



Submission to the

Code Committee for Financial Advisers

on the

Draft Code of Professional Conduct for
Authorised Financial Advisers

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SUBMISSION BY THE NEW ZEALAND BANKERS' ASSOCIATION TO THE CODE COMMITTEE FOR FINANCIAL ADVISERS ON THE DRAFT CODE OF PROFESSIONAL CONDUCT FOR AUTHORISED FINANCIAL ADVISERS

1. Thank you for the opportunity to make a written submission on the draft Code of Professional Conduct for Authorised Financial Advisers (the Code).
2. This submission is the collective view of the New Zealand Bankers' Association (the NZBA) being the following nine member banks:
 - ANZ New Zealand Limited
 - ASB Bank Limited
 - Bank of New Zealand
 - Citibank, N.A.
 - Hongkong and Shanghai Banking Corporation Limited
 - Kiwibank Limited
 - TSB Bank Limited
 - Rabobank New Zealand Limited
 - Westpac New Zealand Limited.
3. The NZBA commends the work of the Code Committee for Financial Advisers (the Committee) for its work to make the Code practical and workable. We support efforts to increase public confidence in the financial advisory sector, including requiring minimum standards of conduct for Authorised Financial Advisers (AFAs).
4. The NZBA invites the Committee to test its thinking on further drafting with NZBA member banks before finalising the Code, if that would assist. In addition, we would be pleased to answer any questions arising from this submission.

CODE STANDARD 1

An *AFA* must place the interests of the *client* first, and must act with integrity.

5. We appreciate the clarification introduced under Standard 1, which now specifies that an AFA is not required to consider financial products or matters outside the scope of the AFA's services. However, we remain concerned that the standard as drafted is too wide.
6. The requirement that an AFA must place the interests of the client first still does not recognise that an AFA may have legitimate competing responsibilities. For example, it is possible that Standard 1 may require an AFA to act against an express employer instruction or contractual term. An even more difficult conflict would arise for an AFA who is also the director of an employer company, in reconciling fiduciary duties owed to the company with the requirements of Standard 1.
7. The NZBA submits that a 'reasonableness' element be introduced to Standard 1, such as has been included in the equivalent Australian proposal. This would enable conflicts of interest such as those described to be managed appropriately.

CODE STANDARD 2

An *AFA* must not do anything or make an omission that would bring or would be likely to bring the financial advisory industry into disrepute.

8. Standard 2 has been expanded to include conduct that would be "likely to" bring the industry into disrepute. The NZBA submits that this expansion may create uncertainty as to its application, and would prefer to see further guidance as to its application.

CODE STANDARD 3

An *AFA* must not state or imply that the *AFA* 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 *AFA* or the services provided are not independent.

9. In the NZBA's submission on the first draft of the Code, we commented that:

The reference to salary or wages should be expanded to include fees paid to a contractor that are not determined by "volume or other targets". The receipt of these fees should not affect an AFA's ability to describe the AFA or his or her services as "independent". This is because the payment of a fee by itself is not thought to affect independence. This is a point which was noted by the Commissioner of Financial Advisers in a recent MED Financial Sector meeting. The Commissioner stated that our market may not be ready to move to customer paid advisers only, which is the reason for disclosure of fees as the regulatory solution to the concerns around independence and fees.

10. The NZBA's submission was not addressed in the redrafted Code or in the response to major submission points and we therefore reiterate this submission.

CODE STANDARD 4

An *AFA* must not borrow from or lend to a *retail client*.

11. The previous drafting of this standard referred to 'money or valuable property'. In the absence of this wording, the NZBA submits that, for the sake of clarity, these words should be reinstated. Alternatively, some reference to the exclusion of insignificant or remote activity should be made.

CODE STANDARD 7

An *AFA* must ensure each *retail client* is provided sufficient written information to enable the client to make an informed decision about whether to use the *AFA's financial adviser services* and/or to follow any *financial advice* provided by the *AFA*.

12. The NZBA understands that Standard 7 has been drafted to accommodate the disclosure regulations in whatever form they eventually take. These are currently being prepared by the Ministry of Economic Development. However, as drafted, Standard 7 has the potential to create additional disclosure requirements to those under the proposed regulations. The NZBA is concerned that the requirement for additional information may create consumer confusion because they may receive two different disclosure documents from an AFA. AFAs may similarly be confused as to how to interpret the principles-based guidelines under the Code.
13. The requirement in Standard 7 also conflicts with the policy principles adopted by Cabinet in its Cabinet Paper on Disclosure Regulations [EGI (10) 14 (12 February 2010)]. These call for simple, easy to understand disclosures that are easily comparable.
14. The NZBA urges the Committee to liaise with the Ministry of Economic Development and to develop the AFA regulations so this Code Standard is complementary (or may not be required at all).
15. If Standard 7 remains, the NZBA submits consideration should be given to limiting its application to services that only an AFA can provide: i.e. providing investment planning services, discretionary investment management services or personalised advice on Category 1 products not issued by the group Qualifying Financial Entity (QFE) by which the AFA is employed. Customers will be confused if they receive different disclosure for the same products/services depending on whom they are talking to. Regulatory neutrality should apply and advisers should not be discouraged from becoming AFAs.

CODE STANDARD 8

When providing a *personalised service* to a *retail client* an *AFA* must take reasonable steps to ensure that the *personalised service* is suitable for the client.

The *AFA* must also provide a written explanation to the client of the basis for any *financial advice* provided as part of the *personalised service*, and of the risks and potential benefits involved in following that financial advice.

16. As noted above in relation to Standard 7, the NZBA considers that the suitability requirements and the requirements for written information in Standard 8 should only apply to services that only an AFA can provide (see above, paragraph 15). Further, while we agree that a written explanation should be given for investment planning services, the NZBA submits that it should be optional, not mandated, for personalised advice on Category 1 products not issued by the group QFE. There should be no requirements for written explanations for either Category 2 products or class advice.
17. Standard 8 is also inappropriate for some of the services which an AFA may provide. For example, AFAs may advise on the rollover of term deposits, which may be effected over the telephone. In this type of circumstance a full written explanation is unnecessary.
18. In addition, to avoid ambiguity, it should be clearly stated that both parts of Standard 8 should clearly relate to retail clients only. We would also suggest that this Standard is divided into two standards: one for suitability and another for written requirements.

CODE STANDARD 9

When providing a *class service* to a *retail client*, an *AFA* must provide an appropriate statement as to the limitations of the service provided.

19. The explanation under Standard 9 provides:

When providing a class service to a client, the AFA must take reasonable steps to ensure the client is aware that the service does not take into account the client's financial situation or any of the client's financial goals.

20. The NZBA submits that this explanation should be modified. 'Class services' provided by an AFA may in fact take into account customers' financial situations. Generic risk calculators used by financial service providers, and likely to be used by AFAs relating to Category 1 products, are based on information inputted about the client's financial situation and goals. These calculators are 'class services' because the customer using them is not 'readily identifiable'.
21. The NZBA also submits that it should be clarified that a statement made under Standard 9 can be provided orally as well as in writing and electronically where the customer agrees to accept and has the capacity to download. This will prevent vast quantities of paper being transmitted to customers when class advice is offered on any product (simple or complex).

CODE STANDARD 11

An AFA must record in writing adequate information about the *financial adviser services* he or she provides.

22. The NZBA submits this standard should explicitly state that it only applies to retail clients. Further as noted above in relation to Standard 8, the NZBA considers that Standard 11 should only be mandated for investment planning services to retail clients and should be optional for personalised advice to retail clients on Category 1 non-group QFE issued products.
23. The NZBA also notes that relief has been provided for AFAs who are employees, so that they need only take reasonable steps to ensure that relevant measures are taken by their employer. The NZBA submits that there should also be corresponding relief for AFAs that look to another group company, rather than their employer, to take relevant measures.
24. Customers should be able to elect how the 'adequate information' is received, including: in writing, orally, mailed in electronic format (again, where the customer agrees that they have the capacity to download the information) or through diversion (orally or electronically) to a website that contains the prescribed information.

CODE STANDARD 15

To be an *AFA*, a *financial adviser* must attain the *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 *AFA* is deemed to have attained a particular *Unit Standard Set* where the *AFA* has attained an alternative qualification or designation to that *Unit Standard Set* specified in the *Code's* Competence Alternatives Schedule.

Advisers in training

25. An appropriate model for allowing potential AFAs to satisfy requirements under Unit Standard Set C is not provided for in the Code. In its 'Response to Major Submission Points' the Committee commented that providing specific relief for new or supervised advisers in training might undermine the 'AFA brand'.
26. The Committee has suggested the alternative that the process of mentoring and supervising an adviser in training could be carried out without a specific class of provisional AFAs being developed but with an adviser in training working with an AFA and developing advice that would be finalised and signed off by the AFA. The risks of this proposal are that:
- different AFAs may take different approaches to mentoring and supervising the adviser in training and disclosing that the adviser is in training, and
 - AFAs may be unwilling to take on mentoring and supervision of advisers in training if they have sole responsibility for the adviser's actions.

There is also a significant logistic difficulty presented by requiring a supervising AFA to accompany an adviser in training.

27. The NZBA previously submitted that:
- the Code should allow for 'provisional' AFAs who can provide a full array of financial adviser services provided they:*
- *have attained Unit Standard Sets A and B*
 - *are employed by a QFE or another AFA, and*

- *attain Unit Standard Sets C and D within one year of attaining their provisional authorisation.*

Provisional AFAs would be supervised by AFAs, but each provisional AFA would be liable under the Financial Advisers Act for their financial adviser services. Depending on the final disclosure requirements set out in regulations, NZBA would support these provisional AFAs having to disclose to clients that they have not yet attained all of the qualifications required by the Code. The Code Committee could issue guidance for provisional AFAs and those who supervise them.

There is a clear need to ensure that new advisers are able to enter the profession. The NZBA submits that, as long as there is transparency to the public about the supervised adviser in training status, this should be acceptable.

28. The NZBA would be pleased to work with the Committee further to develop a proposal for advisers in training. Some options suggested by member banks are:

[Option A: Supervision model](#)

The Code should allow for a class of provisional AFAs in training who can provide retail personalised financial adviser services provided they:

- have attained Standard Sets A and B
- are employees of nominated representatives of QFEs (because QFEs are required to supervise their AFAs and are liable for them)
- are supervised / mentored by an AFA, and
- attain Standards Sets C and D, within one year of attaining provisional authorisation.

The Ministry of Economic Development could set specific disclosure requirements for provisional AFAs under the regulations (e.g. about their status as provisional advisers). If provisional authorisation is adopted the Committee should issue guidance on the process for mentoring and supervising provisional AFAs. This guidance could be completed by July 2011.

Option B: Where there are internal Designated Assessment Organisation (DAO) assessors only

Advisers in training should undergo prior internal training to ensure that the trainee AFA meets the same internal standards as required of a practicing AFA. This would include role specific training on products and services, risk and compliance as well as requiring a demonstration of core competence in the regulatory compliance arena. This would include role specific training on products and services, risk and compliance as well as demonstrating core knowledge of the regulatory compliance arena.

Each trainee would be subject to role play testing using Standard Set C as a benchmark that is assessed by internal DAO assessors before being recommended that the candidate meets the standards of a trainee AFA to the relevant governing body as a trainee AFA by an appropriate senior manager. Once this standard has been met then the trainee would be required to gain further business experience before being allowed on accompanied visits with a qualified AFA. Each trainee AFA's disclosure document would clearly state the level of experience that trainee has had, including their qualifications (as is an existing requirement) and would also show that 100% of that trainee AFAs work is checked internally for completeness, accuracy and validity prior to any recommendation being submitted to the client.

Competence Alternatives Schedule

Massey/Waikato Diplomas

29. Unit Standard Set D of the draft Code recognises Massey and Waikato University Diplomas in Personal Financial Management as alternative qualifications. The NZBA submits that Unit Standard Set C should also recognise these qualifications. Unit Standard Set C focuses on professional practice advice and compliance with legislation. The practical content of these diplomas corresponds well with the six step planning process. Diploma holders could still be subject to the assessor process. These qualifications should certainly be recognised by Unit Standard Set C, especially considering that Certified Financial Planners and Chartered Life

Underwriters, who may not have undertaken further study, are recognised at that level.

Overseas Qualifications

30. The Committee said in its response to major submission points that “requirements of the Standard Sets are in general too New Zealand specific to justify foreign relief without compromising the integrity of the required standards”.
31. While the NZBA supports the requirement that AFAs must have a strong understanding of the legislative, regulatory and economic conditions specific to New Zealand, the theoretical underpinnings of financial advice are common across all financial markets. In addition, there are other regulatory regimes which set competency standards that are at least equivalent if not more stringent than those required in New Zealand. Standards 13, 16 and 17 place sufficient professional onus on prospective AFAs who have qualified under these regimes requiring them to ensure that they are familiar with the New Zealand specific context in which they operate.
32. The NZBA urges the Committee to reconsider its stance on overseas qualifications for Standard Sets A, D and E. We reiterate our previous submission that the following overseas regulatory competency regimes should be accepted as providing competence alternatives:

National Certificate in Financial Services (Financial Advice) (Level 5). <i>Unit Standard Sets</i>	Alternative Qualification or Designation
	For the purposes of the <i>Code</i> , an AFA who has attained one of the following qualifications is treated as having satisfied the requirements of the specified <i>Unit Standard</i>

<p>Unit Standard Set A (Comprising <i>units</i> 24755, 25642, and 25643) Knowledge of the industry, financial markets, the advice process and products</p>	<ul style="list-style-type: none"> • Any Australian qualification relevant to an advisor's activities that awards ASIC RG146 Financial Planning compliance. • Any British qualification that satisfies the Financial Services Authority requirements of the United Kingdom. Specifically, qualifications that are relevant to an advisor's activities that meet the the UK's Financial Services Skill Council Appropriate Examination Standards. • Any South African qualification relevant to an advisor's activities administered by approved examination bodies on behalf of the Financial Services Board (refer FAIS/Regulatory Examinations)
<p>Unit Standard Set B (Comprising <i>unit</i> 26360) Knowledge of the Code and consumer protection laws</p>	<p>No recognised alternative.</p>
<p>Unit Standard Set C (Comprising <i>units</i> 25650, 25651, 25652, and 25653) Professional practice advice process and complying with legislation</p>	<p>No change</p>
<p>Unit Standard Set D (Comprising <i>units</i> 25648 and 25649) Investment Specialist Standards</p>	<ul style="list-style-type: none"> • Any Australian qualification relevant to an advisor's activities that awards ASIC RG146 Financial Planning compliance • Any British qualification that satisfies the Financial Services Authority requirements of the United Kingdom. Specifically, qualifications that are relevant to investment financial planning that meet the the UK's Financial Services Skill Council Appropriate Examination Standards. • Any South African qualification relevant to investment financial planning administered by approved examination bodies on behalf of the Financial Services Board
<p>Unit Standard Set E (Comprising either <i>units</i> 25644 and 25645, or <i>units</i> 25646 and 25647) Insurance Specialist Standards OR Residential Property</p>	<ul style="list-style-type: none"> • Any Australian qualification that awards ASIC RG146 Financial Planning compliance • Any British qualification that satisfies the Financial Services Authority requirements of the United Kingdom. Specifically, qualifications that are relevant to insurance or mortgage financial planning that meet the the UK's Financial Services Skill Council Appropriate Examination Standards.

Lending Specialist Standards	<ul style="list-style-type: none"> Any South African qualification relevant to insurance or mortgage financial planning administered by approved examination bodies on behalf of the Financial Services Board
<ul style="list-style-type: none"> Please note that AFAs with the above qualifications would still be required to demonstrate (see Code Standard 13) having a reasonable level of knowledge of the New Zealand legislative, regulatory, and economic environment. 	

NZX Adviser Status

33. The NZBA also submits that those with NZX Adviser status should be exempt from undertaking Standard Sets C and D. NZX Adviser designation is awarded when investors have a full understanding of the investment environment (equities and fixed interest securities). The practical part of the assessment has also been addressed by the NZX Adviser status being accepted as an alternative designation for Standard Set C.

DEFINITIONS

34. NZBA strongly recommends the definitions in the glossary of the Code that are either lifted directly from the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or relevant sections in the legislation are referenced. In places in the Code, the legislative definitions are summarised or paraphrased, which could create confusion.