

# CODE OF PROFESSIONAL CONDUCT FOR FINANCIAL ADVICE SERVICES

THIS CODE HAS BEEN APPROVED BY THE MINISTER BUT IS NOT YET IN FORCE

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### **The Financial Advice Code**

This is the Code of Professional Conduct for Financial Advice Services prepared in accordance with Part 4 of Schedule 5 of the Financial Markets Conduct Act 2013 (the **FMC Act**).

The Code supports the purposes of the FMC Act including promoting the confident and informed participation of businesses, investors, and consumers in the financial markets, avoiding unnecessary compliance costs, and ensuring the availability and quality of financial advice.

The Code is part of a wider regulatory regime for financial advice. Subpart 5A of Part 6 of the FMC Act imposes statutory duties on persons who give regulated financial advice to retail clients. Those duties include:

- › to comply with the standards of ethical behaviour, conduct, and client care required by the Code
- › to meet the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the Code for giving the advice.

In the Code, “client” means a retail client and “financial advice” means regulated financial advice given to a client.

The Code includes commentary to help persons who give financial advice to comply with the standards. The commentary does not limit the standards.

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# The Standards

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## **PART 1: ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE**

1. Treat clients fairly
2. Act with integrity
3. Give financial advice that is suitable
4. Ensure that the client understands the financial advice
5. Protect client information

## **PART 2: COMPETENCE, KNOWLEDGE, AND SKILL**

6. Have general competence, knowledge, and skill
7. Have particular competence, knowledge, and skill for designing an investment plan
8. Have particular competence, knowledge, and skill for product advice
9. Keep competence, knowledge, and skill up-to-date

# PART 1:



## ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE

### STANDARD 1

#### TREAT CLIENTS FAIRLY

A person who gives financial advice must always treat clients fairly.

##### ■ COMMENTARY

What is fair depends on the particular circumstances, including the nature and scope of the financial advice. Treating clients fairly should include:

- › treating clients with respect
- › listening to clients, considering their views and responding to their concerns and preferences

- › communicating with clients in a timely, clear and effective manner
- › not taking advantage of clients' lack of financial knowledge or other vulnerabilities
- › not applying undue pressure on clients.

Treating clients fairly does not mean that clients are not responsible for their own decisions or that they are not exposed to risk.

### STANDARD 2

#### ACT WITH INTEGRITY

A person who gives financial advice must always act with integrity.

##### ■ COMMENTARY

The standard applies to giving financial advice and to the activities and business practices that surround and support the giving of financial advice. That includes how a person who gives financial advice:

- › describes themselves and their business
- › publishes and shares information with clients, prospective clients and the public
- › interacts with clients, prospective clients, colleagues, regulators, media and the public.

Acting with integrity includes:

- › avoiding or appropriately managing any conflict of interests
- › not doing anything that would, or would be likely to, bring the financial advice industry into disrepute.

## GIVE FINANCIAL ADVICE THAT IS SUITABLE

A person who gives financial advice must ensure that the financial advice is suitable for the client, having regard to the nature and scope of the financial advice.

### ■ COMMENTARY

Ensuring that the financial advice is suitable for the client should include having reasonable grounds for the financial advice. Reasonable grounds for the financial advice means those grounds that a prudent person engaged in the occupation of giving financial advice would consider to be appropriate in the same circumstances, such as those in relation to:

- › any strategy supporting the financial advice
- › any assumptions underlying the financial advice
- › any financial advice product covered by the financial advice
- › the client's circumstances that are relevant to the financial advice, such as their financial situation, needs, goals, and risk tolerance.

Depending on the nature and scope of the financial advice, a detailed analysis of the client's circumstances may be required or it may be reasonable to make assumptions about the client's circumstances based on particular characteristics of the client.

If the financial advice includes a comparison between two or more financial advice products, the financial advice should be based on an assessment of each product.

A person who gives financial advice may rely on another person's assessment of a financial advice product or strategy. The person giving the financial advice should be able to demonstrate that it is reasonable to rely on the other person's assessment.

## ENSURE THAT THE CLIENT UNDERSTANDS THE FINANCIAL ADVICE

A person who gives financial advice must take reasonable steps to ensure that the client understands the financial advice.

### ■ COMMENTARY

Section 431j) of the FMC Act provides that a person must not give financial advice unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

This standard relates to the financial advice itself.

Understanding the financial advice includes the client having sufficient comprehension of the content, risks and consequences of the financial advice, and of the nature of any ongoing and other services related to the financial advice, to be able to make timely and informed decisions about the financial advice, such as:

- › whether the financial advice is based on valid assumptions about the client's circumstances
- › whether to follow the financial advice
- › whether the fees and costs associated with following the financial advice, such as those of any financial advice product or platform, are acceptable
- › whether and when to seek additional financial advice.

What amounts to reasonable steps by the person who gives the financial advice will depend on the circumstances, such as the nature and scope of the financial advice, and the skills, experience and vulnerabilities of the client.

## PROTECT CLIENT INFORMATION

A person who gives financial advice must take reasonable steps to protect client information against loss and unauthorised access, use, modification, or disclosure.

### ■ COMMENTARY

Client information includes all information about the client that is collected or held by a person who gives financial advice. That includes information in work papers and records, and the financial advice given to the client.

Client information about a client should only be used, retained or disclosed:

- › for the purpose of giving financial advice to the client
- › for another purpose that is directly related to giving the financial advice
- › if the use, retention or disclosure is required or permitted by law
- › for another purpose if the client has agreed.

Client information should be retained only for as long as it is required for one or more of those reasons. When it is no longer needed, the client information should be returned to the client or disposed of securely.

Physical and electronic security measures should be maintained so that only authorised personnel of the financial advice provider have access to client information.

Client information is broader than personal information under the Privacy Act. To the extent that it relates to personal information, however, the standard is intended to be applied consistently with obligations under the Privacy Act.

# PART 2:



## COMPETENCE, KNOWLEDGE, AND SKILL

### STANDARD 6

#### HAVE GENERAL COMPETENCE, KNOWLEDGE, AND SKILL

A person must not give financial advice unless the person meets the standard of general competence, knowledge, and skill.

The standard of general competence, knowledge, and skill is that the person has capabilities equivalent to the general qualification outcomes of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315). The general qualification outcomes are qualification outcomes 1-4 of that certificate.

#### ■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their general competence, knowledge, and skill by any of the following ways:

- › hold version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5)
- › hold the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies any of the ways stated above.

#### ■ COMMENTARY

A person may demonstrate competence, knowledge, and skill in a way that is different from those listed above, for example by reference to the financial advice provider's procedures, systems and expertise.

If a person seeks to demonstrate competence, knowledge, and skill by reference to an alternative qualification or experience, they should do so in an objective, measurable and independently verifiable manner.

## HAVE PARTICULAR COMPETENCE, KNOWLEDGE, AND SKILL FOR DESIGNING AN INVESTMENT PLAN

A person must not give financial advice that includes designing an investment plan unless the person meets the standard of particular competence, knowledge, and skill for designing an investment plan.

The standard of particular competence, knowledge, and skill for designing an investment plan is that the person has the capabilities equivalent to the qualification outcomes of the investment strand of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315).

### ■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their particular competence, knowledge, and skill for designing an investment plan by any of the following ways:

- › has achieved the qualification outcomes of the investment strand of version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser, permitted to provide investment planning services, immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies either of the ways stated above.

### ■ COMMENTARY

This standard is an interim standard. The Code Committee intends to consult in the future on whether higher qualification outcomes should be the required standard of particular competence, knowledge, and skill for designing an investment plan.

The Standard 6 commentary also applies to this standard.



## HAVE PARTICULAR COMPETENCE, KNOWLEDGE, AND SKILL FOR PRODUCT ADVICE

A person must not give financial advice that includes a recommendation or opinion about either:

- › acquiring or disposing of (or not acquiring or disposing of) a financial advice product
- › switching funds within a managed investment scheme

unless the person meets the standard of particular competence, knowledge, and skill for product advice.

The standard of particular competence, knowledge, and skill for product advice is that the person has the capabilities equivalent to the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5) version 2 approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315).

The relevant strand means the specialist strand of the certificate that is most relevant to the type of financial advice product to which the financial advice relates. If the financial advice relates to more than one type of financial advice product, the relevant strand means the strands that are most relevant to all those products.

### ■ WAYS OF DEMONSTRATING THE STANDARD

A person may demonstrate their particular competence, knowledge, and skill for product advice by any of the following ways:

- › has achieved the qualification outcomes of the relevant strand of version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- › was an authorised financial adviser, permitted to provide financial adviser services in relation to the financial advice product to which the financial advice relates, immediately before the commencement of the Code
- › give financial advice only through an individual who satisfies either of the ways stated above.

### ■ COMMENTARY

The Standard 6 commentary also applies to this standard.

## KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP-TO-DATE

A person who gives financial advice must undertake continuing professional development as follows:

Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain:

- › the competence, knowledge, and skill for the financial advice they give
- › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.

### ■ COMMENTARY

There are many ways in which a person might satisfy the requirements for continuing professional development. For example, an individual might maintain an up-to-date understanding of the regulatory framework for financial advice in New Zealand by completing, after any material changes to that regulatory framework, the requirements for qualification outcome 4 of the New Zealand Certificate in Financial Services (Level 5) version 2.