

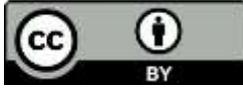
Code of Professional Conduct for Financial Advice Services

Consultation Paper

Monday 12 March 2018

Submissions close Monday 30 April 2018

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How to be involved

How to navigate this document

This paper is 52 pages long and contains a great deal of detail. To help you navigate the paper there is a table of contents on page 5, an executive summary on page 8 and abbreviations are explained on page 7. You do not need to read and comment on the entire paper – you can focus on those particular sections that are of interest to you.

Submissions process

The Code Working Group seeks written submissions on the issues raised in this document by 5pm on Monday 30 April 2018.

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided on the consultation tab at: www.mbie.govt.nz/cwg. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission to code.secretariat@mbie.govt.nz.
- By mailing your submission to:

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the Code Working Group's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The Code Working Group intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The Code Working Group will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The Code Working Group will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the Code Working Group in the course of making a submission will only be used for the purpose of assisting in the development of the new Code of Conduct for financial advice. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the Code Working Group may publish.

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List of abbreviations

Unless the context implies otherwise, the following abbreviations are used throughout this document:

the Code	<i>Code of Professional Conduct for Financial Advice Services</i> now being prepared by the Code Working Group
AFA Code	<i>Code of Professional Conduct for Authorised Financial Advisers</i> (December 2016), published under the Financial Advisers Act 2008, which is being superseded. <u>http://www.financialadvisercode.govt.nz/assets/Code-of-Professional-Conduct-for-AFAs/161201-Code-of-Professional-Conduct-for-Authorised-Financial-Advisers.pdf</u>
CS-x	A code standard published under the AFA Code (CS-1, CS-2, etc.)
AFA, RFA, QFE	Different types of financial adviser or entity under the old regime. See <u>https://fma.govt.nz/compliance/financial-advice/types-of-financial-advisers/</u>

Unless otherwise noted, legislative references in this document are to the Financial Markets Conduct Act 2013, as would be amended by the Financial Services Legislation Amendment Bill.

Executive summary

Introduction

1. The Code Working Group seeks feedback on the key concepts and high-level approach for the Code of Professional Conduct for Financial Advice Services. The Code will apply when regulated financial advice is given to retail clients.

Regulated financial advice for retail clients

Throughout this paper, when we refer to clients, we mean retail (that is, not wholesale) clients.

Wholesale clients are generally large or sophisticated clients such as banks, investment businesses, or high-net-worth individuals who do not require or benefit from the same degree of protection as retail clients. Importantly, many clients who are seeking commercial insurance will not meet the wholesale client definition, and will therefore be retail clients who are covered by the Code.

When we refer to financial advice, we mean regulated financial advice to clients. In brief, regulated financial advice is making a recommendation or opinion about acquiring or disposing of a financial advice product, or designing a financial* plan, other than for certain specified exclusions.

A financial advice product is a debt security, an equity security, a managed investment product, a derivative, a DIMS facility, a contract of insurance, a consumer credit contract, or a renewal or variation of an existing financial advice product.

* see “Assumptions”, in the “Background” section, on page 16

2. Our approach in this paper is first to address the overarching theme of the Code: “good advice outcomes” for clients. Then we consider each category of minimum standards listed in the proposed legislation:
 - ethical behaviour,
 - conduct and client care,
 - general competence, knowledge, and skill that apply to all persons that give financial advice, and
 - particular competence, knowledge, and skill that apply in respect of different types of financial advice, financial advice products, or other circumstances.

Good advice outcomes

3. Our focus is client-centric. We want to provide practical minimum standards that help achieve “good advice outcomes” for clients. Those standards are to apply irrespective of how a Financial Advice Provider operates. In particular, they will apply to advice given

on behalf of the Financial Advice Provider by individuals and advice given on behalf of the Financial Advice Provider by a computer.

4. A “good advice outcome” occurs when the client is given financial advice that meets a reasonable client’s needs in the particular client’s circumstances, having regard to the nature and scope of the financial advice.
5. To achieve a good advice outcome the Financial Advice Provider must be accountable for “doing the right thing” for the client. In our view, that means:
 - considering and meeting the client’s reasonable expectations given the nature and scope of the advice, and
 - having processes, explanations and records to evidence how those expectations were considered and met, by reference to either the particular client or a generic group of clients with similar characteristics and circumstances to which it is reasonable to associate the particular client given the nature and scope of the advice.
6. We will use the concept of “good advice outcome” as an overarching theme of the Code.

Ethical behaviour

7. The section on ethical behaviour explores a framework for setting minimum standards of ethical behaviour. Our objective at this stage is to seek views and ideas, rather than to make definitive proposals.
8. We propose two categories of minimum standards of ethical behaviour: advice-giving standards (that apply when financial advice is given to clients) and organisational standards (that apply on an ongoing basis to all persons who customarily give financial advice to clients).
9. We seek views on whether Financial Advice Providers should be required to have their own code of ethics so that certain matters can be tailored to the particular culture of organisations.
10. We also consider the ethical arrangements that Financial Advice Providers should have in place, including ethics training, processes for resolving ethical dilemmas, and compliance functions. We are interested in ideas that help to scale such obligations in a practical way, so that this is a reasonable and manageable compliance burden.
11. In respect of scaling obligations, a particular objective of this consultation – for all the minimum standards, not only ethical behaviour – is to understand how best the Code can ensure that compliance requirements are clear and that compliance costs are minimised. That applies in respect of all Financial Advice Providers (for example both a sole trader and a large institution).
12. The requirements needed to comply with all Code standards should be scalable based on the nature and scope of the advice that is being provided but should not vary between two businesses delivering identical advice merely based on the respective size of each Financial Advice Provider. Nevertheless, if a Financial Advice Provider’s business model relies less on its processes and more – for example – on the personal competence, knowledge, and skill (and hands-on involvement) of one or more Financial Advisers, then simpler processes and documentation should be possible. In all parts of this consultation we are interested in your suggestions for how we can make this clear in practical ways.

13. We are aware of behavioural research that suggests there are significant benefits to having timely reminders of ethical obligations. We ask for ideas for how Financial Advice Providers could put in place routines that reinforce good ethical behaviour on a day-by-day basis.

Conduct and client care

14. We propose two categories of minimum standards of conduct and client care: advice-giving standards (that apply when financial advice is given to clients) and organisational standards (that apply on an ongoing basis to all persons who customarily give financial advice to clients).
15. The advice-giving standards are based on the client care standards in the AFA Code. We seek views on how they are working and whether they need to be amended or added to.
16. We propose an organisational standard requiring the Financial Advice Provider to document how it ensures its organisational arrangements support the delivery of good advice outcomes. We seek suggestions for the guidance and explanations that could be included in the Code to help Financial Advice Providers apply this standard in a practical way. We want to hear from advice businesses of all sizes and business models, so that any documentation requirements imposed by the Code are proportionate to the way those businesses operate.
17. We also propose an organisational standard requiring the Financial Advice Provider to have processes, explanations and records to evidence how it considered the client's reasonable expectations given the nature and scope of the advice.

General competence, knowledge, and skill

18. We think that standards of "competence, knowledge, and skill" can be met through the combined expertise of the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice.
19. Our initial view is that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate:
 - the competence, knowledge, and skill to give financial advice that will deliver a good advice outcome, and
 - an up-to-date and clear understanding of the general legal, Code and consumer protection obligations relevant to giving the financial advice.
20. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider's or Financial Adviser's competence, knowledge, and skill required by the first minimum standard of general competence, knowledge, and skill is:
 - The Financial Advice Provider has in place processes, controls, and limitations to ensure the combined competence, knowledge, and skill of the Financial Advice Provider and any Financial Adviser or Nominated Representative will deliver good advice outcomes, and

- those processes, controls, and limitations are documented and regularly reviewed for effectiveness.
21. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider's or Financial Adviser's competence, knowledge, and skill required by the second minimum standard of general competence, knowledge, and skill is:
- in the case of an individual (Financial Adviser or Nominated Representative), the person has met – or has an understanding of those obligations equivalent to a person who has met – within the last three years, the requirements of a unit standard structured along the lines of current Level 5 Unit Standard 26360, or
 - in all other cases, the Financial Advice Provider has processes, controls, and limitations to ensure that the financial advice complies with those obligations, and those processes, controls, and limitations are documented and regularly reviewed for effectiveness.

Particular competence, knowledge, and skill

22. We identify two different types of financial advice for the purposes of minimum standards of particular competence, knowledge, and skill:
- product advice, and
 - financial planning.
23. We are not currently proposing to identify different types of financial advice products or other circumstances for the purposes of those minimum standards. We are interested in views on this approach.
24. We are considering as minimum standards of particular competence, knowledge, and skill that must be demonstrated when financial advice is given that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate:
- **For product advice**, the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained the New Zealand Certificate in Financial Services (Level 5). Level 5 is the reference point: the Financial Advice Provider must decide how it achieves that level in aggregate – for example by using an if-not-why-not approach. Our focus is on the outcome not the input: the client experience must be equivalent to that given by a person holding Level 5, not that each person giving the advice necessarily has that qualification.
 - **For financial planning**, the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained (i) a Bachelor's degree (at NZ Level 7 or higher) majoring in financial planning, accountancy, business, commerce, economics, finance, or management, and (ii) a qualification (possibly a Level 6 certificate) in financial planning and advice process. Again, an if-not-why-not approach may be used to demonstrate how the outcome is equivalent.
 - **In both cases**, persons who qualified under the previous regime as AFAs would be recognised as meeting the minimum standard. We ask how RFA experience could be recognised in a measurable, quantifiable way.

Introduction

Purpose of this consultation paper

25. This paper seeks feedback on the key concepts and high-level approach for drafting the Code of Professional Conduct for Financial Advice Services. The feedback will help the Code Working Group to prepare the draft Code, on which your feedback will also be sought.

Who is running this consultation?

26. This consultation is being run by the Code Working Group. We are nine individuals who were appointed by the Minister of Commerce and Consumer Affairs to draft the Code. You can read more about us at www.mbie.govt.nz/cwg.
27. We have secretariat support from the Ministry of Business Innovation and Employment, but we will draft the Code independently.

What does this consultation paper do?

28. This consultation paper sets out the preliminary thoughts of the Code Working Group on the key concepts and high-level approach that we are considering in drafting the Code.
29. It seeks information to help us draft professional conduct standards for competence, knowledge, and skill, ethical behaviour, conduct and client care, and provide for continuing professional development.
30. This paper is 52 pages long and contains a great deal of detail. To help you navigate the paper there is a table of contents on page 5, an Executive Summary on page 8 and abbreviations are explained on page 7. You do not need to read and comment on the entire paper – you can focus on those particular sections that are of interest to you.

Process and timeline

31. The timeline for the implementation of the Code is subject to progress with the legislation. The expected timeline is as follows:

Date	Activity
Early to mid-2018	Consultation on our approach to drafting the Code; gathering information, views and proposals from everyone with an interest in the Code
	Development of the draft Code

Mid-2018	Consultation on the draft Code
Mid to late 2018	Reworking the draft Code based on feedback; this may involve further consultation on specific parts of the Code
Late 2018	Submission of the draft Code to the Minister of Commerce and Consumer Affairs for approval
Late 2018	Code of Professional Conduct for Financial Advice Services approved and published
Approximately three months after the Code is approved and published	Financial Markets Authority commences transitional licensing of Financial Advice Providers
Approximately nine months after the Code is approved and published	New regime takes effect

Background

32. The rules around giving financial advice are changing. The Government has developed a new regulatory regime focused on ensuring the availability and quality of all financial advice.
33. Under the new regime, a person giving regulated financial advice to retail clients will be **subject to the Code of Professional Conduct for Financial Advice Services**.¹
34. Other key features of the new regime include the following:²
 - Any person or entity giving advice will also have to ensure the **client understands any limitations** on the nature and scope of advice.
 - All those giving financial advice (firms and individuals) will be held to **conduct and competence requirements**, and will have to give priority to the client's interests (when managing any conflict between their interests and the client's interests) and disclose certain information.
 - All regulated financial advice will come from a **licenced financial advice provider**. It will be able to be given in three ways: directly by the provider (e.g. online), through Financial Advisers and through Nominated Representatives.
 - The requirement for personalised financial advice to be given by a natural person has been removed, enabling the provision of **digital or digitally-assisted advice** (also known as robo advice, automated advice or computer-generated advice).
 - **Regulatory boundaries have been removed** to make it easier for those giving advice to respond to their clients' needs and wants (for example, the definitions of "class" and "personalised" financial advice, and "category 1" and "category 2" products have been removed).
35. The new regime is set out in the Financial Services Legislation Amendment Bill, which is currently before Parliament.³ The development of the Code is subject to that process.
36. More information about the new regime is available on the website of the Ministry of Business, Innovation and Employment.⁴

What must the Code do?

37. The Code is required to provide for minimum standards of professional conduct that must be demonstrated when regulated financial advice is given.⁵ It will apply to financial advice given to retail clients, so it must be able to accommodate a wide range of advice situations, ranging from comprehensive financial planning services to quick conversations where a recommendation is made about a particular product.

¹ Sections 431H & 431L.

² This is intended as a plain English summary only of key points. Refer to the legislation and the MBIE website for definitive detail.

³ https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_74766/financial-services-legislation-amendment-bill

⁴ <http://www.mbie.govt.nz/faareview>

⁵ Schedule 5, clause 32.

38. “Financial advice” means:⁶
- making a recommendation or giving an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product (e.g. mortgage, insurance, investments, term deposit); or
 - designing a financial plan for a person that is based on an analysis of their current and future overall financial situation (including investment needs) and the identification of their investment goals; and includes recommendations or opinions on how to realise those goals.
39. The Code *must* identify different types of financial advice, financial advice products, or other circumstances for the purpose of setting minimum standards of particular competence, knowledge, and skill, and *may* also distinguish between those types in setting minimum standards of general competence, knowledge, and skill, ethical behaviour, and conduct and client care.⁷

What is the role of the Code Working Group?

40. Our role is to prepare the draft Code in anticipation of the new regime being put in place. This involves consulting widely, including with the financial advice industry and with consumers of financial advice.⁸
41. We are required to have regard to the purposes of the financial advice regime, which include:⁹
- ensuring the **availability** of financial advice for people seeking advice;
 - ensuring the **quality** of financial advice and financial advice services;
 - promoting the **confident and informed participation** of businesses, investors, and consumers in the financial markets;
 - promoting and facilitating the development of **fair, efficient, and transparent** financial markets;
 - providing for **timely, accurate, and understandable information** to be provided to clients;
 - ensuring that **appropriate governance arrangements** apply to financial products and services;
 - avoiding unnecessary **compliance costs**; and
 - promoting **innovation and flexibility** in the financial markets.
42. We must also have regard to New Zealand’s international obligations that are relevant to financial markets or financial advice services.¹⁰

⁶ This is a summary. Refer to section 431C for the detailed definition.

⁷ Schedule 5, clause 32(3).

⁸ Schedule 5, clause 33(2).

⁹ Schedule 5, clause 33(2)(a)(i).

¹⁰ Schedule 5, clause 33(2)(a)(ii).

Assumptions

43. This consultation is occurring in parallel with the Select Committee process. We have made submissions to the Select Committee about the Code provisions and which advice situations the Code reaches.
44. As this is our primary opportunity to consult widely we have decided — for the purpose of consultation — to assume our suggestions to the Select Committee are followed. For us to assume otherwise would mean that we would lose the opportunity to consult on those aspects of our thinking in time for the drafting of the Code.
45. So we make these assumptions:
 - The Code may include statements of intent, explanatory material, guidance and examples, to be taken into account when interpreting the standards. In particular, we are consulting on the overarching theme of “good advice outcomes”.
 - In addition to the current draft provisions, the Code may provide for standards of ethical behaviour, conduct and client care that apply to a person who holds out that the person is lawfully able to give regulated financial advice to a retail client. In particular, we are consulting on ongoing advice obligations.
 - “Financial advice” also includes the following two key advice situations: (a) advice in connection with the exercise of a term of a financial advice product (for example, a decision to switch investment funds in a KiwiSaver scheme); and (b) the design of a financial plan that is not an investment plan (for example, an insurance plan).
 - The legislation applies not just to investment planning but to all financial planning. For example, we envisage a situation where a plan deals with insurance but not investment.
 - The Code can provide for standards that apply to all persons that give regulated financial advice, including the Financial Advice Provider.
 - The term “continuing professional development” is used in preference to “continuing professional training”.

Principles for drafting the Code

Good advice outcomes

46. Our focus is client-centric. We want to provide practical minimum standards that help achieve “good advice outcomes” for clients. Those standards are to apply irrespective of how a Financial Advice Provider operates. In particular, they will apply to advice given on behalf of the Financial Advice Provider by individuals and to advice given on behalf of the Financial Advice Provider by a computer.
47. A “good advice outcome” occurs when the client is given financial advice that meets a reasonable client’s needs in the particular client’s circumstances, having regard to the nature and scope of the financial advice.
48. To achieve a good advice outcome the Financial Advice Provider must be accountable for “doing the right thing” for the client. In our view, that means:
 - considering and meeting the client’s reasonable expectations given the nature and scope of the advice, and
 - having processes, explanations and records to evidence how those expectations were considered and met, by reference to either the particular client or a generic group of clients with similar characteristics and circumstances to which it is reasonable to associate the particular client given the nature and scope of the advice.
49. We will use the concept of “good advice outcome” as an overarching theme of the Code.
50. Our aim is to build structure, fairness and resilience into advice processes. We think that with this theme driving the various limbs of advice practice, the combined effect will be to lower the risk of poor advice. We expect to see this theme — through the Code standards — influencing, for example:
 - the Financial Advice Provider’s attitude, leadership and culture,
 - the Financial Advice Provider’s understanding of each client’s interests,
 - the Financial Advice Provider’s assurance processes (oversight of advice outcomes),
 - the appropriateness of advice given by the Financial Advice Provider and its team, and
 - the Financial Advice Provider’s attentiveness to, and communication with, the client.
51. We intend this approach to be consistent with the Financial Markets Authority’s good conduct guide, in an advice specific context.¹¹
52. It is important to emphasise that a good advice outcome does not necessarily mean the product being advised on performs well. Our focus is the outcome from the advice process, not from the overall financial decision. There is nevertheless a point of intersection: for there to be a good advice outcome:

¹¹ February 2017. <https://fma.govt.nz/compliance/guidance-library/conduct/a-guide-to-the-fmas-view-of-conduct/>

- the actual performance of the product or plan must be within the range of performance that reasonably could be expected by the adviser at the outset, or
 - if it is not within that range, the adviser did not know – and reasonably ought not to have known – that the product would not perform as represented by the product provider.
53. Measuring “good advice outcomes” is difficult because, by their nature, they are not easily quantifiable, and the metrics are not necessarily the most simple or obvious ones. For example:
- With investment products, the lowest fees or highest expected return may not be appropriate when accounting for a client’s individual circumstances or preferences.
 - With mortgage products, the lowest interest rate may not be appropriate when fees and charges associated with early repayment or switching provider are accounted for.
 - With insurance products, the lowest premium or highest level of cover may not be appropriate if the policy has some significant exclusions.

Principles

54. In October, we ran a set of focus groups to test some underlying principles to help us with the design of the draft Code. We spoke to industry participants from financial adviser associations, dispute resolution schemes, the banking, insurance, funds management and broking sectors, the Ministry of Business Innovation and Employment, and the Financial Markets Authority. In this consultation document we welcome additional feedback on the principles, as the focus groups reached many but not all stakeholder groups.
55. Taking into account focus group feedback, the principles are:
- Principle 1: The Code will focus on good advice outcomes for retail clients, having regard to both availability and quality of advice. This means that the client receiving advice is at the heart of the Code.
 - Principle 2: The Code will be drafted on the assumption that most retail clients have basic knowledge but not the Financial Advice Provider’s expert understanding.
 - Principle 3: The Code will be drafted in a clear, concise and effective manner, with a principles-based approach that allows for flexible application to a wide range of situations.
 - Principle 4: The Code will be drafted to promote good advice outcomes irrespective of how the advice is delivered. It will allow for varying degrees of reliance on business process.
 - Principle 5: The Code’s ethical behaviour standards will be consistent for all advice situations, and are relevant to the advice business, its officers and advisers.

Principle 1. The Code will focus on good advice outcomes for retail clients, having regard to both availability and quality of advice

56. The Code applies only to regulated advice given to retail clients, and therefore we regard retail clients as being at the heart of the Code.
57. The Code standards will be designed to promote good conduct by each Financial Advice Provider business and its individual Financial Advisers and/or Nominated Representatives. Irrespective of a business' structure and approach, the Code will require arrangements designed to deliver good advice outcomes. This means advice will need to meet the standards set by the Code whether it is given by Financial Advisers, Nominated Representatives, or directly by Financial Advice Providers, for example as computer-generated advice.
58. A key purpose of the new advice legislation is to ensure the availability and quality of advice.¹² In developing the standards, we will consider good advice outcomes with regard to both these goals.
59. In recent years, there has been interest in and discussion around a high-level duty for financial advisers. This was addressed in CS-1 of the AFA Code, which provides that “an authorised financial adviser must place the interests of the client first, and must act with integrity. These obligations are paramount.”¹³
60. We support the concept of an overarching principle for advisers that encapsulates the spirit and intent of the Code. This may be a separate standard or alternatively may be an overlay to assist with interpretation of the Code.
61. The AFA Code is an “occupational code” which means its individual standards define the activities of the AFA adviser occupation. For that code, the paramount “client first” standard is appropriate. By contrast the new Code will be a “service code” which focuses on service levels and client outcomes.
62. We believe an overarching duty linked to good client outcomes should be adopted for the Code. This could, for example, define the principal role of a Financial Advice Provider, its Financial Advisers and Nominated Representatives, at all times through a financial advice interaction, as being delivery of a “good advice outcome” for that client.

Principle 2. The Code will be drafted on the assumption that most retail clients have basic knowledge but not the Financial Advice Provider's expert understanding

63. We know that different clients have different levels of financial knowledge. However, the Code will be written on the assumption that the client has basic knowledge — not expert understanding — of financial matters. Therefore, the Financial Advice Provider's service must be structured to take the potential asymmetry of expertise into account when delivering a good advice outcome.
64. That expertise comes from the combined competence, knowledge, and skill of the Financial Advice Provider business (including its management, support people and resources) and of its individual Financial Advisers and/or Nominated Representatives.

¹² Section 431B.

¹³ <http://www.financialadvisercode.govt.nz/assets/Code-of-Professional-Conduct-for-AFAs/161201-Code-of-Professional-Conduct-for-Authorised-Financial-Advisers.pdf>

Principle 3. The Code will be drafted in a clear, concise and effective manner, with a principles-based approach that allows for flexible application to a wide range of situations

- 65. We need to strike a balance between generic, high-level standards and those that are sufficiently detailed to be implementable and pragmatic. We may use examples to help with explanations.
- 66. As far as practicable, we will draft standards broadly so they apply to multiple business models and delivery mechanisms.
- 67. Where appropriate, we want retail clients to be able to understand what the Code says about the standards of advice they should receive.

Principle 4. The Code will be drafted to promote good advice outcomes irrespective of how the advice is delivered. It will allow for varying degrees of reliance on business process

- 68. The Code will be agnostic as to different approaches of delivering advice or structuring advice businesses. By this we mean that advice may be delivered by individuals, by computers or by other means.
- 69. The Code is able to distinguish between different types of financial advice, financial advice products, or other circumstances.¹⁴ It is also required to provide for the way(s) in which a Financial Advice Provider or Financial Adviser may demonstrate the provider's or adviser's competence, knowledge, and skill.¹⁵ We will use these tools to promote good advice outcomes that are consistent across different business structures.
- 70. The Code should be developed with regard to the cost of compliance.¹⁶ This cost can be measured in monetary terms and also in terms of demands on other resources such as management time.

Principle 5. The Code's ethical behaviour standards will be consistent for all advice situations, and are relevant to the advice business, its officers and advisers

- 71. In line with our focus group discussions, we support universal ethical standards on the basis that ethics cannot be compromised.

Share your views

- | | |
|----|--|
| A. | What comments do you have regarding the overarching theme of "good advice outcomes" and the underlying principles? |
|----|--|

¹⁴ Schedule 5, clause 32(3).

¹⁵ Schedule 5, clause 32(4)(b).

¹⁶ Section 4(c).

B.	Are there any further principles that should be included, or existing principles that should be removed?
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Ethical behaviour

Overview

72. The section on ethical behaviour explores a framework for setting minimum standards of ethical behaviour. Our objective at this stage is to seek views and ideas, rather than to make definitive proposals.
73. We propose two categories of minimum standards of ethical behaviour: advice-giving standards (that apply when financial advice is given to clients) and organisational standards (that apply on an ongoing basis to all persons who customarily give financial advice to clients).
74. We seek views on whether Financial Advice Providers should be required to have their own code of ethics so that certain matters (for example, the Financial Advice Provider's approach to non-legally-binding promises made on its behalf) can be tailored to the particular culture of organisations. The Code will need to be clear about who imposes which ethical behaviour standards (the Code or a Financial Advice Provider's own code of ethics) and on whom the standards place an obligation (the Financial Advice Provider, Financial Adviser and/or Nominated Representative).
75. We also consider the ethical arrangements that Financial Advice Providers should have in place, including ethics training, processes for resolving ethical dilemmas, and compliance functions. We are interested in ideas that help to scale such obligations in a practical way, so that this is a reasonable and manageable compliance burden.
76. In respect of scaling obligations, a particular objective of this consultation – for all the minimum standards, not only ethical behaviour – is to understand how best the Code can ensure that compliance requirements are clear and that compliance costs are minimised. That applies in respect of all Financial Advice Providers (for example both a sole trader and a large institution).
77. The requirements needed to comply with all Code standards should be scalable based on the nature and scope of the advice that is being provided but should not vary between two businesses delivering identical advice merely based on the respective size of each Financial Advice Provider. Nevertheless, if a Financial Advice Provider's business model relies less on its processes and more – for example – on the personal competence, knowledge, and skill (and hands-on involvement) of one or more Financial Advisers, then simpler processes and documentation should be possible. In all parts of this consultation we are interested in your suggestions for how we can make this clear in practical ways.
78. We are aware of behavioural research that suggests there are significant benefits to having timely reminders of ethical obligations. We ask for ideas for how Financial Advice Providers could put in place routines that reinforce good ethical behaviour on a day-by-day basis.

Background

79. The Code is required to include minimum standards of ethical behaviour that must be demonstrated when regulated financial advice is given.¹⁷ The standards will apply to the Financial Advice Provider and to any Financial Adviser or Nominated Representative they engage who gives financial advice.
80. We seek feedback on the elements of ethical behaviour that the Code should address.
81. We have assumed (see “Assumptions” on page 16) that we will be able to set ethical standards that have ongoing application to the Financial Advice Provider and its advisers, not just when advice is being given.
82. This section covers the following topics:
 - Framework for ethical behaviour standards
 - Ethical processes in Financial Advice Provider entities
 - Reinforcing good ethical behaviour

Framework for ethical behaviour standards

83. As a starting point, we have drawn on the framework for a model code of ethics for financial service professionals set out by the International Organisation of Securities Commissions (IOSCO). For an explanation of this framework, please refer to the IOSCO website for their detailed report.¹⁸
84. We set out below how the Code’s minimum standards of ethical behaviour might be formulated, based on the principles in the IOSCO framework:
 - Act with honesty, fairness and integrity
 - Keep the commitments you make to your client
 - Manage and fully disclose conflicts of interest
 - Do no harm to the client or the financial advice industry
 - Keep your client’s data confidential

Act with honesty, fairness and integrity

85. We want to ensure that the overarching concept of “integrity”, which also already exists in the AFA Code, is conveyed using language that has an everyday meaning easily understood by clients. For this reason, we have chosen to highlight “honesty” and “fairness” as core components of “integrity”. A standard requiring advice-givers to “act with honesty, fairness and integrity” could be framed with guidance along the following lines:
 - Honesty means “sincerity of character or intention; fair, straightforward”.

¹⁷ Section 431L and Schedule 5, clause 32(1)(c).

¹⁸ “Model Code of Ethics”. Report of the SRO Consultative Committee of IOSCO.
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD217.pdf>

- Fairness means “just, unbiased, equitable, impartial; legitimate, in accordance with the rules or standards”. It includes having reasonable or adequate grounds for the way the client is treated.¹⁹ We would make clear that “fairness” must be considered in the context of scope. For example, a Financial Advice Provider would be able to limit advice to the products of one (or only a few) providers, if the Financial Advice Provider had taken reasonable steps to ensure the client understood that limitation to the scope of the advice and its consequences.
- Integrity means “soundness of moral principle” and includes the elements of integrity and truthfulness from the IOSCO report. It extends to conveying all relevant information (the whole truth), in a way that is meaningful to the client and that does not obfuscate or mislead. In our view, the three requirements – honesty, fairness and integrity – are self-reinforcing: you cannot act with integrity without also being honest and fair.

Share your views

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| C. | Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. |
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Keep the commitments you make to your client

86. The IOSCO report asserts that keeping one’s word, regardless of any legal obligation to do so, is key to being an ethical individual or business. In addition, clients for retail financial advice will generally be expected to have a less sophisticated understanding of the legal formalities of the advice relationship. Financial services firms regularly face the issue of clients having expectations that exceed the firm’s formal obligations, and firms respond to this in different ways reflecting their corporate values and risk appetite.
87. We would welcome your views on whether, and to what extent, *minimum* standards for ethical behaviour for the provision of financial advice should extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations.
88. In our view, keeping commitments may require consideration of the culture, corporate values and specific risk appetite of different businesses: Different businesses may legitimately adopt different approaches. For example, is it reasonable to require a Financial Advice Provider to keep a commitment (which goes beyond strict legal requirements) that is made by a Nominated Representative, when any reasonable client ought to know that the commitment was mistaken or wrong? What if there is no loss by the client but keeping the promise would cause a loss to the Financial Advice Provider, such as when a wrong fee was quoted and there is no legal obligation to honour it? Different firms have – and arguably should be allowed – differing attitudes for how they respond to such situations.
89. For this reason, we are considering whether some ethical requirements – such as keeping commitments – should not be hardwired in the Code, but be required to be addressed in a Financial Advice Provider’s own corporate code of ethics. That would

¹⁹ Also see Financial Conduct Authority (UK): <https://www.fca.org.uk/firms/fair-treatment-customers> and <https://www.fca.org.uk/about/principles-good-regulation>.

allow for differentiation between Financial Advice Providers, based on their own culture, corporate values and risk appetite.

90. The Financial Markets Authority's *Corporate Governance Handbook* (2018) includes a guideline that: "Boards should adopt a written code of ethics that is a meaningful statement of the entity's core values. A code of ethics needs to suit their particular circumstances and needs. The code should set out explicit expectations for ethical decision-making and personal behaviour."²⁰
91. The Handbook then expands on what the firm's code should cover and how it should work.
92. Many Financial Advice Providers will already have an internal code of ethics and conduct. There is also a wide range of literature available on developing a firm's code of ethics,²¹ and professional bodies provide support and resources on codes of ethics and conduct to their members.

Share your views

D.	Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.
E.	If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?

Manage and fully disclose conflicts of interest

93. The legislation requires that people giving advice give priority to their clients' interests, and ensure that their advice is not materially influenced by any conflicts of interest.²² Interests include both financial interests and other types of interests, such as relationships. How conflicts of interest are dealt with is a key element of ethical behaviour and so we are considering whether to include a specific standard in addition to the legislation, and how such a standard might be framed.
94. There are four elements of professional conduct in relation to conflicts of interest: identify them; avoid them or manage them; and communicate with your client.
 - **Identify:** Conflicts of interest will inevitably arise. Initial engagement with every client should specifically seek to identify any conflicts of interest, both by seeking information from the client and from self-reflection. In addition, both ongoing interaction with clients and taking on other activities in the business are situations

²⁰ <https://fma.govt.nz/compliance/guidance-library/corporate-governance/corporate-governance-in-new-zealand-principles-and-guidelines/>

²¹ For examples, see: <https://www.ibe.org.uk/the-ibe-9-step-model-for-developing-and-implementing-a-code/103/52>; <http://ethics.org/resources/free-toolkit>; <http://ethicsweb.ca/codes/>

²² Section 431J.

where it is important to be alert to the possibility that new conflicts of interest may be created or identified. Conflicts could arise in respect of an individual Financial Adviser or Nominated Representative, or from within the wider business of the Financial Advice Provider.

- **Avoid:** If you are in the business of providing financial advice, it may make sense to avoid the potential for extraneous conflicts of interest. Senior members of other professions, and their firms, put some effort into arranging their affairs to avoid the potential for significant perceived or actual conflicts of interest that will hamper their ability to offer client services. Financial Advice Providers should do the same, and they should document the processes they have in place to avoid conflicts of interest.
- **Manage:** Various potential conflicts of interest will be unavoidable in different business models. They are just a part of the way that business model works. These need to be managed so that the clients' interests are given priority. Financial Advice Providers should have in place processes to manage conflicts of interest, with a clear understanding as to how different situations will be resolved, including the possibility that the Financial Advice Provider needs to decline to provide advice to a client.
- **Communicate:** Any actual or potential conflicts that arise should be communicated to the client, along with explanation or discussion about how they will be managed or resolved. This includes communicating on other matters that might be perceived as conflicts of interest unless they were adequately explained.

Share your views

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| F. | Should the Code include a minimum standard on conflicts management? Should it focus on any particular situations? |
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Do no harm to the client or the industry

95. Doing no harm to the client will be largely met by compliance with the legislation and with the other elements of this Code. Our current thinking is that an additional specific standard on doing no harm to the client is not necessary.
96. Regarding doing no harm to the financial advice industry, one of the purposes of the Code is to promote the confident and informed participation of businesses, investors, and consumers in the financial markets.²³ That confidence will be eroded if substandard behaviour of a Financial Advice Provider (including its Financial Advisers or Nominated Representatives) calls into question the reputation of the wider industry of financial advice provision. A standard could be framed along the lines that a person who gives financial advice must not do anything or make an omission that would, or would be likely to, bring the financial advice industry into disrepute.²⁴ This is essentially the same as the existing AFA Code, CS-2.
97. The commentary under CS-2 of the existing AFA Code also noted that this does not preclude “commenting in good faith on the business, actions, or inactions of any person

²³ Section 3.

²⁴ Subject to Select Committee deliberation of the Bill, as this potentially goes beyond “when ... advice is given” in clause 32.

[in the financial advice industry] or from exercising [legal reporting powers or requirements]”. We would include the same sentiment.

Share your views

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| G. | Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning. |
| H. | Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? |

Keep your client’s data confidential

98. Client information includes both information provided directly by the client, as well as specific information relating to the client obtained or generated during the engagement (for example, background data obtained while the client is using the Financial Advice Provider’s app or browser application, or additional information gathered or generated using specific knowledge of the client information).
99. We recognise the increasing prevalence of bulk data analytics. Its use can aid the quality and cost of advice, and assist with access to advice. However, there is a balance to be obtained between providing access to a more economic (and potentially higher quality and/or more innovative) service for the client, versus profiting from using client information for purposes other than directly to prepare the advice that that client had requested. Provided such data is anonymised, we propose that the Code should not impose any standards on its use. Any Code standard that addresses confidentiality would apply only where it relates to information that can be linked to an identifiable person.

Share your views

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| I. | In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards? |
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100. Maintaining the confidentiality of client information has several aspects:
- Physical security and virtual security should be maintained so that only authorised personnel, either within or outside the Financial Advice Provider, have access to the information.
 - Client information should only be accessible within the entity on a “need to know” basis.
 - Unless the client explicitly agrees otherwise or there is a legal disclosure requirement, client information should only be used to develop and provide financial advice to that client.
 - Client information from one client should not be taken into account when preparing advice for another client.

- Client information should not be used for the financial advantage of the Financial Advice Provider or of any third party.
 - Client information should only be held for as long as it is required, then should be disposed of, or deleted, securely.
101. There are also wider legal obligations relating to confidentiality of client information. This includes privacy law, which is currently under review,²⁵ as well as laws that would require disclosure of confidential client information in certain circumstances (for example, under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).²⁶ The Code will need to be able to sit alongside these other obligations.
102. A standard could be framed that generally covers the aspects of client confidentiality discussed above.

<i>Share your views</i>	
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there any compliance costs or other aspects of maintaining client confidentiality to consider?

Ethical processes in Financial Advice Provider entities

103. The standards of ethical behaviour will apply to all regulated advice given by a Financial Advice provider entity, not just to that delivered on its behalf by Financial Advisers and Nominated Representatives.²⁷ This means that, in addition to the requirement on the Financial Advice Provider to ensure that its Financial Advisers and Nominated Representatives comply with the standards of ethical behaviour set out in the Code,²⁸ the behaviour displayed by the entity as a whole in relation to its regulated financial advice activities will need to be consistent with the Code. This captures the behaviour of its officers and employees,²⁹ along with the overall operation of its business. Ultimately, the Financial Advice Provider will need to be able to demonstrate that the ethical behaviour (and other) requirements of the Code are being fully met.
104. Alongside standards according to the principles set out in the IOSCO framework discussed above, we expect Financial Advice Provider entities to have processes in place to reinforce the standards of ethical behaviour.
105. We are considering a standard that would require the Financial Advice Provider to document and maintain its “ethical processes”. We envisage specifying some topic areas that must be addressed in the Financial Advice Provider’s ethical processes, but

²⁵ <https://www.privacy.org.nz/the-privacy-act-and-codes/privacy-law-reform/>

²⁶ <https://www.dia.govt.nz/Anti-money-laundering-and-countering-financing-of-terrorism>

²⁷ Section 431L.

²⁸ Section 431P.

²⁹ In this context, “officers and employees” refers to all individuals engaged by the Financial Advice Provider. This includes contracting roles and governance roles.

then leave it to the discretion of the Financial Advice Provider to specify how those processes are designed, documented, implemented and monitored.

106. Our objective is three-fold:

- To enable ethical processes to be tailored to reflect the Financial Advice Provider’s own culture, corporate values and risk appetite. A publicly available corporate code of ethics could form part of those ethical processes.
- To encourage each Financial Advice Provider to put in place arrangements that will help it and its people make good ethical decisions under pressure, in line with its corporate values.
- To recognise that business models continually evolve and ethical requirements of the Code may be met in different ways.

107. The following sections discuss some topics that could form part of those requirements: ethics training, resolving ethical dilemmas, compliance functions, and responsibility for the whole advice process.

108. These topics are not substitutes for effective leadership and the nurturing of a corporate culture that imbues appropriate ethical behaviour. We welcome your views on whether also to include specific ethical behaviour standards relating to leadership and culture of Financial Advice Providers. See also the discussion on organisational standards for conduct and client care³⁰.

<i>Share your views</i>	
L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?
M.	Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

Ethics training

109. The Code is required to provide for continuing professional training for persons that give financial advice.³¹ This could include training requirements in respect of ethical behaviour. In this context, “persons” includes the Financial Advice Provider as a whole. The Code could require each Financial Advice Provider to have in place ethics training that applies to all of its employees, as appropriate to their role and contribution to the process of financial advice provision. For example, a person in a junior administrative role at the least needs to be made aware of the ethical content of their role, and of the

³⁰ See page 38

³¹ Schedule 5, clause 32(4)(a).

potential ethical consequences of their actions, while a Financial Adviser might be expected to complete more formal ethics training, including regular refresher training (as do other professions), and members of the entity’s governing body might be expected to have ethics knowledge relevant to the governance of a Financial Advice Provider.

110. We would expect training to be tailored to the scale and operations of the Financial Advice Provider. It should include the specifics of the Code and its enforcement, and should provide clear guidance on acceptable behaviour.

<i>Share your views</i>	
P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.
Q.	Should ethics training requirements apply to all officers and employees of a Financial Advice Provider involved in financial advice processes, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.
R.	Should there be a requirement for ongoing refresher training on ethics?

Resolving ethical dilemmas

111. Financial Advice Providers will face issues from time to time that require judgements to be made as to the appropriate ethical behaviour in a particular situation. Situations could also arise where there are legitimate differences in opinion on ethical behaviour between a Financial Advice Provider and a Financial Adviser or Nominated Representative.
112. There are various models that can be used for making these judgements.³² We are considering a requirement on Financial Advice Providers to have in place, and to use, a framework for resolving ethical dilemmas that may arise in giving financial advice.

<i>Share your views</i>	
S.	Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.

Compliance functions

113. We are considering whether there should be a requirement on Financial Advice Providers to document how the firm meets, and accepts responsibility for, ethical

³² See section 2 of the IOSCO report for examples.

behaviour in the business. One aspect of this is whether there needs to be any explicit sign-off on the soundness of advice provided directly by the entity (that is, not through a Financial Adviser or Nominated Representative, for example, robo-advice).

114. We are also considering a requirement on Financial Advice Providers to have in place a compliance function aimed at receiving and following up on concerns raised by employees (including whistle-blowing) and other stakeholders. This would include, but be wider than, CS-11 of the existing AFA Code, which required an internal process for resolving client complaints. It is also distinct from any external dispute resolution scheme.

<i>Share your views</i>	
T.	Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?
U.	Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

Responsibility for the whole advice process

115. Financial Advice Providers may engage or utilize a range of inputs to their provision of financial advice, including contracting, outsourcing and financial technology, such as open banking. However, the Financial Advice Provider remains accountable for the ethical behaviour that underlies their ultimate provision of financial advice. We are considering a requirement on Financial Advice Providers to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself. This would mean that the Financial Advice Provider could not “contract out” responsibility for ethical standards being met.

<i>Share your views</i>	
X.	Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.

Reinforcing good ethical behaviour

116. We want the Code to instil day-to-day behaviours that continually remind, or “nudge”, those providing financial advice to honour their ethical obligations. We are considering whether it is practical and beneficial to implement a straight-forward mechanism as simple as a requirement to acknowledge explicitly that the Code applies, whenever advice is about to be delivered. This draws on well-developed research about achieving honesty in business.³³ Mechanisms like this could possibly be developed to work in various advice situations, including those involving Financial Advisers, Nominated Representatives and advice delivered directly by the Financial Advice Provider.

Share your views

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| Y. | What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? |
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³³ See, for example, Ariely, D. The (Honest) Truth about Dishonesty <http://danariely.com/books/the-honest-truth-about-dishonesty/>

Conduct and client care

Overview

117. We propose two categories of minimum standards of conduct and client care: advice-giving standards (that apply when financial advice is given to clients) and organisational standards (that apply on an ongoing basis to all persons who customarily give financial advice to clients).
118. The advice-giving standards are based on the client care standards in the AFA Code. We seek views on how they are working and whether they need to be amended or added to.
119. We propose an organisational standard requiring the Financial Advice Provider to document how it ensures its organisational arrangements support the delivery of good advice outcomes. We seek suggestions for the guidance and explanations that could be included in the Code to help Financial Advice Providers apply this standard in a practical way. We want to hear from advice businesses of all sizes and business models, so that any documentation requirements imposed by the Code are proportionate to the way those businesses operate.
120. We also propose an organisational standard requiring the Financial Advice Provider to have processes, explanations and records to evidence how it considered the client's reasonable expectations given the nature and scope of the advice.

Background

121. The Code is required to include minimum standards of conduct and client care.³⁴ We intend to provide two categories of conduct and client care standards:
 - **Advice-giving standards** would apply when financial advice is given to clients. We ask for feedback on the AFA Code's client care standards, as we intend to duplicate them in this Code. We ask for suggestions about new standards (and provide a few ideas) that could be added. We suggest how the suitability requirement could be clarified to reduce the risk that it would create an over-compliance burden.
 - **Organisational standards** would apply on an ongoing basis to all persons (including the Financial Advice Provider) that customarily give financial advice to clients. We propose a minimum standard that requires the Financial Advice Provider to document how it ensures its organisational arrangements support the delivery of good advice outcomes.

Advice situations

122. The new regime redefines regulated financial advice, and removes the existing boundaries of class/personalised advice. Therefore, when developing minimum

³⁴ Schedule 5, clause 32(1)(d).

standards of conduct and client care, we must consider the ecosystem of all advice-giving scenarios and organisational types.

123. The client care and conduct standards (other than the specific standards) are applicable across advice-giving interactions and their application should be “delivery agnostic”. Our view is that a Financial Advice Provider purely providing automated advice-giving (‘robo-advice’) will still have to meet, and be able to demonstrate compliance with, the same conduct and client care obligations as a Financial Advice Provider using individuals to give advice.
124. Our objective is to provide standards that make sense and work across all advice-giving scenarios, including for example:
- Automated advice
 - Human
 - Artificial intelligence
 - Open banking
 - Vertically integrated organisations
 - Via an intermediary

Share your views

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| Z. | Are there other delivery methods that should be considered when testing our thinking? |
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Advice-giving standards

125. In our view, advice-giving conduct and client care standards should apply to all advice-giving interactions between a Financial Advice Provider – including its Financial Advisers and Nominated Representatives – and the client.
126. The AFA Code includes eight minimum standards of client care:
- CS-6: Behaving professionally, including communication and timeliness,
 - CS-7: Ensuring a client can make an informed decision about using the adviser (which focuses on information about the adviser themselves, rather the advice),
 - CS-8: Agreeing the nature and scope of the service (to be replaced by a duty in section 431I),
 - CS-9: Suitability of the advice,
 - CS-10: Ensuring clients can make an informed decision about the advice,
 - CS-11: Complaints processes,
 - CS-12: Keeping information about the advice, and
 - CS-13: Record retention.

127. Other than the suitability provisions in CS-9 and CS-10 (which are addressed separately below)³⁵ and the nature and scope of advice (now addressed in the legislation itself in section 431I), we intend to incorporate similar client care standards in the new Code. We are interested to hear how these standards work, or would work, in practice across the entire spectrum of advice-giving situations. If there are situations where they are not appropriate, are restrictive, or create a particular compliance burden (either time or cost related), we would like to hear about them. We would also like to hear about scenarios where the standards work well and deliver a good advice outcome for clients.

Share your views

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| AA. | How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10). |
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128. Our provisional view, including from focus group feedback, is that the existing AFA Code works well for new clients or initial product advice scenarios and especially in situations where clients want fuller or more comprehensive advice, but may not accommodate ongoing client relationships, review/renewal, or “limited” advice situations as well. Feedback that we have already received suggests that current difficulties mostly relate to unnecessary process and paperwork.
129. We also are aware that some current client care standards may not translate well to other, generally more simple, scenarios that will now be classified as regulated financial advice; for example, what under the current regime is classified as ‘class advice’.

Share your views

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| BB. | Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.) |
| CC. | Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)? |
| DD. | Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? |

130. In addition to replicating elements of the AFA Code standards (as discussed above), we are considering whether there are additional matters that should be addressed as part of the advice-giving standards (existing or new), for example:
- cyber risk and cyber security,
 - client confidentiality (this is also discussed under “ethical behaviour”, above),
 - transferring a client from one adviser to another,
 - where a trail commission is paid, and

³⁵ See the section on “personalised suitability”, starting on page 37.

- replacement business.

Share your views

EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?
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Advice process

131. With the exception of “suitability” below, we do not propose to include minimum standards of conduct and client care that prescribe particular approaches to or elements of an advice process. We think the process involved in giving advice will differ depending on the circumstances. In some cases, the Code’s minimum standards will be satisfied by very simple steps. In other cases, a more detailed client-personalised process may be necessary to satisfy the minimum standards. It would be up to the Financial Advice Provider and any Financial Adviser to determine, and to be able to justify, what the advice process should involve in each circumstance.
132. However, we are interested in whether the Code could usefully include guidance material to help determine what needs to be considered when designing an advice process.
133. Our provisional thinking is that an advice process needs to be designed to address the following components:
- Client-centricity and good conduct principles should be at the heart of the design and delivery of advice processes.
 - Financial Advice Providers should consider how a client will engage with the advice process to ensure it meets the point above.
 - The complexity of an advice process should be correlated to the complexity of the financial advice being provided.
 - Financial Advice Providers should be able to justify how and why their advice processes deliver good advice outcomes and meet the regulatory requirements.

Share your views

FF.	Do you think there are any other components that should be included in the design considerations of an advice process?
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GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process?
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134. We think there are some key aspects that should be included in all advice processes, no matter how simple the advice interaction. This includes:
- The amount and quality of the information gathered from the client should support the service being provided and the recommendation being made.

- An explanation of why the service or product is being recommended and why it is suitable for the client, accounting for the type of service or product being recommended, should be prepared. This could take the form of a more traditional Statement of Advice that is provided to the client, or it might be a standardised document prepared and retained by the Financial Advice Provider as a reference document to assist with client decision-making. Where appropriate to the advice situation, this might be able to be delivered verbally to the client and recorded by the Financial Advice Provider. For such verbal advice, we are interested in views on what guidance we could include in the Code to help provide clarity.
- Enough information must be provided to the client for them to make an informed decision about whether to proceed with the recommendation.
- The client should understand the basis upon which the advice is being given.
- The risks and benefits associated with following the recommendation, and how they might affect the client, must be explained to the client in terms that they understand.
- There should be an obligation for the advice-giver, where practical, to ensure the client actively acknowledges that they understand the risks and benefits of following the recommendation. Our view is that this should be recorded in internal systems, or in the Statement of Advice, depending on the type of advice process being followed.

<i>Share your views</i>	
HH.	Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?
II.	Should any of the key aspects that we have listed above be removed? If so, why?
JJ.	Are there any situations in which an advice process need not be followed?

Personalised suitability

135. We have separated one topic from the discussion on advice-giving standards and advice process, above. That is suitability: the process of understanding the client’s needs and ensuring that the advice is appropriate to those needs.
136. Our starting proposition is that suitability is an important consideration in all advice situations. But we think there are two issues to be acknowledged:
 - The AFA Code standard on suitability is broadly worded, which we understand from anecdotal feedback leads to many instances of over-compliance. That is good neither for the client or the advice-giver. Specifically, we do not want clients being over-burdened with information and documentation that negatively impacts on their understanding and experience. We would be interested in views on whether we are properly informed in this regard.
 - The distinction between “personalised” and “class” advice is being removed from the legislation, meaning that if there is a minimum standard on suitability it would apply to all advice situations. There would no longer be an exemption for a “class” service.

137. We want to find a way of providing a requirement in the code that adjusts to different situations, giving certainty to advice-givers, the FMA and the Disciplinary Committee. So what is the outcome we want? In some situations, we think a generic determination in relation to a type of client in a particular situation should be adequate. (This is different from class advice where no suitability analysis is done. We envisage a suitability analysis being required, but on a generic level.) In other cases, it may be sufficient to ask a few simple questions of the client. Then there are also the more involved situations where a detailed suitability analysis personalised to the client is required.
138. In our view, that more “personalised” suitability analysis is justified where consideration of the client’s personal situation and goals (rather than the generic situation of a typical client) is necessary to achieve a good advice outcome. That means it is likely to be needed for financial planning, and for product advice situations which involve consideration of the client’s particular financial situation (or a material part of it).
139. We propose that, in those situations, a suitability standard would require the advice-giver (for example, the individual or automated service giving advice) to perform a suitability analysis for the particular client and document details of the advice, along the lines currently envisaged by the existing CS-9 and CS-10. In other words, we see no reason to change the AFA Code approach for those situations.
140. However, we want to find a way to ensure that approach does not get applied in all advice situations because that would impair the availability of affordable advice. So, to minimise the risk of over-compliance, **we propose that the standard would explicitly not apply where** the Financial Advice Provider could demonstrate how a good advice outcome is achieved without a personalised suitability analysis.
141. For example, we would be interested in views on whether a personalised suitability analysis should be required where the Financial Advice Provider demonstrated, quite possibly on a generic basis, that:
- the type advice was limited to straight-forward recommendations about acquiring a financial advice product, and
 - they were satisfied that the individual client’s broader financial situation was not material to the advice, and
 - it was reasonable to conclude that the client understood that the advice scope did not include comparison with an existing or competing product, and the consequences of that.
142. We are interested in any other suggestions for reducing the risk of over-compliance with this requirement, for example what guidance we could include in the Code. However the Code addresses it, we want to ensure that we do so in a way that does not incentivise advice-givers to scope suitability out of their advice. A proportionate, flexible suitability requirement is fundamental to getting the Code working well for clients.
143. We acknowledge that the AFA Code allowed for CS-9 and CS-10 to be scaled for different circumstances. We want to retain that. Our additional objective is to provide greater certainty as to when a personalised suitability analysis is not required. We want the extent of the suitability analysis and advice documentation – when it is required – to be proportionate to the nature and scope of the advice.
144. Put in other words, a specific-client suitability analysis and statement of advice is not an automatic pre-requisite for a good advice outcome. We want to encourage the use of fit-for-purpose advice processes that can be applied flexibly depending on the service being provided.

Share your views

KK. What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?

Organisational standards

145. Organisational standards would apply on an ongoing basis to all persons (including the Financial Advice Provider) that customarily give financial advice to clients. **We propose a minimum standard** that requires the Financial Advice Provider to document how it ensures its organisational arrangements support the delivery of good advice outcomes.
146. These standards relate to the Financial Advice Provider's culture, values and organisational environment that set the tone for how its people behave towards advice clients regardless of systems, controls and formal compliance and other rules.
147. We believe that an organisational culture focused on delivering good advice outcomes for clients should be fundamental to meeting minimum standards of conduct and client care. We intend to provide for minimum standards that require the Financial Advice Provider to document:
 - in general, how the Financial Advice Provider ensures that its culture, values and organisational environment promotes the delivery of good advice outcomes,
 - in particular, the detailed approach the Financial Advice Provider takes to advice-giving so as to understand the needs of clients in that category and to deliver good advice outcomes,
 - how the Financial Advice Provider monitors its ongoing conduct to ensure it is achieving those cultural, environmental and advice-giving objectives, and
 - how the Financial Advice Provider ensures it keeps up-to-date with external good conduct practice.
148. We envisage the standards requiring this good advice outcomes documentation to be kept up-to-date, and treated as a confidential document for use internally and by the Financial Markets Authority.
149. We acknowledge that good organisational conduct, like ethical behaviour, is difficult to describe and measure because, by its nature, it is not easily quantifiable. Key conduct indicators, if used, need to be well designed to ensure they provide a measure for the behaviours they are assessing. Good conduct can also be thought of as good behaviour, the essence and spirit in which a Financial Advice Provider or Financial Adviser acts in relation to their client. It is driven by an intention for a good advice outcome for a client.
150. Building blocks for the principles of good conduct are outlined in the Financial Markets Authority's conduct guidance note,³⁶ and these have informed our view of what good client outcomes are likely to look like.

³⁶ February 2017. <https://fma.govt.nz/compliance/guidance-library/conduct/a-guide-to-the-fmas-view-of-conduct/>

151. Importantly, we want to facilitate Financial Advice Providers to design advice-giving processes that do not necessarily need to rely on traditional client-specific suitability analyses and traditional written recommendations to achieve a good outcome. We want to provide a mechanism for the Financial Advice Provider to document how it ensures good advice outcomes without always needing to rely on detailed paperwork with each individual client. So, our proposal for organisational standards being included in conduct and client care has two objectives: to ensure the Financial Advice Provider can evidence that it is thinking about good advice outcomes, and also to offer the Financial Advice Provider an opportunity to develop organisational controls that reduce the reliance on traditional advice documentation.

<i>Share your views</i>	
LL.	What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

152. To help give effect to the overarching “good advice outcomes” theme, **we propose a minimum standard** requiring the Financial Advice Provider to have processes, explanations and records to evidence how it considered the client’s reasonable expectations given the nature and scope of the advice. The client may be a particular client or a generic group of clients with similar characteristics and circumstances to which it is reasonable to associate the particular client given the nature and scope of the advice. This would also help support the statutory duty under proposed section 431I.

General competence, knowledge, and skill

Overview

153. We think that standards of “competence, knowledge, and skill” can be met through the combined expertise of the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice.
154. Our initial view is that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate:
 - the competence, knowledge, and skill to give financial advice that will deliver a good advice outcome, and
 - an up-to-date and clear understanding of the general legal, Code and consumer protection obligations relevant to giving the financial advice.
155. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider’s or Financial Adviser’s competence, knowledge, and skill required by the first minimum standard of general competence, knowledge, and skill is:
 - The Financial Advice Provider has in place processes, controls, and limitations to ensure the combined competence, knowledge, and skill of the Financial Advice Provider and any Financial Adviser or Nominated Representative will deliver good advice outcomes, and
 - those processes, controls, and limitations are documented and regularly reviewed for effectiveness.
156. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider’s or Financial Adviser’s competence, knowledge, and skill required by the second minimum standard of general competence, knowledge, and skill is:
 - in the case of an individual (Financial Adviser or Nominated Representative), the person has met – or has an understanding of those obligations equivalent to a person who has met – within the last three years, the requirements of a unit standard structured along the lines of current Level 5 Unit Standard 26360, or
 - in all other cases, the Financial Advice Provider has processes, controls, and limitations to ensure that the financial advice complies with those obligations, and those processes, controls, and limitations are documented and regularly reviewed for effectiveness.

Background

157. A person must not give regulated financial advice to a retail client unless the person meets the standards of (general and particular) competence, knowledge, and skill

(including any continuing professional development requirements) provided in the Code for giving the advice.³⁷

158. In our view, in the context of the Code:

- “competence” refers to the ability to do something to an acceptable standard,
- “knowledge” refers to theoretical or practical understanding of something however that understanding is acquired, including through experience or professional learning,
- “skill³⁸” refers to the ability to do something well, and
- “competence, knowledge, and skill” refers to the composite of those abilities as demonstrated by the **combined expertise** of the Financial Advice Provider, and any Financial Adviser or Nominated Representative to give regulated financial advice.

159. Various factors contribute to that **combined expertise**, for example professional development (including qualifications), supervision, and supporting resources, learnings from experience in the profession, methodologies, processes and systems.

<i>Share your views</i>	
NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skill”? If not, why not?
OO.	Are there other factors, which contribute to combined expertise , that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.

160. We have provisionally determined, after consultation with focus groups, that the minimum standards of **general** competence, knowledge, and skill in the Code should be agnostic to different business models and different ways in which regulated financial advice is given. In some cases, a business model may rely heavily on the expertise of Financial Advisers and/or Nominated Representatives. In others, it may depend wholly (for example, for automated digital advice) or predominantly on the Financial Advice Provider’s methodologies, processes, and systems.

161. What is important is that the customer outcome must be at least equivalent for comparable instances of advice, irrespective of how the **combined expertise** (of the Financial Advice Provider, and any Financial Adviser or Nominated Representative) is achieved. Our focus is on the equivalence of outcome, not equivalence in the inputs of competence, knowledge, and skill.

162. To the extent that individuals are involved in giving advice, we think there should be a **general** requirement that they have a clear understanding of the legislative and other advice-giving obligations relevant to them. This would apply to Financial Advisers and Nominated Representatives. In addition, the Financial Advice Provider would need to consider whether there were any people holding a key advice process or supervision

³⁷ Section 431H.

³⁸ The draft legislation uses both “skill” and “skills”. We use “skill” throughout this document and consider it to refer to both the level of skill (or ability) and that there will always be a basket of relevant skills appropriate to any advice situation.

role (other than Financial Advisers and Nominated Representatives) who also needed that understanding to fulfil the obligations of their roles. We are considering making this general individual requirement a renewing obligation, so that every (say) 3 years individuals refresh their knowledge to demonstrate that they are keeping up to date.

Minimum standards

163. We are considering as minimum standards of general competence, knowledge, and skill that must be demonstrated when financial advice is given that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate:

- the competence, knowledge, and skill to give financial advice that will deliver a good advice outcome, and
- an up-to-date and clear understanding of the general legal, Code and consumer protection obligations relevant to giving the financial advice.

164. We intend this to:

- be broadly consistent with CS-14 of the AFA Code, which requires an AFA to have the competence, knowledge, and skill to provide a financial adviser service, and
- make clear that it is the combined expertise of the Financial Advice Provider, and any Financial Adviser or Nominated Representative, that should be considered for the purposes of satisfying the section 431H duty.

Ways to demonstrate meeting the standards

165. Supporting that minimum standard, the Code must also provide for the way or ways in which a Financial Advice Provider or Financial Adviser may demonstrate their competence, knowledge, and skill.³⁹

166. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider's or Financial Adviser's competence, knowledge, and skill required by the first minimum standard of general competence, knowledge, and skill is:

- The Financial Advice Provider has in place processes, controls, and limitations to ensure the combined competence, knowledge, and skill of the Financial Advice Provider and any Financial Adviser or Nominated Representative will deliver good advice outcomes, and
- those processes, controls, and limitations are documented and regularly reviewed for effectiveness.

167. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider's or Financial Adviser's competence, knowledge, and skill required by the second minimum standard of general competence, knowledge, and skill is:

- in the case of an individual (Financial Adviser or Nominated Representative), the person has met – or has an understanding of those obligations equivalent to a person

³⁹ Schedule 5, clause 32(4)(b).

who has met – within the last three years, the requirements of a unit standard structured along the lines of current Level 5 Unit Standard 26360, or

- in all other cases, the Financial Advice Provider has processes, controls, and limitations to ensure that the financial advice complies with those obligations, and those processes, controls, and limitations are documented and regularly reviewed for effectiveness.

Guidance

168. We propose that the Code would contain guidance explaining that the combined expertise should produce an advice outcome at least equivalent to what the customer would experience if they were dealing solely with an individual who met the standard.

<i>Share your views</i>	
PP.	What do you think are the advantages of this approach to general competence, knowledge, and skill?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge, and skill?
RR.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Competence, knowledge, and skill – what’s the status quo?

Currently, AFAs are required to meet the competence standards set out in the AFA Code.

RFAs are not required to meet competence requirements, but must meet the general conduct requirements that apply to all advice, such as exercising the care, diligence and skill that a reasonable financial adviser would exercise in the same circumstances.

QFEs (such as banks) must ensure that any QFE advisers meet similar standards to those set in the Code in relation to advice on category 1 products (e.g. investment products).

AFA competence requirements

The AFA Code requires that AFAs:

- “must have the competence, knowledge, and skill” to provide a financial adviser service
- “must have a knowledge of the Act, the Code, and other legal obligations relevant to the operation of the Authorised Financial Adviser’s practice as a financial adviser (including relevant consumer protection laws), that is adequate for the proper operation of that practice” (this includes attaining NZQA Unit Standard 26360)
- “must attain the Components of the New Zealand Certificate in Financial Services (Level 5)

that are relevant to the financial adviser services provided by the AFA” or a recognised alternative qualification or designation.

- The relevant components of the Certificate include the ‘core’ component, the ‘financial advice’ strand and either the ‘investment’ strand (if giving advice on investment products) or at least one other specialist strand (if giving advice on category 2 products)

NZQA Qualifications

(NZQA, working with the sector, develops then registers the standards for qualifications in NZ.)

New Zealand Certificate in Financial Services (Level 5), qualification number 2315

The purpose of the New Zealand Certificate in Financial Services (Level 5) is “to provide the financial services industry with individuals who have specialist operational and theoretical knowledge and skills in financial services.” It is intended to be an appropriate qualification for “those seeking to advance to specialist roles and/or enhance their skills and knowledge within retail and personal services areas of the financial services industry.”

The qualification includes some compulsory components and a number of specialist strands:

- Financial Advice
- Investment
- Life and Health Insurance
- General Insurance
- Residential Property Lending
- Personal Lending
- Banking
- Trustee Services

Completing the qualification with the core content (compulsory to be awarded the qualification) and a single strand would amount to 60–75 credits. This may take approximately one semester of full-time study or an equivalent amount of part-time study, as a typical full-time learner can usually complete 120 credits of learning in a year.

Completing the components necessary to be an AFA covers 90 - 95 credits depending on the particular strand, so may take 9 months full-time study.

The typical cost of completing the qualification through formal study varies depending on the delivery model and the specific options chosen. We understand that a minimum qualification (core compulsory component plus a single strand) is in the range of \$1,500 to \$2,000. Core compulsory, financial advice strand, plus an additional strand is in the range of \$2,500 to \$2,800. This is the path that would equip an individual to apply for authorisation as an AFA under the current law.

Many financial services institutions have significant learning and development structures in place. They may be able to use that existing capacity to deliver training and assessment against the qualification where the subject matter aligns with the qualification requirements and the assessment is sufficiently robust.

Other qualifications

Other NZQA-recognised qualifications include:

- New Zealand National Certificate in Financial Services (Level 4), qualification number 2247, (60 credits)
- New Zealand Diploma in Financial Services (Level 6), qualification number 2650, (120 credits)

More information on all the NZQA qualifications can be found by searching the qualification number at <http://www.nzqa.govt.nz/nzqf/search/results.do>

Particular competence, knowledge, and skill

Overview

169. The Code is required to identify different types of **financial advice, financial advice products, or other circumstances** for the purposes of setting minimum standards of particular competence, knowledge, and skill.⁴⁰
170. We identify two different types of **financial advice** for the purposes of minimum standards of particular competence, knowledge, and skill:
- product advice, and
 - financial planning.
171. We are not currently proposing to identify different types of **financial advice products or other circumstances** for the purposes of those minimum standards. We are interested in views on this approach.
172. We are considering as minimum standards of particular competence, knowledge, and skill that must be demonstrated when financial advice is given that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate:
- **For product advice**, the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained the New Zealand Certificate in Financial Services (Level 5). Level 5 is the reference point: the Financial Advice Provider must decide how it achieves that level in aggregate – for example, by using an if-not-why-not approach. Our focus is on the outcome not the input: the client experience must be equivalent to that given by a person holding Level 5, not that each person giving the advice necessarily has that qualification.
 - **For financial planning**, the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained (i) a Bachelor's degree (at NZ Level 7 or higher) majoring in financial planning, accountancy, business, commerce, economics, finance, or management, and (ii) a qualification (possibly a Level 6 certificate) in financial planning and advice process. Again, an if-not-why-not approach may be used to demonstrate how the outcome is equivalent.
 - **In both cases**, we propose that persons who qualified under the previous regime as AFAs would be recognised as meeting the minimum standard. We ask how RFA experience could be recognised in a measurable, quantifiable way.

⁴⁰ Schedule 5, clause 32(3)(a).

Background

173. In addition to minimum standards of general competence, knowledge, and skill, the Code must provide for minimum standards of particular competence, knowledge, and skill that apply in respect of different types of financial advice, financial advice products, or other circumstances.⁴¹ The Code must identify different types of financial advice, financial advice products, or other circumstances for the purposes of the minimum standards of particular competence, knowledge, and skill.⁴²

174. We will set minimum standards of **particular** competence, knowledge, and skill where:

- a minimum standard of **general** competence, knowledge, and skill is not appropriate (for example, a particular standard that should not apply to all advice situations), and
- the particular standard is justified with reference to the legislative purposes (for example, quality and availability of advice) or New Zealand’s international obligations.

In our view, the Code should identify different types of financial advice, financial advice products, or other circumstances only to the extent necessary to achieve that outcome.

175. We think that two situations justify particular standards of competence, knowledge, and skill: product advice and financial planning.⁴³ Our preliminary reasoning for identifying these two advice types – and proposing minimum standards particular competence, knowledge, and skill for each – are as follows:

- **Product advice:** Where advice includes a recommendation or opinion about acquiring or disposing of a product, the advice-giver must understand the product(s) they are giving advice on. Where the advice includes comparison with similar products, or with an existing product already held by the client, the advice-giver must be capable in all those products. As the advice situation becomes more complex, more variables must be assimilated in order to give the advice and an understanding of the client’s broader financial situation becomes necessary. We think product advice therefore warrants a minimum standard of particular competence, knowledge, and skill. We think the skill level increases in relation to the number of variables being considered in the advice, but that Level 5 is an appropriate reference point to produce good advice outcomes.

In our view, Level 5 has widespread recognition in New Zealand, notably through its use in the AFA Code. It is a pragmatic standard, developed over the last decade through detailed consultation with industry, and deliberately structured to be relevant to advisers working independently or with limited supervision.

- **Financial planning:** The design of a financial plan typically involves the consideration of many variables. Consequently, it may necessitate the exercise of significant discretion, judgement or balancing of factors. In order for such advice to meet the advice quality objectives of the new regime, higher order competence, knowledge, and skill are likely to be required. Accordingly, we think that a Level 7 degree is required, given the higher-level thinking necessary to exercise appropriate discretion. In addition, we are considering a (yet to be developed) Level 6 certificate in NZ financial planning and advice, if that subject area is not included in the degree. We note that the likely Australian and international financial planning requirements for

⁴¹ Schedule 5, clause 32(1)(b).

⁴² Schedule 5, clause 32(3)(a).

⁴³ The draft legislation currently uses the term “investment planning”. See our assumptions on page 16.

competence, knowledge, and skill in financial planning are increasingly being set at a degree level.

Financial planning often, but not necessarily, includes product advice, in which case competence both in the product and in financial planning competence would need to be considered.

176. Competence, knowledge, and skill can be attained through numerous pathways. Often experience is as important as qualifications. We are proposing that AFAs authorised under the previous regime should be regarded as having sufficient experience, by virtue of operating in practice under the laws and standards that applied to AFAs. We do not propose to require these AFAs to qualify further.
177. We are aware that some RFAs, who have not been required to become AFAs, have considerable experience (for example in life insurance planning), and are interested in views on how that experience could be recognised in a measurable, quantifiable way. We think, in the absence of other qualifications or designations, exemption from Level 5 would be difficult to justify. For financial planning, one option would be for the Code to provide a short transitional arrangement for experienced RFAs, where completion of Level 5 together with the Level 6 certificate was recognised as meeting the financial planning minimum standard of particular competence, knowledge and skill.

Proposed approach to minimum standards

178. We are considering as minimum standards of particular competence, knowledge, and skill that must be demonstrated when financial advice is given that the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice must have, in aggregate, the following:

Product Advice

179. For product advice, the advice-giver must have the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained the New Zealand Certificate in Financial Services (Level 5). Level 5 is the reference point: The Financial Advice Provider must decide how it achieves that level in aggregate – for example by using an if-not-why-not approach – by reference to:
 - (i) The qualifications of the individual Financial Adviser or Nominated Representative (this refers to qualifications that are objectively measurable, not experience which generally is not),
 - (ii) the number of variables that must be assimilated to produce a good advice outcome (that is, the complexity of the process), and
 - (iii) the reliance on processes, controls and limitations.
180. So for example, a smaller Financial Advice Provider that relies primarily on the personal expertise of a Financial Adviser, would require limited or no processes, controls and limitations to meet the minimum standard of particular competence, knowledge, and skill.
181. As an alternative example, a Financial Advice Provider relying primarily on its processes, controls and limitations to meet the minimum standard of particular competence, knowledge, and skill, might employ Financial Advisers or Nominated Representatives

who individually do not have full Level 5 qualifications. They would have to justify how those lower qualified people, working within a particular process environment (eg supported by a part-robot advice system) achieved an Level 5 equivalent outcome when considered in aggregate. Such an approach becomes easier to justify when there are limited variables involved in the advice process. As the advice process gets more complex, so too does the process being relied upon to deliver some or all of the competence, knowledge, and skill.

182. Our focus is on the outcome not the input: the client experience must be equivalent to that given by a person holding Level 5, not that each person giving the advice has that qualification. It is essential that the Code provides guidance so that the standard is certain for advisers and capable of enforcement by the Financial Markets Authority and the Disciplinary Committee.
183. A person previously qualified as an AFA would be recognised as meeting the minimum standard.
184. We note the Level 5 certificate is currently being reviewed. This is a well-timed opportunity to adjust the qualification for changes in the legislative framework. We are aware that the number of credits in a qualification has a direct impact on compliance costs. We would welcome a discussion about whether the emphasis in Level 5 on demonstrating **ability** in the advice process remains justified (particularly given the role of Financial Advice Providers in the advice process), or whether a focus on **knowledge** of the advice process and product **specialty** is more useful for good advice outcomes.

Financial Planning

185. For financial planning, the advice-giver must have the competence, knowledge, and skill to give the financial advice to the minimum standard reasonably expected of an individual who has attained (i) a Bachelor's degree (at NZ Level 7 or higher) majoring in financial planning, accountancy, business, commerce, economics, finance, or management, and (ii) a qualification (possibly a Level 6 certificate) in financial planning and advice process (with the focus being on demonstrating ability in financial planning and advice process). Again, an if-not-why-not approach may be used to demonstrate how the outcome is equivalent. That equivalence, in the case of financial planning, would be to a higher level of skill than with product advice: the discretion and insight of a person who had attained a degree would need to be achieved.
186. The suggestion of a Level 6 certificate – which would have fewer credits than a full Level 6 diploma – is to allow someone with a relevant degree, but without any qualification specifically in financial planning or advice in New Zealand, to demonstrate that aspect of their expertise. (That certificate's requirements could also be incorporated into financial planning degrees to allow for a variety of modes of delivery.) At this stage of consultation we are providing an indication of where our thinking is, not final proposals. We understand that there are other qualifications and professional designations that may be at an equivalent or higher level. It would be helpful if submissions could give us specifics of those.
187. A person qualified under the previous regime as an AFA would be recognised as meeting the minimum standard. As noted above, we are also interested in views on how the Code could recognise, or transitionally recognise, past experience of non-AFAs in a measurable, quantifiable way.

188. We propose that the way in which a Financial Advice Provider or Financial Adviser may demonstrate the Financial Advice Provider's or Financial Adviser's competence, knowledge, and skill required by both minimum standards of particular competence, knowledge, and skill is:
- in the case of an individual (Financial Adviser or Nominated Representative), the person has met the requirements specified in the standard, and
 - in all other cases, the Financial Advice Provider has processes, controls and limitations in place to ensure that in aggregate the financial advice meets the standard, and those processes, controls, and limitations are documented and regularly reviewed for effectiveness.

<i>Share your views</i>	
TT.	What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?
UU.	How should RFA's experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
XX.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
YY.	What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?

Continuing professional development

189. We propose to consult on continuing professional development after we have reviewed the consultation submissions on the competence, knowledge, and skill standards.

Other comments

Share your views

ZZ.	Are there any other comments you would like to make to assist us in developing the Code?
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