

**Reprint
as at 1 May 2014**



**Financial Advisers (Code
of Professional Conduct for
Authorised Financial Advisers)
Notice 2010**

(SR 2010/384)

Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010: revoked, on 1 May 2014, by clause 3 of the Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2014 (*Gazette* 2014, p 966).

Pursuant to section 94 of the Financial Advisers Act 2008, and following the preparation of a draft code by the code committee under section 87 of that Act, and the approval of that draft code by the Commissioner for Financial Advisers under section 88 of that Act and by the Minister of Commerce under section 92 of that Act, the Commissioner for Financial Advisers gives the following notice.

Contents

	Page
1 Title	2
2 Date on which Code of Professional Conduct for Authorised Financial Advisers comes into force	2
Schedule	2
Code of Professional Conduct for Authorised Financial Advisers	

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010.

**2 Date on which Code of Professional Conduct for
Authorised Financial Advisers comes into force**

All of the provisions of the Code of Professional Conduct for Authorised Financial Advisers set out in the Schedule come into force on 1 December 2010.

Schedule

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Code of Professional Conduct for Authorised Financial Advisers

Contents

	Page
A Background	3
B Introduction	4
C Minimum standards of ethical behaviour	5
Standard 1 Placing client interests first and acting with integrity	5
Standard 2 Not bringing the financial advisory industry into disrepute	5
Standard 3 Using the term “independent”	6
Standard 4 Borrowing from or lending to a client	7
Standard 5 Restrictions that apply where AFA is related person of product provider	7
D Minimum standards of client care	8
Standard 6 Behaving professionally	8
Standard 7 Ensuring retail clients are able to make informed decisions	9
Standard 8 Suitability of personalised services for retail clients	10
Standard 9 Explaining the basis of personalised services for retail clients	11
Standard 10 Providing class services for retail clients	12

Reprinted as at 1 May 2014	Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010	Schedule
	Standard 11 Complaints processes	12
	Standard 12 Keeping information about personalised services for retail clients	12
	Standard 13 Record retention	14
E	Minimum standards of competence, knowledge, and skills	14
	Standard 14 Overarching competence requirement	14
	Standard 15 Requirement to have an adequate knowledge of Code, Act, and laws	15
	Standard 16 National Certificate in Financial Services (Financial Advice) (Level 5) requirement and alternative qualifications	15
F	Minimum standards for continuing professional training	16
	Standard 17 Professional development plan requirement	16
	Standard 18 Undertaking continuing professional training	17
G	Competence Alternatives Schedule	18
H	Definitions schedule	24

A Background

This is the Code of Professional Conduct for Authorised Financial Advisers for the purposes of the Financial Advisers Act 2008.

This section of the *Code* provides a brief overview of the scope and aims of the *Code*. The remainder of the *Code* contains the operative provisions which must be complied with by all *Authorised Financial Advisers*.

Financial advisers are required to be authorised under the Financial Advisers Act in order to provide a *personalised service* to a *retail client* that is:

- (a) *financial advice* or a *discretionary investment management service* in relation to a *category 1 product*; or
- (b) an *investment planning service*.

Financial advisers may also elect to become authorised under the *Act* in other situations specified in regulations made under the *Act*. As at the date of this *Code* no such regulations have been made.

The overarching purpose of the Financial Advisers Act is “to promote the sound and efficient delivery of financial adviser and broking ser-

vices, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers”.

One of the key ways the *Act* seeks to achieve its purposes in relation to *financial adviser services* is by requiring all *Authorised Financial Advisers* (also referred to as *AFAs*) to comply with a code which provides for minimum standards of professional conduct. The overarching purpose of the *Act* provides the spirit underpinning the *Code*. When considering their conduct and disclosure obligations under the *Act* and the *Code*, *AFAs* should have that spirit in mind.

The *Act* requires the *Code* to contain minimum standards of competence, knowledge, and skills, of ethical behaviour, and of client care. The *Code* is also required to provide for continuing professional training for *Authorised Financial Advisers*, including specifying requirements that an *FA* must meet for the purpose of continuing professional training. *AFAs* may be disciplined for breaches of the *Code*.

A number of the **Code Standards** include reference to legal obligations that would apply to *AFAs* irrespective of the *Code* requirements. Such references are included largely for the sake of completeness. However, the *Code* does not refer to all legal obligations of *AFAs*. *AFAs* must comply with all applicable laws, whether or not referred to in the *Code*.

This *Code* has been approved by the *Minister* under the Financial Advisers Act and comes into force, either in part or in full, on a date or dates specified by *Gazette* notice under section 94 of the *Act*. The *Commissioner* may specify different dates for the commencement of different provisions of this *Code*.

B Introduction

Each standard in this *Code* consists of an overarching principle identified as a **Code Standard** together with additional provisions that contain further detail about the application of the **Code Standard**.

Unless otherwise stated, the additional provisions do not limit the application of the overarching principle under which they are stated, or the application of any other Code Standard. AFAs must apply the Code Standards in a way that encourages public confidence in the professionalism and integrity of financial advisers.

Terms used in this *Code* that appear in italics are defined in the definitions schedule.

This *Code* does not limit an *AFA*'s legal obligations, including those under the *Act*.

C Minimum standards of ethical behaviour

Code Standard 1

An Authorised Financial Adviser must place the interests of the client first, and must act with integrity.

This **Code Standard** applies to any activity of an *AFA* that relates to the *AFA*'s *financial adviser services*.

What is required to place a *client*'s interests first for the purposes of this **Code Standard** is determined by what is reasonable in the circumstances, including any regulatory obligations binding on the *AFA* in addition to the *Code*.

An *AFA* is required to advise a *client* only in relation to *financial products* or matters that are within the scope of the *AFA*'s *financial adviser services*, as advised to the *client* *in writing*. An *AFA* is not required to consider or provide *financial adviser services* in relation to *financial products* or matters that are not within that scope in order to comply with this **Code Standard**.

An *AFA*'s obligation under this **Code Standard** to place a *client*'s interests first will not be breached by reporting to the Securities Commission any breaches of the *Act* that the *AFA* reasonably believes to have occurred.

Code Standard 2

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

This **Code Standard** prohibits an *AFA* from conduct that would undermine public confidence in the professionalism or integrity of the financial advisory industry. However, this **Code Standard** does not prevent an *AFA* from commenting in good faith on the business, actions, or inactions of any *person* (including any other *financial adviser*, financial adviser group, financial service provider or industry

body) or from exercising the *AFA*'s reporting powers under section 45A of the *Act*.

Code Standard 3

An Authorised Financial Adviser must not state or imply that the Authorised Financial Adviser is independent, or that any financial adviser services provided are independent, if a reasonable person in the position of a *client* would consider that the Authorised Financial Adviser or the services provided are not independent.

The following are examples of circumstances where neither the *AFA* nor the *AFA*'s provision of *financial adviser services* may be described as "independent":

- (a) a *related person* of the *AFA*, or a *related person* of the *AFA*'s employer, or *principal*, is the *product provider* of a *financial product* relevant to the *financial adviser service* provided; or
- (b) the *AFA* is subject to a contractual obligation to:
 - recommend a particular *financial product* or *financial products*; or
 - limit the *AFA*'s recommendations or *discretionary investment management services* to a particular *financial product* or *financial products*; or
 - attain or maintain a target in relation to a particular *financial product* or *financial products*.

However, the contractual obligations falling within this paragraph (b) do not include the use of wrap account services, platforms, or other portfolio administrative or custodial services, where the use of such services and the arrangements the *AFA* is able to put in place for the *AFA*'s *clients* permit access to a wide range of *financial products* and *product providers*; or

- (c) the *AFA* or a *related person* of the *AFA* will or may directly or indirectly receive a *benefit* from a *person* other than the *client* for providing the services or from the *client*'s acquisition of a *financial product* or products.

However, for the purposes of this paragraph (c) the following *benefits* do not affect an *AFA*'s ability to describe the *AFA* or the *AFA*'s services as independent:

- those that are paid, credited, or transferred to the *client*;
and

- those that are remote or insignificant; and
- those that are received by the *AFA* in the form of salary or wages as an employee, or in the form of fees as a contractor, that are not determined in whole or in part by reference to volume or other targets relating to a particular *financial product* or *product provider*.

An *AFA* must not state or imply that a researcher or other third party service provider used by the *AFA* in relation to the *AFA*'s *financial adviser services* is independent unless the *AFA* has reasonable grounds to believe the third party would be able to describe themselves as independent under this **Code Standard**, if the third party were an *AFA*.

Code Standard 4

An Authorised Financial Adviser must not borrow from or lend to a retail client.

This **Code Standard** does not apply if the *client* is

- (a) a *related person* of the *AFA*; or
- (b) in the business of borrowing or lending money or valuable property and the *AFA*'s borrowing or lending is in the ordinary course of the *client*'s business on terms consistent with the *client*'s normal business terms.

This **Code Standard** does not prevent an *AFA* or an *AFA*'s employer or *principal* from entering into financial arrangements on behalf of a *client* as the *client*'s agent to meet settlement obligations in relation to any *financial product*.

An *AFA* must not arrange for the *AFA*'s employer or *principal* to borrow from or lend to a *retail client*, other than in the ordinary course of the employer's or *principal*'s business.

Code Standard 5

An Authorised Financial Adviser must not provide financial advice to a retail client in relation to a financial product that is not offered to the public if the Authorised Financial Adviser is a related person of the product provider of that financial product.

This **Code Standard** does not apply:

- (a) if the *client* is a *related person* of the *AFA*, or is a *related person* of the *AFA*'s employer or *principal*; or

- (b) if the *AFA* is satisfied on reasonable grounds that the *AFA's financial advice* is appropriate for the *client* and, before the *client* makes a decision in relation to the *financial product* to which the *financial advice* relates, the *AFA* provides to the *client in writing*:
- (i) an explanation of the *AFA's* relationship with the *product provider* of the *financial product*, the risks of the *financial product*, and details of how the *AFA* manages any conflict of interest arising as a result of that relationship; and
 - (ii) a recommendation that the *client* takes *financial advice* from another *AFA* who is not a *related person* of the *product provider*.

The purpose of this **Code Standard** is to protect the interests of *retail clients* in the rare situations where a *retail client* may hold, or lawfully be offered the opportunity to acquire, a *financial product* that is not *offered to the public*. Accordingly, this **Code Standard** is very limited in its application. It does not enable an *AFA* to provide *financial advice* to a *retail client* in relation to the acquisition of a *financial product* that is not able to be lawfully offered to the *client*.

D Minimum standards of client care

Code Standard 6

An Authorised Financial Adviser must behave professionally in all dealings with a client, and communicate clearly, concisely, and effectively.

When providing *financial adviser services* to a *client*, an *AFA* must:

- (a) provide only services that the *AFA* has the competence, knowledge, and skill to provide; and
- (b) provide the *services* and perform the *AFA's* obligations in a timely way; and
- (c) transparently manage any conflicts of interest that may arise in providing the services; and
- (d) make recommendations only in relation to *financial products* that have been analysed by the *AFA* to a level that provides a reasonable basis for any such recommendation, or analysed by

another *person* upon whose analysis it is reasonable, in all the circumstances, for the *AFA* to rely.

Communicating “effectively” for the purposes of this **Code Standard** requires an *AFA* to take reasonable steps to ensure the *client* understands the communication.

When transmitting the *financial advice* of another *person* to a *client*, an *AFA* must take reasonable care to ensure that the *person* providing the *financial advice* has an appropriate level of competence, knowledge, and skill to provide that advice, and either:

- ensure the *client* is aware that the *AFA* has not prepared the *financial advice* or assessed its suitability for the *client*; or
- accompany the *financial advice* with the *AFA*’s own *financial advice* in relation to the same subject matter (in which case the *AFA* may have further obligations under **Code Standards 8 and 9**).

When providing *financial adviser services* to a *wholesale client*, an *AFA* must take reasonable steps to ensure the *client* is aware that the *client* is regarded as a *wholesale client* for the purposes of the *Act* and the *Code*, and also is aware of the consequences of that status.

Code Standard 7

An Authorised Financial Adviser must ensure each retail client has sufficient information to enable the client to make an informed decision about whether to use the Authorised Financial Adviser’s financial adviser services and/or to follow any financial advice provided by the Authorised Financial Adviser.

The information an *AFA* may be required to provide a *retail client* under this **Code Standard** includes (but is not limited to) information about any limits on the scope of the *AFA*’s *financial adviser services*, the *AFA*’s qualifications to provide those services, the fees the *client* must pay, the *benefits* the *AFA* or any *related person* of the *AFA* will or may receive, and any conflicts of interest the *AFA* may have, in relation to the *AFA*’s *financial adviser services* provided to the *client*.

In many circumstances an *AFA* will satisfy the requirements of this **Code Standard** by complying with the *AFA*’s disclosure obligations under the *Act*. However, in some circumstances additional information may need to be provided to a *retail client* to ensure the *client* has sufficient information to be able to make an informed decision.

The information required under this **Code Standard** must be updated when there is any change in the *AFA*'s circumstances that is material to the *financial adviser services* provided by the *AFA* to the *client*.

Code Standard 8

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

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

Where a *client*:

- (a) declines to provide some or all of the information required under this **Code Standard**, an *AFA* must take reasonable steps to ensure the *client* is aware that the *personalised service* is limited and specify those limitations; or
- (b) instructs an *AFA* (or an *AFA*'s employer or *principal*) not to determine the suitability of the *financial adviser service* provided, the *AFA* is relieved from the obligation to determine suitability to the extent provided for in that instruction. However, this relief is only available if the instruction is provided in a document that is signed and dated by the *client*, and that includes a clear acknowledgement from the *client* as to the advantages of the *AFA* determining suitability based on the provision of all the information contemplated under this **Code Standard**.

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

- drawing the *client*'s attention to the *client*'s ability to opt out of having suitability determined as contemplated under this **Code Standard**; or

- quoting or estimating a reasonable fee for determining suitability under this **Code Standard**.

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

Code Standard 9

Where an *Authorised Financial Adviser* provides a *personalised service* to a *retail client* that is an *investment planning service* or that relates to a *category 1 product*, the *Authorised Financial Adviser* must provide a written explanation to the *client* of the basis on which those services are provided. The *Authorised Financial Adviser* must also take reasonable steps to ensure the *client* is aware of the principal benefits and risks involved in following any *financial advice* provided as part of that service, having regard to the characteristics of the *personalised service*.

All explanations required under this **Code Standard** must be provided to the *client* at the time the *personalised service* is provided or as soon as practicable after that time. However, the requirement to provide an explanation under this **Code Standard** does not apply where:

- the *AFA* has previously provided the *client* with an explanation under this **Code Standard** that is sufficient to cover the *personalised service* provided; or
- the *client* has either instructed the *AFA* (or the *AFA*'s employer or *principal*) or confirmed a prior instruction that an explanation under this **Code Standard** is not required. Any such instruction or confirmation need not be *in writing*, but must reflect an unambiguous, active instruction or confirmation that is relevant to the *personalised service* currently being provided.

The extent of any explanation required under this **Code Standard** is determined by what a *retail client* would reasonably require for the purpose of deciding whether to follow any advice or guidance provided by the *AFA*.

An *AFA* must not direct or influence a *client* to decline the explanation contemplated under this **Code Standard**. However, this restriction does not prevent an *AFA* from:

- drawing the *client*'s attention to the *client*'s ability to opt out of receiving the explanation contemplated under this **Code Standard**; or
- quoting or estimating a reasonable fee for providing an explanation under this **Code Standard**.

Code Standard 10

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

Code Standard 11

An *Authorised Financial Adviser* must ensure there is an appropriate internal process in place for resolving *client complaints* in relation to the *Authorised Financial Adviser*'s *financial adviser services*.

The complaint resolution process under this **Code Standard** must ensure that:

- (a) the *client* is, as soon as reasonably practicable after making a *complaint*, provided with acknowledgement of the *complaint*, information about the *AFA*'s *internal complaints handling process*, and how to complain to the Securities Commission and to any applicable *external dispute resolution scheme*; and
- (b) a register is kept recording all *complaints*, and action taken towards resolving those *complaints*.

The complaints resolution process required under this **Code Standard** is required in addition to the *AFA*'s *external dispute resolution scheme* (if any).

Code Standard 12

An *Authorised Financial Adviser* must record *in writing* adequate information about any *personalised services* provided to a *retail client*.

The information required to be recorded under this **Code Standard** in relation to each *retail client* must include:

- (a) information about:
 - (i) any *personalised service* provided or any *financial product* recommended to the *client*; and
 - (ii) any required explanation, and advice as to suitability, given to the *client* in relation to a *financial adviser service* or *financial product*; and
 - (iii) the results of any enquiry or any oral confirmation from the *client* declining an explanation or suitability assessment under **Code Standards 8 and 9**; and
- (b) copies of all information and documents provided to the *client in writing*, or received from the *client*, in connection with the *AFA's personalised services* including—
 - (i) any information provided under **Code Standard 7**; and
 - (ii) any provision or confirmation of *financial advice*; and
 - (iii) any explanation provided in accordance with **Code Standard 9**; and
 - (iv) any instructions from the *client* declining to provide information or declining an explanation under **Code Standards 8 or 9**; and
 - (v) any instructions from the *client* declining or acknowledging any limitations of a suitability analysis in accordance with **Code Standard 8**; and
 - (vi) details of any *complaint* received in relation to the *AFA's services*.

An *AFA* who is an employee may satisfy the *AFA's* obligations under this **Code Standard** by taking reasonable steps to ensure that relevant measures taken by the *AFA's* employer are consistent with the measures contemplated under this **Code Standard**.

An *AFA* must comply with all obligations under the Privacy Act 1993. Without limitation, this includes obligations in relation to the use and disclosure of *clients' personal information* and the protection of that information from loss and unauthorised access, use, modification, or disclosure.

Code Standard 13

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

The 7-year minimum period required under this **Code Standard** generally commences on the last date that the *AFA* provides a *financial adviser service* to the *client*. However, for information relating to a *financial product* transaction entered into by the *client*, the 7-year minimum period for that information commences on the date that all benefits potentially available to the *client* from the *financial product* have been realised, if that date is earlier than the date that would otherwise apply.

The records required under this **Code Standard** may be kept in electronic form, provided the records are readily retrievable.

An *AFA* who is an employee may satisfy the *AFA*'s obligations under this **Code Standard** by taking reasonable steps to ensure that relevant measures taken by the *AFA*'s employer (or the *AFA*'s previous employer, where applicable) are consistent with the measures contemplated under this **Code Standard**.

Where an *AFA* transfers the *AFA*'s financial advisory relationship with a *client* to another *financial adviser*, the *AFA* may satisfy the *AFA*'s obligations under this **Code Standard** by taking reasonable steps to ensure that the other *financial adviser* keeps the records contemplated under this **Code Standard** for at least as long as the *AFA* would otherwise have been required to keep them.

E Minimum standards of competence, knowledge, and skills required to provide financial adviser services

Code Standard 14

Before providing a *financial adviser service*, an Authorised Financial Adviser must have the competence, knowledge, and skills to provide that service.

This **Code Standard 14** applies in addition to the requirements of **Code Standards 15 and 16** that relate to particular qualifications an *AFA* must attain.

An *AFA* must be able to demonstrate that the *AFA* has a reasonable basis for believing that the *AFA* has the level of competence, knowledge, and skills required by this **Code Standard**.

Code Standard 15

An Authorised Financial Adviser must have a knowledge of the Act, the Code, and other legal obligations relevant to the operation of the Authorised Financial Adviser's practice as a financial adviser (including relevant consumer protection laws), that is adequate for the proper operation of that practice.

An *AFA* must attain *Unit Standard Set B* and be able to demonstrate the adequacy of the *AFA*'s knowledge of relevant legislative obligations.

Code Standard 16

To be an Authorised Financial Adviser, a financial adviser must attain the Unit Standard Sets within the National Certificate in Financial Services (Financial Advice) (Level 5) that are relevant to the financial adviser services provided by the AFA.

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

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

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

- (a) may provide a *class service* for any *client*, and any form of *financial adviser service* for a *wholesale client*, without having attained *Unit Standard Set C* or *Unit Standard Set D*; and
- (b) may provide a *discretionary investment management service* for a *client* without having attained *Unit Standard Set C*; and
- (c) may provide *financial adviser services* for a *client* without having attained *Unit Standard Set D* if the *AFA* has attained *Unit Standard Set E* and the *financial products* that might be

included within the scope of the *financial adviser services* provided for the *client* concerned do not include any *category 1 products*.

If an *AFA* has attained *Unit Standard Set D* this **Code Standard** does not also require the *AFA* to attain *Unit Standard Set E* in order to provide *financial adviser services* that involve *category 2 products*, so long as the *AFA* satisfies **Code Standard 14**. For the purposes of this **Code Standard**, an *AFA* will be deemed to have attained *Unit Standard Set E* if the *AFA* has either passed both of the residential property lending *units* (*units* 26286 and 26287), or the *AFA* has passed *unit* 25644 and at least one of *units* 25645, 25646, or 25647 (being *units* relating to insurance).

Competence Alternatives Schedule

For the purposes of the *Competence Alternatives Schedule*:

- a designation previously attained that has not been retained at the time an *AFA* seeks authorisation will still be recognised for the purposes of the Schedule, provided the *AFA* has completed at least 20 hours *CPD* in the 12 months immediately before first becoming authorised, including at least 10 hours of structured training as described in **Code Standard 18**; and
- references to a qualification paper or designation being “subject to the *eligibility sunset*” mean the relevant qualification, paper, or designation must be fully attained at the time the *AFA* seeks authorisation for the first time, and the qualification, paper, or designation will only be recognised for authorisations that come into effect prior to 1 January 2014.

F Minimum standards for continuing professional training

Code Standard 17

An Authorised Financial Adviser must maintain and keep current a professional development plan for each CPD period.

An *AFA*’s professional development plan must:

- (a) identify any areas for improvement in the *AFA*’s competence, knowledge, and skills in relation to the *financial adviser services* he or she provides or intends to provide;

- (b) include the *AFA*'s proposals for making those improvements; and
- (c) where available, include details of courses, seminars, workshops, and any other training or professional development planned to be undertaken.

Code Standard 18

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

An *AFA* must in each *CPD period* complete a minimum of 20 hours of professional development relevant to the *financial adviser services* the *AFA* provides or intends to provide.

That professional development must, in each *CPD period*, comprise at least 10 hours of structured training.

To be structured training, the training must form part of the requirements for a qualification on either the National Qualifications Framework or the national register of quality assured qualifications, or be part of a structured continuing professional development programme managed by a *DAO*, *QFE*, or *professional body*.

An *AFA* must keep appropriate records of any *CPD* activity completed that is required by this **Code Standard** in a form suitable for demonstrating compliance with this **Code Standard**. The records contemplated under this **Code Standard** include:

- (a) the name of the *CPD* activity; and
- (b) the date of completion; and
- (c) how many hours of *CPD* it involved; and
- (d) a brief description of the *CPD* content covered by it; and
- (e) whether it constituted structured training; and
- (f) in relation to structured training, relevant third-party verification of the successful completion of that training, such as confirmation by the training provider or by the *AFA*'s employer or *principal*.

G Competence Alternatives Schedule

For the purposes of the *Code*, a person wishing to be an *AFA* is treated as having satisfied the requirements of a particular *Unit Standard Set* where the *person* has attained an alternative qualification or designation as specified in this Schedule.

References in this Schedule to a qualification, paper, or designation being “attained” or “subject to the *eligibility sunset*” are explained under the “Competence Alternatives Schedule” heading in **Code Standard 16**.

**National Certificate in Financial Services (Financial Advice) (Level 5)
Unit Standard Sets**

Unit Standard Set A

(Comprising units 24755, 25642, and 25643)

Knowledge of the industry, financial markets, the advice process and products

Alternative qualification

For the purposes of the *Code*, a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified *Unit Standard Set*

- Any New Zealand-issued tertiary qualification at degree level or above in or majoring in accountancy, business (including business administration and business analysis), commerce, economics, finance, or management studies (including applied management)
- Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*
- Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)*
- Postgraduate Diploma in Personal Financial Planning (Waikato University)*
- Certificate in Financial Services from Adviserlink Learning Limited
- New Zealand Stock Exchange Diploma (NZSE Diploma)
- NZX Diploma

Alternative designation

For the purposes of the *Code*, a person who has attained one of the following designations is treated as having satisfied the requirements of the specified *Unit Standard Set*

- *Associate Financial Planner*
- *Associate Life Underwriter*
- *Certified Financial Planner*
- *CFA Charterholders*
- *Chartered Life Underwriter*
- Member of the New Zealand Institute of Chartered Accountants (*Accounting Technician, Associate Chartered Accountant, and Chartered Accountant*)
- *NZFMA Accredited individual*
- *NZX Advisor*
- *NZX Associate Advisor*
- *Registered Legal Executive*

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Financial Advisers (Code of Professional
Conduct for Authorised Financial
Advisers) Notice 2010

Schedule

National Certificate in Financial Services (Financial Advice) (Level 5)
Unit Standard Sets

Unit Standard Set B
 (Comprising unit 26360)
 Knowledge of the *Code* and consumer protection laws

Unit Standard Set C
 (Comprising units 25650, 25651, 25652, and 25653)
 Professional practice advice process and complying with legislation

Alternative qualification

For the purposes of the *Code*, a person who has attained one of the following qualifications is treated as having satisfied the requirements of the specified *Unit Standard Set*

*in each case, including their respective predecessor diploma qualifications

No recognised alternative

- Certificate in Financial Services from Adviserlink Learning Limited, attained prior to 1 January 2010

Alternative designation

For the purposes of the *Code*, a person who has attained one of the following designations is treated as having satisfied the requirements of the specified *Unit Standard Set*

No recognised alternative

- *Associate Chartered Accountant*
 - *Chartered Accountant*
 - *Certified Financial Planner*
 - *CFA Charterholder*
 - *Chartered Life Underwriter*
 - *NZX Advisor*
- in each case subject to the *eligibility sunset*

**National Certificate in Financial Services (Financial Advice) (Level 5)
Unit Standard Sets**

Unit Standard Set D
(Comprising units 25648 and 25649)
Investment Unit Standards

Alternative qualification

For the purposes of the *Code*, a *person* who has attained one of the following qualifications is treated as having satisfied the requirements of the specified *Unit Standard Set*

- Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)*, subject to the *eligibility sunset*
- Postgraduate Diploma in Personal Financial Planning (Waikato University)*, subject to the *eligibility sunset*
- New Zealand Stock Exchange Diploma (NZSE Diploma)
- NZX Diploma, subject to the *eligibility sunset*

*in each case, including their respective predecessor diploma qualifications

Alternative designation

For the purposes of the *Code*, a *person* who has attained one of the following designations is treated as having satisfied the requirements of the specified *Unit Standard Set*

- *CFA Charterholder*

Reprinted as at
1 May 2014

Financial Advisers (Code of Professional
Conduct for Authorised Financial
Advisers) Notice 2010

Schedule

National Certificate in Financial Services (Financial Advice) (Level 5)
Unit Standard Sets

Unit Standard Set E

(Comprising either *units* 25644 and 25645, or *units* 25646 and 25647)
 Insurance Unit Standards
 OR
 Residential Property Lending Unit Standards

Alternative qualification

For the purposes of the *Code*, a *person* who has attained one of the following qualifications is treated as having satisfied the requirements of the specified *Unit Standard Set*

- Graduate Diploma in Business Studies (Personal Risk Management OR Personal Financial Planning) (Massey University)*, provided the Diploma includes a paper on personal risk management, subject to the *eligibility sunset*
*in each case, including their respective predecessor diploma qualifications
- *Associate Life Underwriter* or *Chartered Life Underwriter* who has completed four papers from the Graduate Diploma in Business Studies (Personal Risk Management) (Massey University)* including a paper on personal risk management, subject to the *eligibility sunset*
- *Associate Financial Planner* or *Certified Financial Planner* who has completed four papers from the Graduate Diploma in Business Studies (Personal Financial Planning) (Massey University)* including a paper on personal risk management, subject to the *eligibility sunset*
- *Chartered Life Underwriter* who, prior to 1 January 2010, has attained the New Zealand Diploma in Life Assurance, the New Zealand Certificate in Life Insurance (Open Polytechnic), an Associatehip of the Insurance Institute of New Zealand

Alternative designation

For the purposes of the *Code*, a *person* who has attained one of the following designations is treated as having satisfied the requirements of the specified *Unit Standard Set*

Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010	Reprinted as at 1 May 2014
Schedule	

**National Certificate in Financial Services (Financial Advice) (Level 5)
Unit Standard Sets**

Alternative qualification

For the purposes of the *Code*, a *person* who has attained one of the following qualifications is treated as having satisfied the requirements of the specified *Unit Standard Set*

Alternative designation

For the purposes of the *Code*, a *person* who has attained one of the following designations is treated as having satisfied the requirements of the specified *Unit Standard Set*

Zealand (Life), or has completed the personal risk management course provided by Adviserlink Learning Limited

*in each case, including their respective predecessor diploma qualifications

Reprinted as at
1 May 2014

Financial Advisers (Code of Professional
Conduct for Authorised Financial
Advisers) Notice 2010

Schedule

H Definitions schedule

In this *Code*, unless the context otherwise requires, the following terms have the meanings set out below. To assist, those terms are shown in *italics* wherever they appear in the body of the *Code*. Any term that is not defined in this Schedule, but is defined in the *Act* or in regulations made under the *Act*, has the same meaning in the *Code* as in the *Act* or in those regulations, as applicable.

Accounting Technician	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation accounting technician
Act	the Financial Advisers Act 2008
AFA	an <i>Authorised Financial Adviser</i>
Associate Chartered Accountant	a member of the New Zealand Institute of Chartered Accountants who, under the rules of the Institute, is entitled to use the designation Associate Chartered Accountant
Associate Financial Planner	an individual who has been awarded this designation by the Institute of Financial Advisers Inc
Associate Life Underwriter	an individual who has been awarded this designation by the Institute of Financial Advisers Inc
Authorised Financial Adviser	a <i>person</i> described in section 51 of the <i>Act</i> who is authorised by the Securities Commission under section 55 of the <i>Act</i>
Bank	has the same meaning as the term “bank in New Zealand” in section 5 of the <i>Act</i>
benefit	any money, property, or other valuable consideration
business partner	a <i>person</i> who is a member of a partnership as defined in section 4 of the Partnership Act 1908

category 1 product	means any of the following products (other than a product that is a category 2 product): (a) a <i>security</i> ; or (b) a land investment product (as defined by regulations); or (c) a futures contract; or (d) an investment-linked contract of insurance (as defined by regulations); or (e) any other product specified by regulations made under the <i>Act</i> ; or (f) a renewal or variation of the terms or conditions of an existing <i>category 1 product</i>
category 2 product	means any of the following products: (a) a <i>bank</i> term deposit; or (b) any bonus bond; or (c) any call building society share; or (d) a call credit union share; or (e) a call debt security; or (f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or (g) a unit in a cash or term portfolio investment entity (as defined by regulations); or (h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or (i) a contract of insurance (other than an investment-linked contract of insurance); or (j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or (k) any other product specified by regulations made under the <i>Act</i> ; or (l) a renewal or variation of the terms and conditions of any existing category 2 product
Certified Financial Planner	an individual who has been awarded this designation by the Institute of Financial Advisers Inc.
CFA Charterholder	an individual entitled to use the chartered financial analyst designation granted by the CFA Institute
Chartered Accountant	has the same meaning as in section 2 of the New Zealand Institute of Chartered Accountants Act 1996

Schedule	Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010	Reprinted as at 1 May 2014
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Chartered Life Underwriter	means an individual who has been awarded this designation by the Institute of Financial Advisers Inc.
class service	a <i>financial adviser service</i> that is not a <i>person-alised service</i>
client	means, in relation to an <i>AFA</i> ,— (a) a <i>person</i> who receives a service from the <i>AFA</i> (whether or not on payment of a charge); but (b) does not include a <i>person</i> who receives any services from the <i>AFA</i> if the service is both provided and received in the course of, and for the purposes of: (i) the same business; or (ii) the businesses of related bodies corporate; or (iii) the businesses of members of a QFE group, irrespective of whether the <i>person</i> providing or receiving the service is the <i>person</i> carrying on the business, a controlling owner, a director, an agent, or any other <i>person</i>
client information	information about a <i>client</i>
Code	the Code of Professional Conduct for Authorised Financial Advisers approved by the <i>Minister</i> and brought into force by <i>Gazette</i> notice under section 94 of the <i>Act</i>
Code Standard	a standard specified in the <i>Code</i>
Commissioner for Financial Advisers and Commissioner	the <i>person</i> appointed under section 79(3) of the <i>Act</i>
Competence Schedule	the schedule of this <i>Code</i> named as such
complaint	an expression of dissatisfaction by a <i>client</i> to an <i>AFA</i> about the <i>AFA</i> 's <i>financial adviser services</i> provided to the <i>client</i> , other than an expression of dissatisfaction that is trivial or vexatious or that the <i>client</i> indicates is not intended to constitute a complaint for the purposes of the <i>Code</i>
CPD	continuing professional development or training relevant to the <i>financial adviser services</i> the <i>AFA</i> provides or intends to provide

CPD period	in respect of an <i>AFA</i> , a 12-month period from the day of the year specified for this purpose in the <i>AFA</i> 's terms of authorisation or, in the absence of any such day being specified, a calendar year with the first such period commencing on the 1st day of January following the <i>AFA</i> 's authorisation
DAO	an entity registered by <i>ETITO</i> as a delegated assessment organisation accredited for the provision of training and assessment for <i>Unit Standard Set C</i>
director	has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a <i>person</i> who occupies a position comparable to that of a <i>director</i> (such as a trustee or a partner)
discretionary investment management service	a service which an <i>AFA</i> , acting under an authority granted to the <i>AFA</i> (or to the <i>AFA</i> 's employer or <i>principal</i>) manages all or some of the <i>client</i> 's holdings of <i>financial product</i> , and decides which <i>financial products</i> to acquire or dispose of on behalf of the <i>client</i>
eligibility sunset	part of the transitional measures explained at Code Standard 16 under the “Competence Alternatives Schedule” heading
ETITO	Electrotechnology Industry Training Organisation Incorporated
external dispute resolution scheme	in respect of an <i>AFA</i> , the scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to which any complaint concerning the <i>AFA</i> must be referred
financial advice	making a recommendation or giving an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a <i>financial product</i> , noting that whether or not advice is financial advice is not affected by how the advice is given or communicated. The mere provision of information or making a recommendation or giving an opinion relating to a class of <i>financial products</i> , or making a recommendation or giving an opinion about the procedure for acquiring or disposing of a <i>financial product</i> , or transmitting the financial advice of another or recommending that a <i>person</i> consult a <i>financial adviser</i> , does not amount to <i>financial advice</i>

Schedule	Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010	Reprinted as at 1 May 2014
financial adviser	a <i>person</i> who provides a <i>financial adviser service</i>	
financial adviser service	giving <i>financial advice</i> , or providing an <i>investment planning service</i> , or providing a <i>discretionary investment management service</i> , in the ordinary course of business	
financial product	a <i>category 1 product</i> or a <i>category 2 product</i>	
internal complaints handling process	an <i>AFA</i> 's internal process for handling and resolving <i>complaints</i> as described in Code Standard 11	
investment planning service	a service provided by an <i>AFA</i> under which the <i>AFA</i> designs, or offers to design, a plan for an individual that:	
	(a) is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and	
	(b) includes 1 or more recommendations or opinions on how to realise those goals (or 1 or more of them),	
	regardless of whether the analysis and identification is of the individual's particular financial situation and goals or of the financial situations and goals attributable to a class of <i>persons</i> that the individual is identified as coming within	
Minister	has the same meaning as in section 5 of the <i>Act</i>	
NZFMA Accredited individual	an individual who has achieved accredited individual status following the completion of the New Zealand Financial Markets Association Financial Services Accreditation Program	
NZX Advisor and NZX Associate Advisor	an individual who has been accredited and approved by NZX as an NZX Advisor or NZX Associate Advisor (as applicable) as provided in the NZX Participant Rules	

offered to the public	in relation to a <i>security</i> , has the same meaning as the construction of references to offering securities to the public in section 3 of the Securities Act 1978; and in relation to any other <i>financial product</i> means the <i>financial product</i> is being or has been offered to: (a) any section of the public, however selected; or (b) individual members of the public selected at random; or (c) a <i>person</i> if the <i>person</i> became known to the offeror as a result of any public advertising of the offeror that was intended to likely to result in the public seeking further information about the <i>financial product</i>
person	includes an individual, a corporation sole, a body corporate, and an unincorporated body (including the trustees of a trust)
personalised service	a <i>financial adviser service</i> : (a) given to or in respect of a named <i>client</i> or a <i>client</i> that is otherwise readily identifiable by the <i>AFA</i> ; and (b) the <i>AFA</i> has taken into account the <i>client's</i> particular financial situation or goals (or any one or more of them) in providing the service, or the <i>client</i> would, in the circumstances in which the service is provided, reasonably expect the <i>AFA</i> to take into account the <i>client's</i> particular financial situation or goals (or one or any more of them), however, a service is not personalised merely because the <i>client</i> comes within a class of <i>persons</i> having predefined characteristics and the <i>AFA</i> takes the fact that the <i>client</i> comes within that class into account
principal	a <i>person</i> who is the <i>principal</i> in an agency relationship

product provider	<p>means:</p> <ul style="list-style-type: none"> (a) the issuer, in the case of a security: (b) the creditor, in the case of a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003): (c) the insurer, in the case of a contract of insurance (other than an investment-linked contract of insurance): (d) the <i>person</i> specified by regulations in any other case
professional body	a membership-based organisation whose principal activities are associated with the financial services industry in New Zealand where ongoing membership requires compliance with continuing professional development or training requirements specified by the organisation
QFE	an entity that is registered and has QFE status or a number of partner entities that are each registered and jointly have QFE status
Registered Legal Executive	an individual who is entitled, under the Rules of the New Zealand Institute of Legal Executives Inc, to use the designation registered legal executive
related person	<ul style="list-style-type: none"> (a) in relation to an individual, a parent, child, sibling, spouse, <i>de facto</i> spouse, civil union partner, employer, or <i>business partner</i> of that individual, or a <i>principal</i> on whose behalf the individual provides <i>financial adviser services</i> by way of a contract for services; and (b) in relation to a body corporate A: <ul style="list-style-type: none"> (i) a <i>person</i> who <ul style="list-style-type: none"> • is also a body corporate; and • either has substantially the same shareholders as A; or • is under the control of the same <i>person</i> or <i>persons</i> as A; or (ii) a <i>person</i> who is able, directly or indirectly, to— <ul style="list-style-type: none"> • exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or

		• appoint or control 25% or more of a governing body of A
retail client	a <i>client</i> who is not a <i>wholesale client</i>	
security unit	has the same meaning as in section 5 of the <i>Act</i> a unit standard forming part of the National Certificate in Financial Services (Financial Advice) (Level 5) on the National Qualifications Framework	
Unit Standard Set	a set of <i>units</i> specified in the National Certificate in Financial Services (Financial Advice) Level 5, with Unit Standard Sets A, B, C, D and E comprising the respective <i>units</i> specified in the Competence Schedule	
wholesale client	a <i>client</i> classified as a <i>wholesale client</i> under section 5C of the <i>Act</i>	
written or in writing	includes in electronic form.	

Dated at Wellington this 22nd day of October 2010.

David Mayhew,
Commissioner for Financial Advisers.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which is given by the Commissioner for Financial Advisers (the **Commissioner**), gives the notice required by section 94 of the Financial Advisers Act 2008 (the **Act**) of the date on which the provisions of the Code of Professional Conduct for Authorised Financial Advisers (which is set out in the Schedule of this notice) comes into force. All the provisions of the Code come into force on the same date, 1 December 2010. The draft code was prepared by the code committee (as required by section 87 of the **Act**) and approved

by the Commissioner (under section 88 of the Act) and by the Minister of Commerce (under section 92 of the Act).

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 October 2010.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2010 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Advisers (Code of Professional Conduct for Authorised Financial Advisers) Notice 2014 (*Gazette* 2014, p 966)
