



IFA Submission on the Code of Professional Conduct For Authorised Financial Advisers

Introduction

The Institute of Financial Advisers (IFA) appreciates the opportunity to formally comment on the draft Code of Professional Conduct for Authorised Financial Advisers. As for our comments on previous papers, we have been mindful of the purpose of financial adviser regulation which is to provide New Zealand consumers with the confidence to seek out professional financial advice to enable them to achieve their lifetime financial goals. We have also considered the likely overall impact of regulation on financial advisers and how that may potentially impact on the availability of Authorised Financial Advisers (AFA) to consumers of financial advice.

Overall view

As you know IFA is highly committed to achieving financial adviser regulation to help raise the standards of financial advice in New Zealand and to help encourage consumers to seek advice to help them achieve their financial goals. We have worked towards achieving this for many years now and passionately want to see it become a reality for New Zealanders as soon as possible.

We have however been extremely concerned at the slippage in timing for the implementation and authorisation processes and in particular we had concerns about the capacity and availability issues with regard to access to assessors and education providers. We therefore welcome the relief provided by the Minister of Commerce, Simon Power, by extending the timeline for advisers to be fully compliant with AFA requirements.

We would still voice our concern at the cost imposition of authorisation on Advisers. Every step of the process of authorisation requires considerable financial commitment on the part of individual advisers that, if this is passed on to their clients, will defeat the purpose of regulation to a certain extent by making access to advice out of the reach of many consumers.

As always we would welcome the opportunity to discuss our submission.

C. MINIMUM STANDARDS OF ETHICAL BEHAVIOUR

Code Standard 1

When providing *financial adviser services*, an AFA must place the interests of the *client* first, and must act with integrity.

We support Code Standard 1 – this is fully consistent with the Codes of Ethics and Practice Standards already in place for IFA members and will pose no problem for our members to adhere to.

Code Standard 2

An AFA must not do anything that would bring the AFA, or financial advisers generally, into disrepute.

We support Code Standard 2 but suggest that any person who warns or brings to the attention of the Commission any such incidences of an AFA bringing financial advisers into disrepute is protected and provided anonymity.

Code Standard 3

An AFA must not state or imply that the AFA is independent, or that the AFA's financial adviser services are independent if, in the circumstances, it would be reasonable for a non expert third party [a client] to consider that the AFA or the services provided are not independent.

We support Code Standard 3

Code Standard 4

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

We support Code Standard 4, although comment that it should state whether the sufficient information has to be supplied in writing or verbally, and when it should be provided in the engagement process.

We also query how the Code will address institutional advisers in relation to how they must disclose fees, bonuses and remuneration.

We submit that there must be consistency in disclosure requirements for institutional and individual advisers.

Code Standard 5

An AFA must not borrow money, or valuable property, from a *client* or lend money, or valuable property, to a *client*.

We support Code Standard 5

Code Standard 6

An AFA must not provide *financial advice* to a *client* in relation to a *financial product* if the AFA is a *related person* of the *provider* of the *financial product*.

We strongly support Code Standard 6 as it's a conflict of interest clause that an adviser cannot opt out of.

Code Standard 7

An AFA who has reasonable grounds to suspect that another AFA has not complied with the Code, or that a person has not complied with the Act, must report the suspected non-compliance to the Securities Commission.

We agree with the intent of this standard – however we would point out that having grounds to suspect is not the same as having absolute proof of non-compliance.

We strongly believe that there needs to be prescriptive guidance around how the Securities Commission will protect and provide anonymity for the whistleblower.

There needs to be regulatory protection for the whistleblower from civil liability.

D. MINIMUM STANDARDS OF CLIENT CARE

Code Standard 8

An AFA must behave professionally when providing *financial adviser services*.

We support Code Standard 8

Code Standard 9

Any *financial advice* given to a *client*, and any *financial planning service* provided for a *client*, must be accompanied by an explanation of the basis for any advice provided, the risks involved in following the advice and the potential benefits of following the advice.

We agree with Code Standard 9, however we stress that the focus should be general, not an in-depth explanation.

Code Standard 10

In providing *personalised financial advice* or a *financial planning service*, an AFA must:
(a) take reasonable steps to determine that the AFA's *financial adviser services* are suitable for the *client*; and
(b) give an explanation of the basis for any *financial advice* provided.

We support Code Standard 10 however in regard to point (d) of the additional provisions would point out that in reality clients often do not decline advice in writing – they just opt not to proceed with taking the advice provided - so it is difficult for an adviser to enforce this standard.

Code Standard 11

When providing *non-personalised financial advice*, an AFA must ensure a statement is provided to the effect that the advice has not taken into account the recipient's financial situation, needs or goals, or tolerance for risk, and should not be relied on without taking *personalised financial advice*.

We have no comment on this Code Standard.

Code Standard 12

An AFA must ensure there is an appropriate process in place for resolving a *client's complaints* in relation to the AFA's *financial adviser services*, in addition to the AFA's *external dispute resolution scheme*.

We recommend an amendment to (a) of the additional provisions:

Advisers who are not part of a large company or institution do not normally have access to internal disputes resolution processes. We recommend that the requirement should be for an "internal complaints handling process" to be in place in each adviser practice.

Code Standard 13

An AFA must take all reasonable steps to protect:

- (a) *client money*; and
- (b) *client property*; and
- (c) *client information*.

We have no comment on this Standard.

Code Standard 14

An AFA must take all reasonable steps to ensure that proper:

- (a) trust account records are kept of *client money*; and
- (b) records are kept of *client property*

We support Code Standard 14

Code Standard 15

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

We support Code Standard 15

Code Standard 16

An AFA must ensure that records of all information and documents required under this Code are kept for a minimum of 7 years.

We support Code Standard 16 however seek assurance that there is a statute of limitations for complaints. If records are to be kept for 7 years then assurance is needed that there is no ongoing risk of a complaint on advice given more than 7 years previously.

E. MINIMUM STANDARDS OF COMPETENCE, KNOWLEDGE, AND SKILLS REQUIRED TO PROVIDE FINANCIAL ADVISER SERVICES

Code Standard 17

Before providing a *financial adviser service*, an AFA must be satisfied that the AFA has the competence, knowledge and skills to provide that service.

We strongly support Code Standard 17

Code Standard 18

An AFA must have an adequate knowledge of the Act, the Code and other legal obligations relevant to the operation of the AFA's practice as a *financial adviser*, including relevant consumer protection laws.

We support Code Standard 18

Code Standard 19

An AFA must attain the *Unit Standard Sets* within the National Certificate in Financial Services (Financial Advice) (Level 5) that are relevant to the *financial adviser services* provided by the AFA.

For the purposes of the Code, an AFA is deemed to have attained a particular *Unit Standard Set* where the AFA has attained an alternative qualification or designation to that *Unit Standard Set* specified in the Competence Alternatives Schedule.

We support Code Standard 19 but would recommend that it should state that:
For the purposes of the Code, an AFA is deemed to have attained a particular *Unit Standard Set* where the AFA has attained and maintains an alternative qualification or designation to that *Unit Standard Set* specified in the Competence Alternatives Schedule.

F. MINIMUM STANDARDS FOR CONTINUING PROFESSIONAL DEVELOPMENT

Code Standard 20

An AFA must maintain and keep current a professional development plan for each CPT period.

We support Code Standard 20 - but would suggest that the regime needs to be based on the need for continuing professional development rather than “training” which implies attendance at a course of study rather than all the many ways in which development can take place. We believe that requiring advisers to achieve continuing development rather than training provides them with a wider scope for them to access professional development that is appropriate to their needs rather than attending training courses just to achieve sufficient hours.

Code Standard 21

An AFA must undertake sufficient continuing professional training to maintain the AFA's competence at a level appropriate for the *financial adviser services* the AFA provides or intends to provide, and keep up to date with developments relevant to the AFA's practice.

We support Code Standard 21 - but would suggest that the regime needs to be based on the need for continuing professional development rather than “training” which implies attendance at a course of study rather than all the many ways in which development can take place. We believe as above that development rather than training provides advisers with a wider scope for them to access professional development that is appropriate to their needs rather than attending training courses just to achieve sufficient hours.

G. COMPETENCE ALTERNATIVES SCHEDULE

Standard Set A

1. We believe that any Economics or Finance Degree should be included as an alternative qualification that satisfies this Standard.
2. We suggest that the words “Graduate” and “Post Graduate” and the reference to Massey University be removed from the description of the Diploma in Business Studies or Personal Financial Planning— so that they are referred to as the Diploma in Business Studies or the Diploma in Personal Financial Planning. The reason for this is that this qualification has been known as the Diploma, the Graduate Diploma and the Post Graduate Diploma at differing times, and it has been available from either Massey or Waikato University, but it is essentially the same diploma which has been accepted by IFA as meeting our requirements and those of the international Financial Planning Standards Board (FPSB) in regard to the academic qualification leading to the awarding of the CFP^{CM} mark.

Standard Set B – We support the need for all advisers to complete this Standard.

Standard Set C - relates to the Adviser's practice and processes rather than their technical knowledge. We feel there are some real discrepancies in the exemptions for this standard.

1. We believe that achievement of the CFP^{CM} or CLU professional designations should be sufficient to provide exemption from the requirement to achieve Standard Set C. All CFP^{CM} and CLU professionals are experienced advisers, and have met appropriate IFA (or our predecessor organisations) standards and the certification process applicable at the time to be awarded these designations. All CFP^{CM} practitioners have achieved this designation through the equivalency requirements of the international Financial Planning Standards Board (FPSB). These equivalency requirements are discussed below. They have all had to complete a period of study (including those who have not done a Diploma) and an assessment of their competence. They have also continued to adhere to IFA standards since achieving their CFP^{CM} or CLU designations including our Code of Ethics and Practice Standards, continuing professional development requirements and voluntarily subscribing to the IFA's disciplinary process. The majority have also been valuable mentors to up and coming financial adviser professionals - they have effectively been the trailblazers for professional financial advice in New Zealand and we believe they need to be recognised as such.
2. Additionally we strongly recommend that any adviser that has completed the approved IFA 2 year mentoring programme should be exempt from this standard. The mentoring process is carried out by experienced senior advisers, approved as being suitable mentors by our Certification Committee. Mentors are generally holders of the CFP^{CM} or CLU professional designations (see "Relevance and Importance of the CFP^{CM} designation at the end of this paper) and the mentoring process covers such matters as a demonstration that the adviser is following a correct process, a review of their client files, as well as their technical experience. Those who have gone through this process have already proven their practices and processes are of an appropriate standard. We feel that not only is there a cost imposition on these Advisers who have already met this requirement which, in our view, is unjust but that these Advisers have already clearly demonstrated their adherence to best-practice advice processes and there is nothing to be gained by requiring them to do so again. The process involves four in-depth mentor reports being completed over a 2 year period (a copy of a template mentor report showing what is assessed for each report is attached) and each report is referred to our Certification Committee for overview to determine that it meets acceptable standards.

Our membership Bylaws outline the mentoring process as follows:

1 4.3 *The Mentor shall use his or her best endeavours to ensure that the Member:*

1. *complies with the Institute's Constitution, Bylaws, Code of Ethics, Rules of Conduct and Practice Standards*
2. *maintains appropriate records of client activities*
3. *has satisfactory administrative systems in place*
4. *obtains the required depth and breadth of experience*
5. *provided that as between the Mentor and the Member, the Mentor shall not incur any personal liability in the undertaking of such role.*

14.4 The Mentor will be required to report six monthly to the Certification Committee and shall confirm that the required experience standards have been met, and provide other comment/information as sought by the Committee.

(Attached to this submission, as Appendix A, is the Mentor Guidelines and the Mentor Report template which detail the various processes and experience the Mentor will review and report on. Additionally as Appendix B is the IFA Practice Standards that all IFA members adhere to)

3. Again we encourage you to drop the term “Graduate” or “Post Graduate” and specific University references, and simply use the term “Diploma”

Standard Set D

1. We believe that all CFP^{CM} professionals should be included as having achieved sufficient qualification for the achievement of Standard Set D as they have demonstrated the ability to meet the requirements applicable at the time they achieved their designation which has always included demonstrating competence and understanding of investment theory and the fundamentals of investment. They have also maintained continuing professional development at levels to meet ongoing IFA membership criteria (which is a greater requirement than that set for all financial advisers through the Code).
2. The Diploma qualification is recorded in the schedule, but not the designation received if a person has achieved that designation.
3. We suggest that the word “Graduate” and the reference to Massey University be removed from the description of the Diploma in Business Studies – so that it is referred to as the “Diploma in Business Studies”. The reason for this is that it has been known as the Diploma, the Graduate Diploma and the Post Graduate Diploma at differing times and is and has been available from both Massey and Waikato University, but is essentially the same diploma that has been accepted by IFA as meeting our requirements and those of the international Financial Planning Standards Board (FPSB) in regard to the academic qualification leading to the awarding of the CFP^{CM} mark.

Standard Set E

1. Advisers, who have completed the following courses that were formal learning provided through Adviserlink, should be exempt from this Standard as we believe the competencies have been met:
 - Risk Management
 - Disability Income Insurance
 - Business Insurance
 - Agent as a business person
2. We believe the Diploma in Personal Financial Planning or the Diploma in Business Studies should be recognised as an alternative qualification for this Standard as these both include papers on insurance.

3. We believe there is an obvious mistake here – CFP^{CM} has been excluded from the approved designations list, when CLU, ALU and AFP are included. All CFP^{CM} practitioners have demonstrated competence and understanding of an insurance and property investment component at the time they achieved their qualification and designation. Also, it states there are ‘no approved qualifications’ when in the designations column it lists the approved qualifications. We suggest these approved papers are moved into the approved qualifications column, and Certified Financial Planner^{CM} is added as an approved designation.
4. We suggest that the word “Graduate” and the reference to Massey University be removed from the description of the Diploma in Business Studies and the Diploma in Personal Risk Management – so that it is referred to as the “Diploma in Business Studies” or the “Diploma in Personal Risk Management”. The reason for this is that it has been known as the Diploma, the Graduate Diploma and the Post Graduate Diploma at differing times and is and has been available from both Massey and Waikato University, but is essentially the same diploma that has been accepted by IFA as meeting our requirements and those of the international Financial Planning Standards Board (FPSB) in regard to the academic qualification leading to the awarding of the CFP^{CM} mark.

Additional points on the Competence Alternatives Schedule

No allowance has been made for those advisers who have attained their qualifications and CFP^{CM} designation in another country, and have therefore not gained the NZ diplomas – however they have met stringent international requirements to achieve the designation in their country of origin and then completed the required Tax and Estate Planning papers here along with six months mentoring to be certified as members of the IFA and holders of the CFP^{CM} designation in accordance with our certification by-laws and standards set by the international Financial Planning Standards Board (FPSB). These CFP^{CM} practitioners should be exempted from having to sit anything apart from Standard Set B (together with all CFP^{CM} and CLU professionals) as they have proved their experience and qualifications via the IFA certification process which is approved by FPSB which controls the standards for achievement of the CFP^{CM} designation throughout the world.

We strongly recommend that all advisers who have CFP^{CM} are exempted from having to complete standards sets A, C, D and /or E. Particularly in the case of Standard Set C, given that Standard Set C is an assessment, not of technical competency, but rather of an adviser’s delivery of the advice process and their practice standards, and that these aspects we believe are more than adequately covered by the attached IFA Mentor Guidelines and Mentor Report requirements (Appendix A) and the FPSB Financial Planner Competency Profile attached in Appendix C (we refer to the section entitled “Financial Planner Professional Skills Matrix on pages 12-13)

These advisers have already proved they have attained the necessary experience and qualifications, in excess of the Level 5 qualification, via the IFA certification process and have been awarded the designations because they have proven they met these requirements. They have also voluntarily adhered to IFA’s Codes of Ethics (Appendix D) and Practice Standards (Appendix B), achieved higher than the minimum levels of continuing

professional development required under the Code and have been subject to IFA's complaints and disciplinary process. We believe that these people have demonstrated strong commitment to raising standards of financial advice professionalism in New Zealand and should be recognised as being the pioneers of our profession.

We further comment that the Code has been built around the standards required to achieve the Level 5 Certificate, with no recognition to those on the path to the higher qualification of the diploma. This creates the possibility that it will kill the aspiration to achieve higher standards and qualifications as a professional financial adviser. There is no recognition in the Code for anyone who is on the journey, with maybe 4 or more papers of the Diploma completed. The risk here is that Advisers will go for the minimum requirement for authorisation and not aspire to achievement of the Diploma, and that New Zealand consumers will have limited access to advisers who aspire to achievement of higher standards of qualification and professionalism.

We bring to the Code Committee's attention also that the AFP, ALU, CLU and CFP^{CM} designations awarded by IFA are only applicable while they are members of IFA. The designations are lost when an adviser leaves and they can no longer hold themselves out to hold one of these if they do not maintain their professional body membership.

As a final thought on this, we fear there could well be a miscarriage of justice, particularly with respect to the Competence Alternatives Schedule. We have substantial concern as to the rationale in not giving recognition to the CFP^{CM} designation, given that it is internationally recognised and highly respected and is awarded to financial planning practitioners who meet stringent entrance and ongoing criteria. It is a little ironic that an associated accounting professional, for whom financial planning services are arguably not their core business, may meet the requirements of Standard Set C, yet a professional in the business itself, with an internationally recognised designation, may very well be excluded.

DEFINITIONS SCHEDULE

Professional Body

We feel that this definition needs to be extended to include not only the need for continuing professional development but also for the requirement of professional standards for its members and enforcement of those standards through a robust disciplinary process.

The Relevance and Importance of the CFP^{CM} Designation

CFP^{CM} is the international mark of professional distinction and represents global excellence in financial planning. It is the highest designation that a truly professional financial adviser can achieve. There are over 120,000 CFP^{CM} practitioners worldwide licensed through the international body – the Financial Planning Standards Board (FPSB). IFA is the only body licensed to FPSB to award the designation in NZ by following strict guidelines set by FPSB. FPSB, through IFA, has granted the CFP^{CM} designation to those advisers that have completed the diploma (and have completed the required mentored training) and also to those advisers without a diploma who have demonstrated equivalent competency in the relevant areas on the basis of prior training, experience and examination.

We recognise that there may be some concern as to the competency of those CFP^{CM} advisers that have not completed the diploma. All CFP^{CM} and CLU advisers without a diploma have a minimum of 15 years experience. They were all required to attend approved training courses at the time of being granted their professional designation and were all required to pass an examination before being granted their designation.

It is a misconception that any of these people were awarded their designations by way of lowering of standards, a “grand-parenting” process or worse, through having “bought” their designation. IFA and its predecessor organisations have taken the responsibility of awarding this international mark of excellence very seriously. We can therefore state that no-one under our jurisdiction has been awarded their designation without appropriate levels of experience and competence assessment.

IFA is subject to regular auditing of our CFP^{CM} certification programme and processes. In Appendix C we attach copies of the international Financial Planning Standards Board Assessment Framework, Curriculum Framework and Financial Planner Competency Profile for the Committee’s information which detail the significant competencies and knowledge requirements that a CFP^{CM} practitioner must prove before being awarded this designation anywhere in the world. All CFP^{CM} professionals in New Zealand, including those without diplomas, have been assessed as competent or have been awarded equivalency for prior training and experience in respect of those standards.

IFA asks that these documents be forwarded onto ETITO or the Code Committee competency group, or whoever will be making a determination of equivalency of standards.

The competencies required are far in excess of the Level 5 qualification; therefore we believe that any CFP^{CM} practitioner should not have to re-demonstrate their competence.

We would welcome the opportunity to discuss these points further

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