee considered that the Adviserlink Certificate was not set at a sufficiently high level to warrant relief against Standard Set D.</p>
<p>Is there to be any relief for advisers part way through recognised alternative qualifications or designations?</p>	<p>See earlier response in relation to this issue.</p>

Issue raised	Response
<p>Should those who are members of the Fellow of New Zealand Society of Actuaries (FNZSA) be granted relief from Standard Set D?</p>	<p>The Committee was not satisfied that there was anything inherent in the requirements to attain FNZSA status to provide confidence that every holder of that designation would have gone through a process that was appropriate to warrant recognition against this Standard Set.</p>
<p>Should FINSIA and/or Kaplan qualifications be recognised for relief under Standard Set D?</p>	<p>See earlier response in relation to recognition of foreign qualifications.</p>
<p>Should AFPs, who have completed four papers from Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University), be exempt from Standard Set D to ensure consistency with Standard Set E?</p>	<p>Given the distinction made in the Act between category 1 products and category 2 products, the Committee did not consider that consistency of recognition against Standard Set D with recognition against Standard Set E was necessary. Insistence on the full Diploma was considered appropriate in the context of Standard Set D.</p>
<p>Should relief for NZX Advisors under Standard Set D be increased beyond those who hold the NZX Diploma to all those with NZX Advisor status?</p>	<p>Standard Set D is an academic skill set. The only basis for granting relief against Standard Set D is accordingly a specified qualification, with a designation on its own being inadequate to demonstrate a sufficient level of knowledge in this regard. The only designation that the Committee considered provided an adequate assurance as to academic competence was the CFA Charterholder designation.</p>
<p>Unit Standard Set E</p>	
<p>Should the qualification of New Zealand Diploma in Life Assurance be deleted as an alternative designation from Standard Set E, in light of the fact that it is just one of three qualifications accepted towards becoming a CLU and those other two qualifications are not included (and CLUs, without restriction, be granted relief from Standard Set E)? Submitters noted that this particular qualification to be the ‘easiest’/’weakest’ of the three qualifications accepted towards becoming a CLU, and there are no CLUs who do not possess one of the 3 qualification options.</p>	<p>Recognition of various qualifications held by those with a CLU designation has been included in the updated list of alternative designations in the Competence Alternative Schedule.</p>

Issue raised	Response
<p>Should those who have obtained CFP status overseas and have received a certificate from NZQA confirming the overseas qualification is equivalent to at least the Level 5 Certificate, be granted relief under Standard Set E?</p>	<p>Unless the confirmation provided was at a sufficient level to provide a cross credit recognition (so that the individual was, in effect, awarded Standard Set E) the Committee considered that it would be inappropriate for the Code to provide such recognition.</p>
<p>Should those who have completed the Certificate in Financial Services from Adviserlink Learning Limited receive relief in relation to Standard Set E?</p>	<p>No. The Committee considered that the Adviserlink certificate was not set at a sufficiently high level to warrant relief against Standard Set E.</p>
<p>Should the Waikato Diploma in Financial Planning and/or the Waikato Graduate Diploma in Financial Planning receive relief in relation to Standard Set E, due to the fact both contain a paper on risk?</p>	<p>Advice received by the Committee indicated that it would be inappropriate to recognise the Waikato diploma against Standard Set E.</p>
<p>Should the alternative qualifications and designations in Standard Set E be reduced to avoid the Code being potentially opened up to all local advisers in the insurance sector? Concern was expressed that the NZ Diploma in Life Assurance was insufficiently robust to warrant comparability with Unit Standard Set E.</p>	<p>The Committee has endeavoured to address this concern by linking the qualification in question to the CLU designation. In the context, the Committee was satisfied that the combination of the CLU designation together with the academic qualifications identified were sufficient to warrant relief against Standard Set E.</p>

Issue raised	Response
Definitions Schedule	
<p>Should definitions adopted from the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008 be referenced to avoid confusion?</p>	<p>The definitions included in the Code have been reviewed for consistency against the Act. The Committee considered that it would be unhelpful to effectively require anyone wishing to review the Code to have a copy of the Act on hand. The only exception to this is in relation to the definition of wholesale client, where the Committee felt that it would be disproportionate to repeat the Act's complex definition of that term in the body of the Code.</p>
<p>Should the definition of 'professional body' be expanded to include compliance by members with professional standards and enforcement of those standards through a disciplinary process?</p>	<p>For the purposes of Code Standard 18, the only requirement the Committee considered to be of relevance was insistence by the relevant body that its members comply with a specified CPD programme. The Committee considered the approach taken was appropriate.</p>
<p>Should the definition of 'professional body' exclude the requirement for 'continuing professional development or training requirements specified by the organisation', in light of the fact that certain alternative designations recognised in the competence alternatives schedule do not require compliance with any CPD requirement?</p>	<p>The point of identifying professional bodies in the Code was to ensure that there would be a wide range of bodies available to provide continuing professional training. This is different to the alternative designations recognised in the Competence Alternative Schedule, which have been included for a different purpose.</p>
<p>Should the definition of 'complaint' include a requirement for the complaint to be made in writing?</p>	<p>The Committee considered that insisting on complaints being made in writing risked creating reluctance amongst clients to complain. The Committee considered that there should be as few impediments as possible put in the way of a client's legitimate concerns being treated as a complaint.</p>
<p>Should the definition of 'complaint' include a materiality test?</p>	<p>The definition of complaint has been adjusted so as to exclude complaints that are trivial or vexatious, as well as including a mechanism for AFAs to seek clarification as to whether or not the client is actually wanting to make a formal complaint when an expression of dissatisfaction is received.</p>

Issue raised	Response
<p>Can 'land investment product', in relation to a category 1 product, be further defined in terms of what it encompasses? For example, would it cover individuals advising on farm sales?</p>	<p>The Committee is unable to provide a definition of land investment product. This term is to be prescribed by regulation. As at the time of finalising the draft Code for recommending to the Commissioner, no indication had been given to the likely scope of the concept.</p>
<p>Can 'class service' be further explained as to whether the advice provided as part of a class service is considered advice of an entity or advice of the individual adviser who is part of that entity?</p>	<p>This query is a matter of legislative interpretation. It is beyond the powers of the Committee to address that concern in the Code itself.</p>
<p>The definition of 'personalised service' needs to be updated to reflect the latest changes to the Act.</p>	<p>The definition has been updated to reflect the final wording in the Act.</p>