

SUBMISSION TO THE
Code Committee for Financial Advisers

***Code of Professional Conduct for
Authorised Financial Advisers***
Draft for Consultation

PREPARED BY

**THE NEW ZEALAND INSTITUTE OF CHARTERED
ACCOUNTANTS**



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May 2010

Executive Summary

1. The New Zealand Institute of Chartered Accountants ('NZICA') welcomes the opportunity to comment on the Code of Professional Conduct for Financial Advisers. NZICA supports the formulation and promulgation of such a code. We acknowledge the analysis and synthesis that has clearly occurred in order to produce a realistic Code within a limited time.
2. NZICA has a century long history in regulating its members in the public interest to ensure the highest professional and ethical standards are met. This includes the development of ethical and professional standards based on internationally accepted best practice and a rigorous complaints and disciplinary framework. NZICA's ethical and professional standards can be viewed at: http://www.nzica.com/AM/Template.cfm?Section=Ethical_Professional_Standards
3. NZICA has provided general introductory information in past submissions to the Code Committee on its regulatory framework, professional and ethical standards, its structure and how it prepares submissions. NZICA's submissions to government can be viewed at www.nzica.com.
4. NZICA is generally supportive of the structure and content of the Code of Professional Conduct for Financial Advisers. Our submission provides general comment on the structure of the Code and specific comment on certain standards.

If you would like to discuss any aspect of this submission with NZICA, please contact, in the first instance, Julie Haggie – Senior Manager Specialisations (phone: 917 4861, and e-mail: julie.haggie@nzica.com).

General comments

The structure of the Code

5. NZICA notes that the framework of the Code uses overarching principles followed by additional provisions. NZICA appreciates that the Committee's intention is for this Code to be easily understood by the consumer, and this is why the broad principle approach has been taken. Whilst acknowledging that there are benefits and disadvantages of both the broad and the detailed approaches to regulation, NZICA tends to favour a more prescriptive approach where decisions based on that regulation may have a direct impact upon people's lives, because:
 - a. It makes the rules more transparent, reducing the interpretative capability of the standard.
 - b. It is particularly useful where a good percentage of the practitioners are unused to professional standards and context.NZICA appreciates that there may have to be some interpretative guidance provided by the Securities Commission over time.

NZICA comments on specific Standards

Code Standard 3

6. New Zealand supports the approach taken to commissions by the Code Committee. This is the same approach that NZICA has taken in its Financial Advisory Services Standard. We note one concern based on a comment reported to us from a Code Commission consultation meeting, i.e. that charging a fee to clients based on a percentage of funds under management would be regarded as an impediment to independence. It does not appear to us that this conclusion could be arrived at from the wording of Standard 3. The clear inference from Standard 3 is that, as long as any remuneration comes from the client and not a third party, then independence is not impaired. Charging a fee based on a percentage of funds under management is merely a way of setting the fee that the client will pay. This appears to be in line with the approach that will be applied in the recently announced changes in Australia. The proposed legislation to ban commissions in Australia will permit advisers to charge a flat fee, hourly rate or a fee on un-g geared assets under management.

7. **Should the Code Committee** consider that Standard 3 could be interpreted to read that charging a fee to clients based on a percentage of funds under management would be regarded as an impediment to independence, then **NZICA recommends** that Standard 3 be amended to clarify that advisers who calculate fees based on funds under management will be able to state that they are independent.

Code Standard 5

8. Code Standard 5 forbids AFAs from borrowing or lending to clients. This would create a conflict for some NZICA members who operate associated finance entities. NZICA's Professional Standard 2 allows members to lend or invest client monies with associated finance entities, under strict conditions (including obtaining the client's express written authority, only to an associated finance entity that is an 'issuer' or where the client has given permission and other conditions apply). NZICA considers that its members are sufficiently regulated through the provisions of this standard to mitigate risk to the client. **NZICA therefore recommends that Code Standard 5** includes an additional point which is:
 - d. Where the AFA is an NZICA member.

Code Standard 7

9. NZICA supports this Standard. It is in line with the requirements set by other regulators of professions in New Zealand and overseas, and it supports the purpose of the Financial Advisers Act, i.e. to encourage public confidence in the professionalism and integrity of financial advisers. NZICA considers that the wording of the provision sufficiently protects the AFA who is reporting on another AFA. It is the responsibility of the Securities Commission to investigate any suspected breach.
10. All NZICA members providing financial advice have to comply with NZICA's Financial Advisory Engagement Standard (FAES) which includes a requirement that members report misconduct by other members. The FAES also requires members to:
 - a) report their own personal misconduct.
 - b) report instances of fraudulent or illegal activities that they discover in the course of their professional work.NZICA is not suggesting that the Committee add these requirements to its Code. The matching and additional NZICA requirements support the Committee's position that reporting misconduct is a reasonable expectation for a regulatory body to place upon professionals.

Code Standards 13 & 14

11. NZICA appreciates that Standards 13 and 14 were developed prior to the release of the Supplementary Order Paper (SOP) to the Financial Service Providers Pre-Implementation Bill.
12. Assuming that the relevant clauses of the SOP are passed as drafted, then:
 - a. Given that the SOP includes specific conduct and disclosure requirements for those providing a broking service, and
 - b. Given that broking service, by definition in the SOP, would cover the actions of authorised financial advisers (i.e. they would also be brokers if they receipted, handled or paid client money or client property,**NZICA recommends that the Committee avoids including similar, but slightly different, requirements in Standards 13 and 14.** The Committee may wish to set additional requirements for authorised financial advisers who are also providing a broking service.
13. The requirement for 'annual audit' in Standard 13(d) is not reflected in the SOP to the Pre-Implementation Bill. NZICA does not require an annual audit per se (though may if the firm is investing the client's money in a financial entity which is not an 'Issuer'). An annual audit is not a specific requirement in the proposed SOP although there are quite specific requirements about the keeping of records and protection of client monies. NZICA questions whether this requirement should be included as an additional requirement in Standard 13. Notwithstanding that the necessary incident exemption for broking service may well apply to many client trust account activities undertaken by Chartered Accountants, the requirement for an annual audit would place an unnecessary burden on NZICA members who are already managing client trust accounts according to NZICA professional standards.

14. **NZICA therefore submits that the phrase “and an annual audit by an independent Chartered Accountant” should be removed from Standard 13(d).**
15. **NZICA submits that if Standard 13(d) is retained then the provision should stipulate what matters the auditor is to consider and report on.** As a comparison, NZICA’s Professional Standard 2 (PS-2) – Client Monies (71) states that *“the auditor undertaking the audit of a member or firm’s activity in respect to client monies .. must express an opinion, in respect of the client monies and/or operation of client bank accounts, as to whether client monies and/or client bank accounts have been properly maintained, recorded and accounted for by the member or firm in compliance with this Standard. “*

Code Standard 19

16. In general NZICA supports the requirements of the standard as it affects NZICA members.
17. Standard 19(d) provides a level of relief from attainment of unit standard sets for members who are Accounting Technicians or Associated Chartered Accountants who *“may provide financial advice in the course of his or her professional practice as an accountant...if the advice is a necessary incident of professional accounting practice.*
18. Ideally such a necessary incident exemption should sit in the Act itself to recognise that Accounting Technicians and Associate Chartered Accountants do, at times, provide financial advice as a naturally occurring consequence of accounting practice, and that any risk is minimised because they are subject to NZICA’s Professional Standards and complaints/disciplinary process.
19. We acknowledge that the Committee has recognised that the current exemption in the Act only provides for CA’s and will create difficulties for other NZICA members providing advice as a naturally occurring incident of accounting practice.
20. Whilst not opposing the current inclusion of the exemption, NZICA notes that it has the potential for confusion:
 - a. for the public who may be confused about the difference between an Accounting Technician who has full AFA competency and an Accounting Technician who has ‘limited’ AFA licensing under 19(d). Whilst disclosure is required, understanding what that means may be beyond the ken of clients.
 - b. for the Accounting Technician or Associate Chartered Accountant being clear that whilst they are authorised they have only a limited authorisation, and what that means in each situation.
21. NZICA would appreciate the opportunity to discuss this clause with the Code Committee
22. **NZICA notes the following typographical error:**
19 (d) should read ‘Associate Chartered Accountant’ (not Associated Chartered Accountant)

We have referred in our submission to a number of documents and programmes for which we can provide copies or more information should you wish. The documents or information about the programmes are available on NZICA’s website at www.nzica.com.